The Interactive Process: Reasonable Accommodation

Manager’s Guide

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Overview

This Managers’ Guide on the Interactive Process: Reasonable Accommodation provides supportive information for the Interactive Process: Reasonable Accommodation video. It is the University’s intent to comply with existing legal requirements and, at the same time, model the institutional values of Excellence, Integrity, Accountability and Respect in our efforts to reasonably accommodate all faculty or staff with a disability. Please note that this document and the video do not address certain important considerations applicable to academic appointees. Please contact your local Academic Personnel Office for information and guidelines on addressing concerns specific to academic appointees with disabilities.

UC managers are encouraged to learn the concepts and practices within this program. The video and Managers’ Guide identify three managerial requirements:

- Implement the interactive process
- Provide reasonable accommodations
- Support the reassignment to an open and vacant position of an employee with a disability when appropriate

Managers are encouraged to attend local training available on this topic to meet local resource specialists, identify location specific procedures used to implement the Interactive Process and ask questions you feel are not completely addressed in the video or this Manager’s Guide.
Background

The law

There are federal and state laws that require University compliance to complete the interactive process and provide, where possible, a reasonable accommodation. In addition, the courts have made clear that a reasonable accommodation may need to include the reassignment to an open and vacant position.

| Federal Law | Rehabilitation Act of 1973 | Applies to federal contractors
|             |                          | Prohibits discrimination on the basis of disability
|             |                          | Requires employment affirmative action
|             |                          | Requires the provision of reasonable accommodations for employees and applicants with disabilities
| Federal Law | Americans with Disabilities Act of 1990 with the ADA Amendments Act of 2008 (ADA) | Prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications
|             |                          | Prohibits discrimination by requiring reasonable accommodation for employees with disabilities
|             |                          | http://www.ada.gov/
| California Law | The Fair Employment & Housing Act (FEHA) | Prohibits discrimination against those with physical and mental impairments, including conditions that are disabling, potentially disabling, or perceived as disabling
|             |                          | Requires employers to provide a reasonable accommodation

Basic Definitions

Interactive Process – “The interactive process is an ongoing dialogue between the employee and appropriate representatives of the University about possible options for reasonably accommodating the employee’s disability.” UC Policy PPSM 81: Reasonable Accommodation

Reasonable Accommodation – “Generally, a reasonable accommodation is one that effectively enables an employee to perform the essential functions of the job. The University and the employee should identify possible reasonable accommodations.” Universitywide Procedures accompanying PPSM 81

Medical Separation – “A regular status employee who becomes unable to perform essential functions of his or her position with or without reasonable accommodation, due to a disability, may be separated.” UC Policy PPSM 66: Medical Separation
University Policy

UC managers are expected to comply with the laws and follow UC policy in facilitating the Interactive Process.

Personnel Policy for Staff Members (PPSM)

Effective July 1, 2006, President Dynes issued a revised Personnel Policy for Staff Members (PPSM) to include the interactive process, identify a reasonable accommodation and implement a medical separation where warranted. These policy changes and new procedures communicate the University’s intent to comply with state and federal law.

An important change is the requirement that the University conduct a timely Interactive Process in good faith.

“Timely” is defined as: prompt, immediate, soon, and what most people would define as a reasonable time.

“Good Faith” is defined as: demonstrated, documented efforts to communicate, identify, and implement a reasonable accommodation.

The revisions to PPSM also require a noncompetitive placement in an open and vacant position if doing so is determined to be a reasonable accommodation.

It is important to note that the Reasonable Accommodation policy applies to all staff including employees with casual or restricted status. However, while the University is required to implement the Interactive Process with everyone, only career appointments are subject to the Medical Separation policy.

A non-career PPSM-covered employee who cannot perform the essential functions of a position with or without a reasonable accommodation may be released from employment “at the discretion of the University” in accordance with PPSM 61: Release of Casual and Probationary Employees. This can only occur when the Interactive Process is complete and no reasonable accommodation, including transfer of the employee to an open vacant position for which they are qualified, is available.

