

Department Chair Brown Bag

Managing Accommodation and Medical Leave Issues

Office of the Vice Provost – Academic Affairs
January 14, 2015

Part I

Managing Reasonable Accommodations and Medical Leaves For Faculty

AGENDA

- Introductions
- Legal Considerations (Campus Counsel)
- Policy/Best Practices (Academic Affairs)
- Interactive Process/Reasonable Accommodation (Disability Management Services)
- Case Scenarios
- Review of Handout

INTRODUCTIONS

LEGAL CONSIDERATIONS

Sheila O'Rourke,
Associate Campus Counsel

Legal Considerations

- Federal and State employment law protects:
 - “Qualified”
 - “Individuals with disabilities”
- Legal obligations:
 - Provide “reasonable accommodation”
 - Engage in “interactive process”
 - May not “discriminate”
 - May not “retaliate”
- Protection includes employees and applicants

Legal Considerations

- Definition of “Qualified”
 - Must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses, AND
 - Must be able to perform the “essential functions” of the job with or without reasonable accommodation.

Legal Considerations

- Definition of “disability” is broad
 - a physical or mental impairment that *limits* a major life activity;
 - a history of such a disability; OR
 - Is regarded as having such a disability, even if he or she does not have a disability
- Includes: emotional, mental, cognitive impairments such as autism, PTSD, depression

Legal Considerations

- Definition of “Disability” does NOT include:
 - Gambling, kleptomania, pyromania
 - Disorders from current unlawful use of controlled substances or other drugs
 - Sexual behavior disorders (pedophilia, exhibitionism, voyeurism)
 - Mild conditions that do not limit a major life activity, as determined on a case by case basis, i.e common cold, minor sprains, non-migraine headaches

Legal Considerations

- Definition of “Essential Functions”
 - A function may be essential because the reason the position exists is to perform that function;
 - A function may be essential because there are a limited number of faculty among whom the function could be distributed;
 - A function may be essential because it is highly specialized and the incumbent is hired for his or her expertise or ability to perform that function

Legal Considerations

- Reasonable accommodations
 - Must be made on a case by case basis in accordance with individual limitations and job requirements;
 - Must take the employees preferences into account, BUT not have to be the best option or the preferred option, only an effective one;
 - Should not include doing the “essential functions” of the employee’s job
 - May include periods of leave

Legal Considerations

- The big picture – reducing legal risk
 - Strive for consistent expectations and requirements evenly applied across the department
 - Treat the individual with a disability the same as you would your most valuable colleague
 - Don't improvise! There are complicated legal obligations - REACHOUT FOR ASSISTANCE

POLICY & BEST PRACTICES

Matilda Aidam, Director
Faculty Relations and Development
Academic Affairs

Policies

- **APM 710 – Medical Leave**

Provides quarters of paid leave for own illness/injury based on the faculty members years of service, in 10 year increments:

- 0-10 years – 2 quarters/1 semester
- 10-20 years – 3 quarters/2 semesters/12 months (fiscal)
- 20-30 years – (same as above)

Use or lose - Unused portions of the leave do not get carried over.

Policies

- **APM 715 – Family and Medical Leave (FMLA)**
Providing FMLA leave for the appointee's own illness can be a form of accommodation.
- If someone is on leave based on APM 710, FMLA should be designated.
- This is not additional leave, just a designation.

Policies

- **APM 711 – Reasonable Accommodation for Academic Appointees with Disabilities**

Provide guidance to ensure consistency in implementation of accommodations for academics.

- Addresses the need for University and the academic member to engage in an “interactive process” to identify possible options for reasonably accommodating their disability. (DMS will cover this process further.)

- We recommend you encourage new faculty to buy Supplemental Disability Insurance with the 6 month waiting period.

Policies

- **APM 080 – Medical separation**

Used only in cases where a long term or serious disability occurs that cannot be reasonably accommodated.

- Prior to initiating medical separation process, the University will engage in an interactive process, per APM 711.

Best Practices

- Keep the information confidential and only limited to those who need to know and are directly involved to avoid the appointee receiving differential treatment.
- Be consistent in your response to these issues, including leaves or requests for medical accommodations.
- Though cases are all different, being consistent in approach is crucial so you are not seen as being arbitrary.
- Collaborate with your resources. Start with the Deans office, and use both DMS and AA.

