

Compliance with the Americans with Disabilities Act (ADA)



About This Training

The University is committed to an environment for our faculty, staff, students, patients, and visitors that is welcoming, inclusive and free from discrimination and harassment.

This training provides information for managers and supervisors regarding the University's **employment** obligations, procedures and policies for our faculty and staff with disabilities.

The University's non-discrimination statement, along with federal and state civil rights laws, provide the framework for the policies and procedures you will learn about in this training.

U-M Non-Discrimination Statement

The University of Michigan, as an equal opportunity/affirmative action employer, complies with all applicable federal and state laws regarding nondiscrimination and affirmative action.

The University of Michigan is committed to a policy of equal opportunity for all persons and does not discriminate on the basis of race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight, or veteran status in employment, educational programs and activities, and admissions.

This Training Will Cover

- The Americans with Disabilities Act Amended (ADAA)
- The Definition of Disability
- The Accommodation Process
- The Reassignment Accommodation Committee (RAC)
- Reassignment to a Vacant Position
- Resources

The ADA

The Americans with Disabilities Act (ADA) is a federal civil rights law that was first passed in 1990 and amended in 2008 (ADAA). It was designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.

The ADA provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of the University.

The ADA and UM

Specifically, the ADA prohibits disability discrimination and harassment, and requires reasonable accommodation.

The ADA applies to:

- Faculty
- Regular and temporary staff
- Probationary staff
- Student employees

ADA Definition of Disability

According to the ADA, an individual with a disability is a person with a physical or mental impairment that substantially limits one or more major life activities, or:

- Has a record of such an impairment; or
- Is regarded as having such an impairment

Types of Disabilities

Some people have a disability that is observable or apparent. An example is a person who may use a cane or wheelchair for mobility, or a person who has impaired hearing and uses a hearing aid or other device to improve their ability to hear.

Other people may have a disability that is not obvious or apparent. Some examples of disabilities that may not be apparent are Diabetes, Seizure Disorder, Learning Disability, Major Depression, Cancer, or Traumatic Brain Injury.

Reasonable Accommodation

Many people with disabilities work for the University. At times, some aspect of their work or environment may impede or interfere with their ability to perform the job because of their disability.

In these instances a reasonable accommodation may remove or mitigate the barrier, thereby allowing them the opportunity to perform the essential functions of their job.

Essential Functions

Essential job functions are important as these tasks are the focus of the accommodation for an employee with a disability.

A marginal function of the job, one that is not performed often **and/or** is not critical to the reason the job exists, can be re-assigned to another employee.

In all cases, the employee with a disability must be able to perform the essential functions of the job, with or without an accommodation.

Essential Functions

When evaluating whether a task is essential, it is important to consider the following:

- Content of the written job description, including any physical skills required to perform the job (i.e. must be able to move and transport objects weighing up to 40# frequently; must climb ladders to inspect ductwork; etc.)
- The amount of time spent performing the job function
- The consequence of not requiring the person to perform the function
- The work experience of current and past incumbents in the job

Reasonable Accommodation

The University will provide a reasonable accommodation to a qualified employee with a known disability unless the accommodation would impose an undue hardship.

- ✓ The employee must be qualified. That is, they must have the skills, education, and experience for the job.
- ✓ The employee must disclose they have a disability.
- ✓ The accommodation must be reasonable and not impose an undue hardship.

The Request for an Accommodation

There is no specific language required when an employee is making a request for an accommodation. That is, the employee does not have to use the word “accommodation” and they do not have to make the request in writing.

The request for an accommodation may be expressed in a conversation with the supervisor in talking about something that has changed for the employee, or in talking about what they may need to be able to do their job.

The Request for an Accommodation

Here are some examples of statements that can be a request for an accommodation:

- “I’m on a new medication and having trouble getting to work on time.”
- “I need some time off for some treatment that my doctor is recommending.”
- “I am making more errors because I am having trouble seeing the data on the monitor.”

The Interactive Process

These requests and the resulting conversations between the employee and the supervisor starts the “interactive process,” an important component of the accommodation procedure.

These interactions can also help identify barriers the employee is experiencing. A barrier is some feature of the employee’s job (or the job environment) that makes it difficult for the person with a disability to perform their job tasks.

Documentation

If the employee's disability is observable, and the need for the accommodation is evident, medical documentation is not needed.

If the disability is not apparent, the supervisor should request documentation of the disability in a letter from the employee's health care provider. The information should include the nature of the employee's disability, the resulting restrictions or impairment, and may include suggestions for accommodations.

If an employee does not want to provide this documentation directly to their supervisor, they may provide this information to Human Resources or Work Connections.

Return from Leave

Many departments use the university's Integrated Disability Management program, Work Connections, when an employee has requested a medical leave. Work Connections secures medical documentation to support the leave and informs the department of the employee's return to work status.

When Work Connections informs the department that the employee has been released for return to work with restrictions in either job tasks or work hours, that information constitutes a request for an accommodation.

FMLA Request

In some cases, an employee has made a request under the Family Medical Leave Act (FMLA) and has provided the completed FMLA form to their supervisor, Human Resources, or Work Connections.

