

Department Chair Bag Lunch Session

Academic Disability Issues

A Chair's guide to navigating sensitive ground

Office of the Vice Provost – Academic Affairs
November 30, 2017

AGENDA

- Introductions
- A quiz
- Legal considerations
- Case
- Interactive Process/Reasonable Accommodation
- Case
- Best practices
- Case
- Closure

INTRODUCTIONS



QUIZ

LEGAL CONSIDERATIONS

Shondella Reed,
Senior 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 employee's 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 – REACH OUT FOR ASSISTANCE

A CASE

FOR EACH STAGE OF THE SCENARIO, CONSIDER

- Policy/Best Practice
- Interactive Process/Reasonable Accommodation
- Legal Considerations

Professor Smith

Professor Smith is a tenured member of the department. He is a respected campus citizen, is active within the department, mentors junior faculty well, has been an active teacher, regularly has several graduate students working with him, etc.

Lately, he's been missing department meetings, hasn't been showing up for office hours, and hasn't been as visible on campus.

You have heard that he's been ill, but he hasn't requested any medical leave. Rumor has it, he's "very sick." This happens to be a "non-teaching" quarter for him.

THE INTERACTIVE PROCESS

Fredna Karnegees & 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 restrictions 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 limited 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

A CASE

FOR EACH STAGE OF THE SCENARIO, CONSIDER

- Policy/Best Practice
- Interactive Process/Reasonable Accommodation
- Legal Considerations

Professor Jones

Professor Jones is a junior faculty member, an assistant professor. She has only been here one year, but she was a very popular hire and the department looks forward to great things to come from her.

Earlier this week, she came to meet with you to share that she has been diagnosed with Stage IV breast cancer. She is scared but clear that she wants to fight this with everything she can.

She doesn't want to adjust any of her teaching load or other service. She wants to do it all and is proposing a schedule that allows her to keep up with her duties between chemo treatments.

POLICY & BEST PRACTICES

Binnie Singh
Assistant Vice Provost
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, if eligible.
- This is not additional leave, just a designation, and provides some protections during the leave.

Policies

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

Provides 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.
- We recommend you encourage new faculty to opt into the additional Disability Insurance.

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 Dean's 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.

A CASE

FOR EACH STAGE OF THE SCENARIO, CONSIDER

- Policy/Best Practice
- Interactive Process/Reasonable Accommodation
- Legal Considerations

Professor Lee

Professor Lee is a senior faculty member who hasn't been very productive for a number of years. As a new chair, you learn that no one has ever talked with him about his performance. His teaching evaluations are also poor and previous chairs have been hesitant to assign him any teaching. You aren't clear what, if anything, he does at all.

He asked to meet with you later this week. You aren't sure what it's about, but your CAO has shared that she thinks Prof. Lee wants to ask for an accommodation. He has been limping a lot lately, often appears exhausted and, overall, haggard. He seems to be breathing hard whenever you see him walking. A couple of times, when you've walked past his office door, you have seen him asleep in his chair.

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.

RESOURCES

Academic Affairs

Binnie Singh

binsingh@ucdavis.edu

(530)752-5726

Lisa Brodkey

labrodkey@ucdavis.edu

(530)752-7643

Disability Management Services

Fredna Karneges, M.S.,C.R.C.

fjkarneges@ucdavis.edu

(530)752-6008

David Ritz, M.A., C.R.C.

daritz@ucdavis.edu

(530)752-7227

Thank You
for Attending