Best Practices

- Document! Documentation takes time but it's very important to show engagement in the interactive process.
- AA and DMS can assist with finalizing the more involved documentation.
- Those individuals who have been ill or injured and on leave or can show through medical documentation that they were incapacitated, can request deferrals without reduction to offscale.
- We have a track record of providing workable solutions and have a number of success stories.

THE INTERACTIVE PROCESS

Fredna Karneges & Dave Ritz
Disability Management Services

The Interactive Process

- It is unlawful under both Federal and California State laws and is contrary to UC policy for employers to fail to engage in the interactive process in a timely way and in good faith.

The Interactive Process

- The interactive process is an on-going dialogue between employer and employee when an employer becomes aware of, or has knowledge that the employee may have a medical condition, disability, or other circumstance that could require reasonable accommodation.

The Interactive Process Starts:

- When you become aware that a faculty member may need help start the Interactive Process (IP).
- Starting the IP is as simple as asking, “Can I help you?”
- Simultaneously, ask for help from your resources: Disability Management Services (DMS) and Academic Affairs.

The Interactive Process Starts:

- You may ask for limitations and restrictions that will help define reasonable accommodation(s).
- DMS will help you obtain this information, convey what is useful and keep the information confidential.
- Discuss the limitations and restriction with the faculty member to obtain an idea of what kinds of accommodation(s) might be needed.
- With help from your resources, explore what accommodation(s) will be most effective for your needs and document the accommodation. DMS and AP will assist with the documentation.

“Reasonable Accommodation”

- A reasonable accommodation is a logical adjustment to the job that allows a person with a disability to perform the essential functions of the position.
- An adjustment which allows a person with a disability to participate in any and all aspects of the employment process, including recruitment, application and promotion, as well as all other employee privileges & benefits.

Types of Accommodations

- Making existing facilities readily accessible to and usable by the disabled appointee.
- Providing classrooms with appropriate accessibility and instructional facilities
- Restructuring the job to eliminate non-essential job functions.
- Granting a leave of absence in accordance with policy, see APM 710, APM 711, and APM 715.

Types of Accommodations

- Reduction of appointment percentage on a temporary basis with corresponding reduction in duties, compensation and benefits.
- Modifying the appointee's work schedule (when the faculty member teaches).
- Acquiring or modifying equipment or devices (voice recognition software, document camera).
- Providing qualified readers, interpreters, typing assistance.
- Reassignment to an available alternative position for which the academic appointee is qualified.
- Leave

Recap

- Good Faith Interactive Process is required by California Law and UC Academic Policy.
- Failure to engage in the Interactive Process can be a violation of the law.
- Analyze the essential functions of the Job.
- Rely on current Medical Documentation (functional limitations, do not keep diagnosis info.)
- Discuss possible Reasonable Accommodations.
- Finalize and document the accommodations.
- Disability Management Services and Academic Affairs are your resources for this process.

Part II

Accommodating Students with Disabilities

Jeanne Wilson, Director, Student Disability Center

AGENDA

- Laws and Policies Governing Academic Accommodations
- The Accommodations Process for Students
- Overlapping Roles, Dual Accommodations Processes: Teaching Assistants & Research Assistants
- Grievance Procedures
- Case Scenarios

Federal Laws & Student Accommodations:

- Section 504 of the Rehabilitation Act of 1973
 - Applies to all programs and activities of entities that receive Federal financial assistance
- Title II of the Americans with Disabilities Act of 1990 (ADA)
 - Applies to all services, programs, and activities of public entities
- As both a recipient of Federal financial assistance and a public entity, UC Davis must comply with both these laws.

Federal Laws & Student Accommodations:

- The ADA, Section 504, and implementing regulations require UC Davis to ensure that its academic programs accessible to students with disabilities. Examples of modifications to make academic programs accessible include:
 - Adapting “the manner in which specific courses are conducted”
 - Changing “the length of time permitted for the completion of degree requirements”
 - Permitting “substitution of specific courses required for completion of degree requirements”

Eligibility for ADA Accommodations

- Applicants for UC Davis academic programs must meet the same criteria as all other applicants--they must be “otherwise qualified” with or without accommodations.
- Students with disabilities have the right not to disclose, BUT to be eligible to receive accommodations , they must
 - **disclose their disability to the SDC, and**
 - **submit clinical documentation of their disability describing their specific functional limitations and how their ability to learn/academic performance are impacted**

Not Reasonable Accommodations:

- Providing personal attendants, individually prescribed devices, or other devices/services of a personal nature
- Making adjustments or waiving requirements that would fundamentally alter the nature and/or standards of academic program
 - Whether an adjustment is a “fundamental alteration” is *not* determined by faculty, but through interactive process involving instructor, student, SDC, and academic department
 - Burden is on campus to demonstrate “fundamental alteration,” must explore reasonable alternatives