FMLA paperwork may recommend the need for intermittent absences, a leave of absence, a change in work schedule, or some other modification to the employee's work.

This information may constitute a request for an accommodation if the employee's serious health condition also meets the ADA definition of disability.

Confidentiality

Any disclosure an employee makes regarding a disability, including any medical documentation regarding the disability, must be kept confidential. This information must be kept in a confidential file separate from the employee's personnel file. This includes any notes a supervisor may make regarding their discussions with an employee about their disability or need for an accommodation.

Some faculty and staff may be comfortable in sharing information about their disability with their co-workers; however, that does not permit the supervisor or manager to discuss the employee's disability or accommodations with staff.

Confidentiality

At times, supervisors may need to discuss an employee's need for an accommodation with Human Resources, Work Connections, or the university Americans with Disabilities Act (ADA) Coordinator.

When these staff are consulted regarding an employee's disability or need for an accommodation, these parties must also keep the information confidential.

The Accommodation Process

Once there has been a request for an accommodation, and documentation (if needed) has been obtained, the supervisor should discuss possible options with the employee.

If there is more than one option to provide an accommodation, the supervisor should consider the employee's preference.

However, the employer has the final decision regarding which accommodation is provided if the available options are **equally both** effective.

What is Reasonable?

In determining whether an accommodation is reasonable we look at whether providing the accommodation would be an “undue hardship.”

Considerations include:

- The nature and cost of the accommodation*
- The type of operation (administrative, patient care, facilities, research, etc.)
- The structure and function of the work that needs to be performed and the number of people available to do the work
- The impact of the accommodation on the operation of the department

*Generally speaking, the cost of an accommodation is not an undue hardship for the University as most accommodations are administrative and/or not of significant cost.

The Accommodation

The accommodation needs to be tailored to address the workplace or environmental barrier, the nature of the person's disability, and the impact on the person within the context of the essential functions of their job.

Evaluating the nature of the person's disability, the essential functions of their job, and the appropriate accommodation is very person and fact specific. Accommodations are determined on a case-by-case basis.

Examples of Accommodations

Here are some types of accommodations:

- Modify/provide equipment or software
- Modify the work schedule/rotation
- Modify supervisory methods
- Provide accessible materials
- Grant a leave of absence
- Reassignment to a vacant position

Providing Equipment as an Accommodation

Jessica is an insurance verification specialist. Her job requires that she work the majority of the day, except for breaks and lunch, seated at her desk using the computer and phone to complete her job tasks. She has a chronic impairment and recently had back surgery. With her return to work, it was recommended she have a more supportive chair and an adjustable height desk as she was restricted from sitting for hours at a time. The equipment provided her the opportunity to work either sitting or standing while she completed her job tasks.

Modifying the Work Schedule as an Accommodation

Bob is a budget analyst. He has bipolar disorder and takes medication that affects his alertness in the morning. Although other staff in the unit start work at 8 am, Bob has arranged with his manager to start at 8:30 am. Bob's manager also changed the time of the weekly staff meeting to start at 9:00 am instead of 8am so that Bob would be able to attend. Flexing Bob's schedule to allow him to adjust to the effects of his medication in the morning is an example of an administrative accommodation.

Modifying a Supervisory Practice as an Accommodation

David is a long-term custodian with a learning disability that affects his ability to correctly read and understand written directions. When provided written instructions he also becomes anxious and frustrated. David has been accommodated for many years by providing floor maps of the building to which he is assigned. Rooms are shaded in different colors that allow him to know what tasks are required in each room on which day of the week. David has consistently received compliments on his work from supervisors and building occupants.

Reassignment as an Accommodation

Mary has been a Nursing Assistant for seven years. She has multiple sclerosis and now has problems with fatigue and balance. This affects her ability to maintain a full time schedule. Her occasional problems with balance have required that other staff complete some of her patient assignments. After a careful review it was determined that Mary could no longer perform the essential functions of her position. She had past clerical experience, knew medical terminology, and had strong customer service skills. Mary was reassigned to a vacant Patient Assistant position as she met the minimal qualifications for the position.

Monitoring the Result

Once an accommodation has been provided it is important to check in with the employee to see how the accommodation is working for them.

The employee should be invited to let their supervisor know if there are any problems with the accommodation.

If there was a change in performance, attendance or behavior initially, the supervisor should check in to see if these have improved with the provision of the accommodation.

Modifying the Accommodation

Sometimes the effects of a disability change, there are new limitations as a result of the disability, or the accommodation is just not as effective as anticipated.

In these cases the interactive process needs to be re-engaged to determine if there is an effective reasonable accommodation to address the employee's current limitations.

Reassignment

In some instances, all reasonable accommodations have been exhausted and even with an accommodation, the employee is unable to perform their essential job functions.

Remember Mary, the case example from earlier in the training? Her situation is a good example of this. If you recall, the accommodation provided was to reassign her to a vacant position for which she was qualified.

Reassignment Accommodation Committee (RAC)

The University established the Reassignment Accommodation Committee (RAC) as a mechanism to review situations when a department believes they are not able to reasonably accommodate one of their faculty or staff with a disability and reassignment to a vacant position needs to be considered.