Additional information on reasonable accommodation and medical separation can be found in the UC PPSM 81: Reasonable Accommodation and PPSM 66: Medical Separation. The web link is:

http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/personnel_policies/index.html

Managers are encouraged to review the revised policies and procedures and become familiar with related local procedures. Questions should be directed to your local Human Resources office, disability management services, and/or rehabilitation counselor.

Academic Personnel Manual (APM)

The Academic Personnel Manual (APM) addresses reasonable accommodation (APM – 711) and medical separation (APM – 080) for academic appointees. Although the concepts are similar in the APM, this document and the video do not address important considerations applicable to academic appointees. Please contact your local Academic Personnel Office for information and guidelines addressing concerns specific to academic appointees with disabilities.
**Bargaining Units**

The University will provide reasonable accommodations for represented employees and document the interactive process. The video and Managers’ Guide apply to both represented and non-represented employees.

If a bargaining agreement contains outdated provisions or does not address the Interactive Process, UC complies with Federal and State law. Revisions to contractual language consistent with Federal and State law will be negotiated when individual contracts are renewed.

Current contracts can be viewed at this web link: http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/collective_bargaining_agreements.html

**Workers’ Compensation**

For employees who file a workers’ compensation claim, the overall responsibility to engage in the Interactive Process is the same. However, there are certain requirements that are a part of a workers’ compensation claim that you should be aware of. For example, when an employee with a disability has permanent restrictions that impact their ability to perform their regular job, UC has 30 days to offer permanent modified or alternate work to an employee. This 30-day timeframe begins at the end of temporary disability payments and/or when the employee’s restrictions are declared permanent by their physician. Furthermore, the employee must begin the permanent modified or alternate work within 60 days after the end of temporary disability payments and/or notice that the work restrictions are permanent. Please remember that if UC is unable to meet the 30-day or 60-day time frames, the UC responsibility to conduct the Interactive Process is ongoing.

The UC disability management services or rehabilitation counselor at your location can help you manage the workers’ compensation schedule, UC requirements, and generally assist you through its process. Keep in mind that modified or alternative work might also meet the requirements of the reasonable accommodation policies and the University’s legal obligations. Even if an employee has filed a workers’ compensation claim, UC is still obligated to comply with the ADA and FEHA disability laws.

**Disability Income from the UC Retirement Plan**

Employees with a disability may be eligible to receive Disability Income (DI) from the University of California Retirement Plan (UCRP). If employees with a disability decide to apply for UCRP DI, these employees should be informed of their right to engage in the Interactive Process to explore any potential reasonable accommodation including alternate employment. As a part of the UCRP DI approval process, the location may be asked to provide documentation that the Interactive Process and evaluation for reasonable accommodation has been offered. Managers are encouraged to refer to the local disability management services or rehabilitation counselor for help in completing the Interactive Process.
The Importance of Compliance

The two compelling reasons for compliance with legal and UC Policy requirements are to support Faculty and Staff and to minimize risk, penalties and other costs.

As an employer, UC supports its Faculty and Staff by providing reasonable accommodations to perform essential job functions. This practice supports the UC mission of research, teaching, and public service and the UC values of Excellence, Integrity, Respect, and Accountability. There are numerous examples of individuals with disabilities making significant contributions to the University.

The cost associated with the failure to comply with the law increases annually. Although the general requirements for the University to accommodate individuals with a disability are not new (the Rehabilitation Act originated over 30 years ago) the recent changes in California and Federal law apply to a broader population of UC employees. In addition, even as more employees are entitled to these protections, the courts have further clarified the nature and types of accommodations to be provided. As the protection for employees has increased so has the number of lawsuits and grievances alleging discrimination and failure to accommodate a disability.

Listed below are three examples of lawsuits that resulted in a significant cost to the University.

- In a case that was lost, the University did not initiate the Interactive Process. That case cost the University almost a million dollars.
- In a case that was won, the total expense to the University in costs and attorney fees was over $600,000.
- In a case that was settled before trial the University was obligated to pay the employee and attorney fees. The total cost of this case was in excess of $400,000.