Eligibility for ADA Accommodations

- Nationally, almost 11% of undergraduates report that they have a long-term disability
- Many students with disabilities do not identify themselves or seek accommodations, especially during the application process and when first starting their academic program
- Many have strong learning skills that have enabled them to succeed in the past without even realizing they have a disability
- At UC Davis, less than 3% of students register with the SDC for long-term disabilities

Accommodating Students with Disabilities

- UC Davis must provide reasonable academic accommodations to students with disabilities
- Students, faculty, SDC, and administration share responsibility for ensuring accommodations
- Students with disabilities are exempt from rules that would limit their participation in academic programs, e.g., rules against making audio recordings of class or against bringing dogs to class -- permitted to record class and to bring service dogs

Auxiliary Aids/Accommodations

- Must provide necessary auxiliary aids to ensure program accessibility and avoid discriminating against students with impaired sensory, mobility, manual, or speaking skills.
- The SDC authorizes and provides, assists with, arranges, and /or pays for auxiliary services
- SDC advises students on disability management and compensatory strategies to facilitate independence and self-determination
- SDC loans/makes available accessible/assistive technology devices and software, and provides technical training and consultation to students

Auxiliary Aids/Accommodations

- Auxiliary Aids may be provided as services or in the form of accessible technology, and include:
 - E-Text or other alternate formats for text books, course materials, assignments, and tests
 - Sign language interpreting, captioning, or other effective methods of making oral materials available to students with hearing impairments
 - Lab assistants, test assistants (readers/scribes)
 - Classroom equipment adapted for use by students with sensory, manual, or mobility impairments
 - Other similar devices, actions, or services

Common Academic Accommodations

- Eligible students with verified disabilities may be authorized by the SDC to receive reasonable accommodations appropriate to their functional limitations, such as
 - Extended time, separate room, breaks as needed, or use of a computer for tests;
 - Notetakers, audio recordings of class, or use of a note-taking device or software in class;
 - Alternate formats for books, Smartsite readings, handouts, and tests;
 - Part-time status, waiver of minimum progress

Special Case: TAs and RAs

- Teaching Assistants and Research Assistants have dual roles as both students and employees
- As students, they work with the SDC and go through the accommodations process for classroom and test accommodations
- As employees, they have rights to accessibility and non-discrimination in employment like those of faculty, but covered by different policies
- Some employment responsibilities may be paid but may also be “graded” academic requirements

Special Case: TAs and RAs

- A TA or RA with a disability who is having difficulty meeting employment responsibilities should work with DMS and her/his supervisor to determine accommodations
- Consult with both DMS and SDC when responding to TAs and RAs who have disclosed, or who appear to have, disabilities

UC Davis Division Regulation 538(H)

- Section 538(H) states that faculty have responsibility for providing accommodations authorized by the SDC
- Faculty should immediately consult SDC for questions about authorized accommodations
- Faculty do not have authority to make unilateral decisions about how/whether to provide accommodations, must use interactive process
- If faculty, SDC, and student cannot agree, VC Student Affairs may convene review committee

The Accommodations Process

- Student submits documentation from qualified diagnosing clinician verifying and describing student's current specific functional limitations
- Documentation explains how limitations impact student's ability to learn/academic performance
- Specialist reviews documentation, meets with student to discuss limitations, and determines eligibility for services
- Specialist authorizes individualized accommodations based on student's limitations in context of academic program requirements

Accommodations Process

- Once basic accommodations are authorized, student must still request accommodations for each course each quarter
- Accommodations are approved and letters of accommodation are sent (starting Spring, faculty will access letters through on-line portal)
- Instructor should contact SDC for questions about/help with providing accommodations or if there are concerns that accommodations will fundamentally alter the nature of the course or academic standards/requirements

Grievance Procedures

- SDC Appeal Process
- Role of ADA Compliance Coordinator
- PPM 280-05 Process
 - Grade Change Committee
 - Faculty Code of Conduct
- Complaints to the Office of Civil Rights

Contact the SDC:

- Student Disability Center
Room 54 Cowell Building
530-752-3184; sdc@ucdavis.edu;
<http://sdc.ucdavis.edu>

Director: Jeanne Wilson, jxwilson@ucdavis.edu

Specialists:

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Case Scenarios

RESOURCES

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Thank You
for Attending