Standing members of the RAC are the ADA Coordinator, the Return to Work Coordinators, the Lead Nurse Case Manager from Work Connections, and the Long Term Disability (LTD) Manager.

The RAC

Referrals to the RAC are made either by Work Connections or Human Resources.

Work Connections will refer those situations when:

- An employee has a release for return to work from a leave for medical reasons
- There are permanent restrictions the department has stated they cannot accommodate

Human Resources will refer those cases when an employee is still at work, and because of their disability is no longer able to perform the essential functions of their job, either with or without accommodation.

RAC Outcomes

The following outcomes may result from a RAC review:

- The department may be advised to implement accommodations that had not been considered previously.
- The RAC agrees the home department cannot reasonably accommodate the employee:
 - The employee chooses to work with a Return to Work Coordinator for reassignment to a vacant position for which they are qualified.
 - The employee chooses not to pursue job placement and remains on a leave and/or may apply for Long Term Disability (LTD)

UM's ADA Obligation

The University's responsibility to provide a reasonable accommodation under the ADA's requirement for reassignment concludes when:

- The employee is reassigned and, with or without a reasonable accommodation, can perform the essential job functions of the new position.
- The employee refuses to accept reassignment and does not engage in the interactive process.
- The employee is reassigned but is not successful for reasons unrelated to their disability or accommodations.

Reassignment

Although the focus of the training up to this point has been the accommodation of one of your staff, transferring an employee to a vacant position as a last resort accommodation also has implications for you as a hiring supervisor.

There may be instances when you are asked to look at vacant positions in your area to reassign one of your own staff as an accommodation. As a hiring supervisor, there may also be times when you are notified there is an employee who is qualified for one of your vacant positions and they are eligible for reassignment as an accommodation.

Reassignment

The Equal Employment Opportunity Commission (EEOC) provides guidance to employers when an employee with a disability can no longer perform their job with or without an accommodation:

An employer must reassign an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position.

Reassignment

If there is no vacant equivalent position, the employer must reassign the employee to a vacant lower level position for which the individual is qualified.

Assuming there is more than one vacancy for which the employee is qualified, the employer must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc. If it is unclear which position comes closest, the employer should consult with the employee about his/her preference before determining the position to which the employee will be reassigned.

Reassignment

The EEOC's guidance is reflected in the University's **SPG 201.84: EEO Affirmative Action Policy for Individuals with Disabilities**

<http://spg.umich.edu/policy/201.84>

*Whenever reassignment to a vacant position is the only way in which an employee with a disability can be reasonably accommodated, **the employee with a disability shall be transferred into that vacant position.** Transfer will be made to a vacant position that is equivalent in terms of pay and other relevant factors such as benefits, status, or geographical location. If there are no equivalent vacant positions available the employee may be reassigned to a lower level vacant position.*

Reassignment

The University's Recruitment and Employment process (**SPG 201.22**) provides for a "best qualified" standard for hiring except:

*In situations where transfer of a current employee with a disability into a vacant position for which they are qualified constitutes a reasonable accommodation, **the employee with a disability shall be transferred into the posted position.***

In instances of reassignment as a reasonable accommodation, hiring supervisors cannot apply the University's practice of choosing the "best qualified" applicant. The employee with a disability must be accepted for the position if they meet the minimal qualifications for the position.

Summary

In summary, the University has a responsibility to provide a reasonable accommodation to a qualified faculty or staff with a disability.

A reasonable accommodation is meant to remove or mitigate barriers, thereby providing an opportunity for the employee to perform the essential functions of the job.

Accommodations are achieved through the interactive process between the employee and their supervisor, and may involve consultation with other resources.

In some instances the accommodation of last resort will be reassignment to a vacant position. In these instances, the university will not use the criteria of “best qualified” but instead must use the “qualified” standard for reassignment into the vacant position.

Resources

Always feel free to contact the ADA Coordinator in the Office for Institutional Equity with any questions you may have regarding this training or other ADA issues.

ADA Coordinator

Office for Institutional Equity

2072 Administrative Services Building

Phone: (734) 763-0235

TTY: (734) 647-1388

Email: institutional.equity@umich.edu

<http://hr.umich.edu/oie/ada/adafaq.html>

Resources

University Human Resources (UHR)
(734) 763-1284

Health System Human Resources (UMHS HR)
(734) 647-1856

Academic Human Resources (AHR)
(734) 763-8938

Dearborn Campus Human Resources
(313) 593-5190

Flint Campus Human Resources
(810) 762-3150

Resources

Work Connections
(734) 615-0643

Faculty and Staff Assistance Program
(734) 936-8660

UMHS Employee Assistance Program
(734) 763-5409

MHealthy Occupational Therapist
(734) 763-0852

Resources

Campus Disability Resource Directory

<http://hr.umich.edu/oie/disability.html>

Job Accommodation Network (JAN)

<https://askjan.org/>

Michigan Rehabilitation Services (MRS)

(734) 677-1101

Michigan Bureau of Services for Blind Persons

(800) 292-4200