

Guidelines for Requesting Disability Related Accommodations for Faculty/Staff Employed at California State University, Fresno

General Information

The Americans with Disabilities Act of 1990 (ADA), modified by the ADA Amendments Act of 2008 (ADAAA), and the California Fair Employment and Housing Act (FEHA) make it unlawful to discriminate in employment against individuals with disabilities. California State University, Fresno (Fresno State) is committed to ensuring equal employment opportunity for faculty and staff with disabilities. The University works with employees who seek accommodations for a disability.

Regulations implementing the ADAAA specify rules for managers to use when determining if an individual has a "disability," among which are the following:

- An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population; substantial limits on the ability of an individual to perform a life activity will usually not require scientific, medical, or statistical analysis;
- An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered "substantially limiting;"
- The determination as to whether an individual has an impairment that "substantially limits" should not require extensive analysis and is based on an individualized assessment;
- The determination whether an impairment "substantially limits" a major life activity will be made without regard to the ameliorative effects of mitigating measures, except ordinary eyeglasses or contact lenses (i.e., the potential positive effects of, for examples, taking medication, having an operation, or undergoing physical therapy will not be considered when making this determination);
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting.

In light of these rules, the definition of disability should be interpreted in favor of broad coverage of individuals. An individual may be "disabled" if he or she has a record or past history of an impairment or is regarded as being disabled and receive the protection of the disability laws.

Federal and State Recommendations/Requirements

1. The Equal Employment Opportunity Commission (EEOC) recommends, and the California Legislature requires, that employers respond to a request for accommodation by engaging in an 'interactive process' with the employee. California law affirmatively mandates that employers must timely and in good faith engage in the 'interactive process.'

2. The employer must, as a minimum:

- ▶ analyze the particular job involved and determine its purpose and essential functions;

▶ consult with the disabled employee to ascertain the precise job-related limitations imposed by the disability and how reasonable accommodation might address those limitations;

▶ identify potential accommodations and discuss them with the employee; and

▶ select a reasonable accommodation considering the employee in question.

3. The employee must, as a minimum:

◆ Inform the employer/management of a need for an accommodation;¹

◆ Provide appropriate documentation from a health care provider or other professional relative to the disabling condition;

◆ Describe the limitations imposed by the disability to the manager/supervisor; and

◆ Participate in good faith in the interactive process.

4. An employer cannot compel an employee to identify an accommodation and does not meet its obligation by simply considering and rejecting the employee's suggestions. An employee cannot withhold information or interfere with the information gathering process as long as it is relevant to the reasonable accommodation discussions. An employee cannot insist on a specific accommodation and refuse to discuss in good faith alternative accommodations suggested by the employer. Employer and employee must continue to be open to monitoring, reviewing and modifying or even terminating an accommodation based on the experience of how it has worked in the past or changed circumstances in the workplace or with the disabled employee.

Procedures

1. Requests for disability related accommodations in the workplace are communicated to the immediate supervisor and/or manager by the employee. Disability issues may also come to managers or supervisors through observation.

2. Managers/supervisors should contact the ADA/Disabilities Coordinator, Office of Human Resources (HR), Joyal Administration Building, Room 211, extension 2364 for consultation and information. The Coordinator will:

a. Provide and discuss the reasonable accommodations guidelines of the FEHA and ADA with the managers/supervisors to ensure their awareness of the employer's responsibilities.

b. Emphasize the importance and requirement of the interactive process and that it is open and ongoing. Neither a reasonable accommodation nor the interactive process obligations of the employer are satisfied by a one-time participation in the process. Both employer and employee should monitor,

¹ If an employee has an obvious disability that affects his ability to perform his or her job, a manager may be responsible for initiating a job review and initiating the interactive process.

modify and even terminate, as necessary, accommodations as circumstances change or learn of the effectiveness of the accommodation and its impact on the workplace.

c. Ensure that the creation of a new position or elimination of an essential function of the existing position is not necessary but that alternative methods for the accomplishment of the job are considered.

d. Emphasize that an employer cannot impose an accommodation upon an employee even if he/she believes the employee needs it. Each request should be considered on its own merits.

e. Discuss the need to document the steps in the process and accurately record all proceedings.

f. Serve as a resource for questions and additional information as the process continues.

3. ADA/Disabilities Coordinator in conjunction with the employee's manager consults with the employee(s) to identify the job-related limitations.

4. The ADA/Disabilities Coordinator requests documentation of the functional limitations of the employee from the medical provider/professional consultant through the employee unless the limitations are obvious. Direct contact with the employees' physicians or health providers by the managers/supervisors is not permitted.

5. The request, with medical documentation, is reviewed by the ADA Coordinator/Director in the Office of Human Resources to ensure it meets the limitation requirements of the FEHA. Suggested limitations are listed at the Job Accommodations Network (JAN), Office of Disability Employment Policy, U.S. Department of Labor at www.jan.wvu.edu. Any limitation with substantiated documentation is acceptable under the FEHA.

