

Department Chair Brown Bag

Where's Prof. Gunrock?

Everything You Ever Wanted to Know about
Faculty Leaves and Accommodations

Office of the Vice Provost – Academic Affairs
February 11, 2016

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

- 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 someone else 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 any valued 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.

Essential Functions

- Determining Essential Functions
 - Do incumbents perform the job?
 - Would removing the functions fundamentally change the position?
 - Does the position exist to perform the function?
 - Are there a limit number of employees who could perform the function?
 - Are the functions highly specialized?
 - Are there consequences of not requiring a person in this job to perform the function?

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.

CASE SCENARIOS

Professor Carmine Gunrock

- One of your junior faculty members, Asst. Prof. Carmine Gunrock, is in his third year. He is one of few experts in his field and is well liked in the department. Until recently, he has been productive in his research and has received good teaching evaluations. Last summer, Prof. Gunrock's spouse died suddenly. You hear rumors that he is having great difficulty coping with his loss. You have heard that he seems unfocused and rambles when speaking. One of his TAs told you that he has missed some lectures and failed to show up for office hours. He has been heard sobbing in his office.

Professor Gunrock– Part 2

- You invite Prof. Gunrock into your office to discuss the reports about missing classes and office hours. Prof. Gunrock tells you that he had the flu for a couple of weeks and made arrangements with the TA to cover for him. You express sympathy for his loss of his spouse. In response to your question as to whether he needs any help, he says everything is fine.

Professor Gunrock – Part 3

- At the end of Fall Quarter, Prof. Gunrock is walking into the lecture hall carrying a box of handouts when he trips and falls, landing on his knees and bumping his head. He continues with the class but notices his right knee begins to swell and hurt. After class he tells the office manager about the fall, saying that it “knocked the wind out of him” and that he was unable to get up for several minutes after he fell.

Professor Gunrock – Part 4

- When you reviewed teaching evaluations at the end of the year, you noted that Prof. Gunrock's evaluations for Fall Quarter were very poor. Before you can call him in to discuss, you learn that he has presented a note from his doctor saying that due to the knee injury he would need to be relieved of teaching Winter Quarter, excused from attending department meetings, and would need assistance to get from the parking lot to his lab every day. He also asked for an ergonomic chair and desk so he could work more hours at home.

Professor Gunrock – Part 5

- In response to his request, you cancel Prof. Gunrock's classes and excuse him from department meetings for Winter Quarter. Because he is not teaching, you never get around to discussing the negative evaluations. Towards the end of the quarter, he comes into your office and says he cannot teach the intro class Spring Quarter because he has been having dizzy spells that he thinks are related to the fall. He says he would like to teach a graduate seminar which is much in demand and has already been assigned to another professor. If he has to teach the intro class, he will need two additional TAs to help with grading.

Professor Gunrock – Part 6

- In this same meeting, Prof. Gunrock tells you that he is beginning to feel ostracized by other faculty. He believes he is being deliberately excluded from informal social events and that one of his colleagues jokingly called him “gimp.” Separately, you have heard from colleagues that Prof. Gunrock has been hostile and antagonistic in conversations lately. You also heard one faculty member asking why Prof. Gunrock is not teaching and complaining that he is not “carrying his load” according to the department teaching policy. There are also rumors that Prof. Gunrock is “losing it.”

Professor Gunrock – Part 7

- After being relieved of all teaching responsibilities for the academic year, Prof. Gunrock once again comes to your office and tells you he has been very depressed since the death of his spouse. He has had trouble with his research and not completed the publications he thought he could get out this year. He also is crushed to learn that he did not get a major grant that he expected. He asks to defer his mid-career evaluation and have time off the clock for his tenure case.

Professor Gunrock – Finale

- With the support of the awesome department that rallied to mentor him and provide reasonable accommodations that allowed him to be successful, Prof. Gunrock achieved tenure. Afterwards, though, his career seems to have stalled. He was unable to get funding and did not publish. He did not advance for the next 18 years. Colleagues began to notice that he drank a lot at department events. His teaching evaluations had comments about erratic behavior in class and reports of students smelling alcohol on his breath during office hours. He is due for a mandatory five year review and has requested a deferral.

Questions?

RESOURCES

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Thank You
for Attending