

## LEGAL CONSIDERATIONS

- Federal and State employment law protects *qualified individuals with disabilities*
  - “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.
  - “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
    - Does not include: disorders from current unlawful use of controlled substances or other drugs; 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
- Employers are legally obligated to provide **reasonable accommodation** and engage in the **interactive process**. Employers may not discriminate or retaliate
- Protection includes employees and applicants
- **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; and may include periods of leave
- Reduce 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; and reach out for assistance instead of improvising.

## 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.
- 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 employee to obtain an idea of what kinds of accommodation(s) might be needed.

### INTERACTIVE PROCESS (CONT'D)

- 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. Start the interactive process when you become aware that the academic appointee may need help

### 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?

### 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. It is 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. Examples include:

- 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.
- 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

## RELEVANT 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.

- **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.

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

- Provides guidance to ensure **consistency** in implementation of accommodations for academics, and addresses the need for the University and the academic member to engage in an Interactive Process to identify possible options for reasonably accommodating their disability.
- New faculty should be encouraged to opt into the additional **Disability Insurance**.

- **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.
- **Use your resources.** Start with the Dean’s office and use both Disability Management Services (DMS) and Academic Affairs (AA).

BEST PRACTICES (Cont'd.)

- **Document, document, document.** Although this can take time, it's very important to show engagement in the interactive process. AA and DMS can assist with finalizing the more involved documentation.
- **Inform** individuals who have been ill or injured and on leave, or who can show through medical documentation that they were incapacitated, that they can request **deferrals** without reduction to offscale.