6. The ADA/Disabilities Coordinator will issue a memorandum to the manager/supervisor, copying the employee and appropriate administrative staff, indicating the employee's condition meets the FEHA limitations for a disabling condition and the requirement to initiate the interactive process, when appropriate. A confidential file for the employee is then opened where all documentation is eventually housed and stored.

7. The ADA/Disabilities Coordinator in conjunction with the employee's manager/supervisor will initiate the interactive process with the employee and document all actions. This process will include but is not limited to the following:

a. Analysis of the job functions and establishment of essential and nonessential tasks.

b. Identification of precise job limitations and/or restrictions.

c. Identification of possible accommodations and assessment of how each will enable the employee(s) to perform the job functions.

d. Consideration of employee and medical provider's input. The employee and medical provider are not to choose the accommodations but their input is taken into consideration.

e. Manager/supervisor and employee research possible accommodations, discuss these options and determine appropriate outcomes.

f. ADA/Disabilities Coordinator oversees the process, mediates terms and recommends accommodations to manager/supervisor and employee in conjunction with technical advice and guidance from other campus resources that have disability responsibilities such as the Center on Disabilities (COD), National Center on Deafness (NCOD), Risk Management and Human Resources (Benefits Office).

g. Manager/supervisor accepts a course of action and initiates approval to the appropriate department/division Administrator.

h. Implement appropriate reasonable accommodation for employee after considering alternatives, if such exist.

i. Manager/supervisor works with ADA/Disabilities Coordinator and Approving Administrator to determine reasonable accommodations if proposed accommodations are not considered reasonable by the employee. The Division Vice President makes the final decision if agreement cannot be reached.

j. All documentation of the accommodations process is sent to Human Resources for retention. Information is not placed within employee's personnel records/files.

Other Considerations

a. Accommodation approvals are made at the appropriate levels of the Administration based on delegation of authority.

b. Medical notes that include information that is not related to the employee's restrictions or limitations or are undefined and vague will not be considered and clarification should be requested.

c. The accommodations process must be accomplished in good faith and in a timely manner. Undue delays and obstructions are documented by the ADA/Disabilities Coordinator for both the manager/supervisor and employee(s).

d. Appropriate local forms are developed by Human Resources to record and document the process at all levels, i.e., request for accommodations (revised), health provider information request forms, etc.

e. A glossary of terms and definitions associated with the accommodations process is listed at Attachment 1.

Definition of Terms

AB2222

(aka: Prudence Kay
Poppink Act):

State legislation passed in 2000, effective January 1, 2001, amending the CA FEHA and Civil Code to clarify that state law is independent of, and stronger than, federal disability law. It clarifies the definition of 'mental disability,' 'physical disability' and 'medical condition;' limits an employer's ability to require medical or psychological examinations, or make certain medical or disability related inquiries and requires an employer to engage in a good faith, interactive process to determine reasonable accommodations for a disabled employee or applicant.

ADA:

Americans with Disabilities Act: Legislation passed in 1990 providing persons with disabilities protection from discrimination based on disability. The ADA includes revisions to the ADA under the ADA Amendments Act of 2008

ADA Coordinator:

University representative having responsibility for ensuring ADA compliance.

Applicant:

An individual who has filed an application for employment with the California State University, Fresno (Fresno State).

DFEH:

Department of Fair Employment and Housing. An independent State Department charged with enforcing California's employment, housing, public accommodations and public service non-discrimination laws as well as the State's bias related hate violence law.

Disability

ADAAA: A physical or mental impairment that substantially limits one or more major life activity (e.g. caring for oneself, walking, seeing, hearing, speaking, etc); has a record of a physical or mental impairment; or when a cover entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor. Certain impairments, due to their inherent nature, will virtually always be disabilities. These include deafness, blindness, intellectual disability, partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

FEHA: A physical or mental disability that limits one or more major life activity; or has a history of such an impairment known to the employer; or is incorrectly regarded or treated as having or having had such an impairment; or is regarded or treated as having or having such an impairment that has no presently disabling effects but may become a

qualifying impairment in the future.

Documentation
of Disability:

Any documentation from a qualified professional that substantiates an individual's functional limitations as it pertains to their ability to perform a major life function.

EEOC:

Equal Employment Opportunity Commission. The EEOC enforces the federal statutes prohibiting employment discrimination on the basis of disability in the private sector and state and local governments.

Employee:

A person employed by the Fresno State in a part-time, full-time, temporary or other capacity while receiving earnings in exchange for work performed.

Essential Job
Functions:

Those job duties that are so fundamental to the position that the individual holds or desires that he/she cannot do the job without performing them. A function can be 'essential' if the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it.

FEHA

Fair Employment and Housing Act. The California law that provides Protection from harassment and discrimination in employment because of Age (40 and over), Ancestry, Color, Creed, Denial of Family and Medical Care Leave, Disability (mental and physical) including HIV and AIDS, Marital Status, Medical Condition (cancer and genetic characteristics), National Origin, Race, Religion, Sex, and Sexual Orientation.

