

PPP-45 Americans with Disabilities Act

The Americans with Disabilities Act (ADA) of 1990 was signed into law on July 26, 1990 and was amended on September 25, 2008 through the ADA Amendments Act of 2008 (ADAAA). The Act gives civil rights protection to individuals with disabilities similar to those rights provided to individuals on the basis of race, color, religion, national origin and sex (Civil Rights Act of 1964). To be protected under the ADA, an employee or an applicant for employment must meet the definition of the term "disability," as stated in the law. Under the ADA, an individual with a disability is a person who has: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) is regarded as having such an impairment.

The ADA makes it unlawful to discriminate in all employment practices such as: recruitment, hiring, promotion, training, lay-off, pay, firing, job assignments, leave, benefits, and all other employment related activities. The university's search guidelines detail proper advertising, testing, interviewing and hiring procedures in accordance with the ADA. If an employee believes that he/she has been discriminated against based upon their disability, the employee can seek resolution of the problem following proper university procedures. Contact the Affirmative Action Officer for additional information. Employees may seek accommodation assistance by contacting the Director of Disability Services/University ADA Coordinator.

Reasonable Accommodation

An employee/applicant is considered a "qualified individual with a disability" if the employee/applicant can perform the essential functions of the position with or without reasonable accommodation. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

Standards for determining whether an accommodation to an otherwise qualified disabled employee/applicant is "reasonable" or imposes an "undue hardship" are adopted from the principles and considerations outlined in the College and University Personnel Association ADA Compliance Manual for Higher Education: A Guide to Title I, 1992 (Chapters 9 and 10).

For the accommodation to be "reasonable":

- A. It must be effective.
- B. It reduces barriers to employment related to the person's disability.
- C. It need not be the best accommodation available, as long as it is an effective accommodation.
- D. It is not primarily for personal use.
- E. An accommodation which exceeds ADA's requirements will not set an adverse precedent.
- F. It is made with respect to the known limitations of an otherwise qualified individual with a disability.
- G. Some examples of "reasonable" accommodations:
 - 1. Reassigning a disabled employee to a vacant position.
 - 2. Making existing facilities used by employees readily accessible to and usable by individuals with

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disabilities.

3. Allowing part-time or modified work schedules.
4. Acquiring or modifying equipment or service.

For the accommodation to impose an "undue hardship":

- A. The cost of providing the accommodation would have a significant impact on the financial resources of the institution.
- B. The accommodation would fundamentally alter the way the job is performed and have a detrimental effect on the operation of the university in that it would substantially disrupt the provision of services.
- C. The cost of providing the accommodation would jeopardize the institution's ability to continue to provide essential services and academic programs to students and employees.
- D. Some examples of accommodation which would impose an "undue hardship" to the university:
 1. Providing the accommodation would render an economic blow resulting in the layoff of other employees.
 2. Providing the accommodation would result in the closure of essential academic programs or services for students and employees.

Justification and Documentation

The following steps will be taken to ensure adequate documentation of any decisions regarding refusal to hire, promote or retain due to undue hardship. It will include, as a minimum, the following information:

The supervisor will submit through supervisory channels to the Office of Human Resources a detailed statement of justification for the decision regarding refusal to hire, promote or retain due to undue hardship. It will include, as a minimum, the following information:

1. Job description (including essential functions of the position).
2. Description of the disability.
3. Type of accommodation requested by the employee/applicant.
4. Estimated cost of the requested accommodation.
5. Description of any non-cost effects of the requested accommodation.
6. Justification of why the accommodation should not be provided.
7. Impact on financial resources, programs, and services if the requested accommodation is provided.
8. Alternative accommodation proposed, if any, and whether it would be effective.

The Office of Human Resources will review justification and consult with the supervisor, the Affirmative Action Officer, the employee/applicant, and other university/TBR officials as appropriate.

A written recommendation on the supervisor's request will be submitted to the Vice President for Finance & Administration and/or the President, as appropriate, for final decision.