Good Faith:

Federal courts have provided an interpretation of 'good faith,' essentially stating that an employer and employee must communicate directly with each other to determine essential information and that neither party can delay or interfere with the process. Examples of good faith efforts are:

- ◆ Making the process easy for the employee/applicant.
- ◆ Providing forms for requests for accommodation to help document the Process.
- ◆ Making time for dealing with these issues.
- ◆ Training supervisors not make employees feel that such requests are an Unwelcome burden.
- ◆ Responding promptly to employee requests for reasonable accommodation.

HR:

Human Resources is the Fresno State department responsible for monitoring and evaluating equal employment opportunity (EEO) and

affirmative action (AA) compliance within the organization.

Impairment, Physical or Mental: Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin and endocrine. This term also covers any mental or psychological disorder, such as intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Individual Assessment: An assessment made to determine the appropriateness of an accommodation based on information received by that individual and not by the perception of the individual's disability/impairment.

Interactive Process: A consultation with the individual to ascertain the precise job-related limitations due to the disability and how they could be overcome with a reasonable accommodation; and cooperatively identifying potential accommodations and assessing their effectiveness.

JAN: Job Accommodations Network is a free service of the Office of Disability Employment Policy, U. S. Department of Labor, that provides accommodation information that can be used in the hiring, training, retention and career advancement of people with disabilities.

Limited: An impairment that makes performance of a major life activity 'difficult' as compared to the ability of the average person in the general population to perform the same activity.

Major Life Activity: An activity such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, thinking, concentrating, learning, and working. Under the ADAAA major life activities include major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions as well as the operation of an individual organ within a body system. This list is not inclusive and must be used only as a guideline when making an individual assessment of the employee's applicant's request for accommodation.

Medical Condition: FEHA. Any health impairment associated with a diagnosis of cancer when competent medical evidence indicates that the cancer victim has been cured or rehabilitated. It also includes certain genetic characteristics as defined in the statute.

Mitigating Measures: Mitigating measures eliminate or reduce the symptoms or impact of an impairment. The positive effects of from an individual's use of one or more mitigating measures must be ignored in determining if an impairment substantially limits a major life activity. Assistive technologies such as prostheses, medications and adaptive equipment are not to be considered when determining whether a condition 'limits' a major life activity. When making a determination of eligibility for ADA/FEHA protection, the condition is evaluated without the mitigating measure. An individual with diabetes may still be covered, even if the diabetes is controlled. An entity can not require an individual to use a mitigating measure. Any adverse result of the mitigating measure (i.e., the medication causes concentration problems) must be considered and accommodated, if reasonable.

Pre-employment Inquiries: It is unlawful for an employer to require and applicant to attend a medical/psychological examination, make any medical/psychological inquiry, make any inquiry as to whether an applicant has a mental/physical disability or medical condition or make any inquiry as to the severity of the disability or medical condition prior to employment. An employer may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation or requires a medical/psychological examination or make an inquiry of a job applicant **after** an employment offer has been made but **prior** to the start of the employment provided that the examination or inquiry is job-related and consistent with business necessity and all new employees in the same job classification is subject to the same examination or inquiry.

Post-employment Inquiries: An employer may require any examination or inquiries that it can show to be job-related **and** consistent with business necessity.

Prudence Kay Poppink Act (aka: AB 2222): State legislation passed in 2000, effective January 1, 2001, amending the CA FEHA and Civil Code to clarify that state law is independent of, and stronger than, federal disability law. It clarifies the definition of 'mental disability,' 'physical disability' and 'medical condition;' limits an employer's ability to require medical or psychological examinations, or make certain medical or disability related inquiries and requires an employer to engage in a good faith, interactive process to determine reasonable accommodations for a disabled employee or applicant.

Reassignment: A possible form of reasonable accommodation that, absent undue hardship, is provided to employees who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation. Reassignments are made only to vacant positions and to employees who are qualified for the new position. The

'qualified employee will be reassigned to the job and will not have to compete for it.

Reasonable
Accommodation:

Any change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy the benefits and privileges associated with employment including the ability to perform the essential functions of their job, attend meetings and other functions associated with their employment.

Request for Reasonable
Accommodation:

Any statement or observation that suggests an individual needs an adjustment or change at work, in the application process, or in a benefit or privilege of employment because of a disability or impairment.

Stereotype:

A fixed or conventional notion or conception, as of a person, group, idea, etc., held by a number of people and allowing no individuality.

Substantially
Limited:

Prohibition or significant restriction of an individual's ability to perform a major life activity as compared to most people in the general population to perform the same activity. The effects of an impairment lasting fewer than six months can be substantially limiting. To be protected under the disability laws, the individual need only have an impairment that affects his or ability to to a particular job, not a broad range of employment.

TTY:

TeleTypewriter (aka): TDD/Telecommunications Device for Deaf or Hard of Hearing. A device used to communicate with individuals who are deaf or hard of hearing.

Undue Hardship:

An accommodation that causes significant difficulty or expense or may cause a violation of established laws, policies or procedures. A case-by-case basis is always used when making a determination of 'undue hardship' considering factors that include the nature and cost of the accommodation and the impact on the organization.