Clearly there is a high cost if the Interactive Process is not initiated and completed. The revised policies and new guidelines are intended to improve University practices, establish systemwide consistency, and save administrative time and legal costs.
The Manager’s Role

The University’s obligation under the law is to conduct the Interactive Process, and to identify and implement a reasonable accommodation. The manager’s role is to support the Interactive Process.

A manager should initiate the interactive process when he or she becomes aware of an employee with a disability and the possible need for an accommodation. A reasonable accommodation request may be made orally or in writing by the employee, or by someone on his or her behalf. Participants in the process may include the employee, the manager, the employee’s health care provider, or other appropriate University representatives.

Where it is possible, it is preferable to initiate the Interactive Process with the employee before they return from sick/disability leave. This will allow you the opportunity to prepare a reasonable accommodation beginning the first day of work. In the video, the first case example with Marie demonstrates a different scenario wherein the interactive process is initiated after it is discovered the employee is unable to perform her assigned job duties. Whether the Interactive Process begins before an employee returns to work from sick/disability leave or begins while the employee is at work either the employee or the manager may initiate the Interactive Process.

A manager is required to ensure four key elements of the Interactive Process.

1. Analyze the essential job functions. Essential functions of a job are defined as:
   • The duties the employee is required to actually perform
   • The duties that are fundamental and not marginal

   Some indications that a function is essential are:
   • the position exists to perform that function
   • there are a limited number of other employees available to perform the function, or among whom the function can be distributed
   • the function is highly specialized

2. Obtain current medical documentation of physical and cognitive functional limitations. During the interactive process you should not inquire about the nature, extent and severity of the mental or physical disability or medical condition of the employee. Rather, your inquiry should be limited to the employee’s ability to perform job-related functions. Do not ask for a medical diagnosis or attempt to discover the medical condition of the employee. Do not contact the employee’s health care provider directly. If clarification is needed, ask the employee to contact their health care provider and/or seek assistance from the local rehabilitation counselor or disability management services.

3. Discuss with the employee the potential performance barriers due to the disability related functional limitation(s). It is important to understand how disability related functional limitations may limit the employee’s ability to fulfill an essential job function within the current job environment.

4. Discuss with the employee possible options for an effective job accommodation. Include a rehabilitation counselor or disability manager to broaden the examination of the nature and type of accommodations considered. An accommodation is not reasonable and should not be implemented if it poses an undue hardship for the University. (Please see the discussion of “Undue Hardship” below.)
Additional Considerations for the Interactive Process

• Documentation is an important step of the Interactive Process. Maintain a written record of your decisions, actions, and results. This record is important and can defend the University against a potential complaint. Please note that a properly documented Interactive Process is needed to support a medical separation. The record should include all steps of the Interactive Process, any reasonable accommodation that is considered or implemented, and any medical documentation of functional limitations. The record should be kept in a secured file drawer and separate from the employee’s personnel records.

• Once a reasonable accommodation is made, monitor the effectiveness of the accommodation to ensure that it works. If the accommodation does not work, continue the Interactive Process. Remember, the duty to accommodate is ongoing.

• The Interactive Process is complete when the employee is successfully accommodated or when no reasonable accommodation will allow the employee to do the job. The Interactive Process ends only when one of the following four conditions is met.

  1. The reasonable accommodation works.
  2. The employee with a disability does not cooperate.
  3. It is determined the employee with a disability is not qualified according to the ADA and FEHA.
  4. When there is no accommodation available without causing an undue hardship.

• If a requested job accommodation appears to be unreasonable, discuss this with appropriate Human Resources personnel, rehabilitation counselor, or disability management service.

Undue Hardship — The University does not need to provide a requested accommodation if to do so would create an undue hardship. Undue hardship is defined as any action requiring significant difficulty or expense, taking into account such factors as the:

• type and cost of the accommodation
• overall financial resources of the campus
• number of persons employed in the facility
• effect of the reasonable accommodation on resources
• impact of the accommodation on operations

These factors are not weighted. All factors must be considered to determine if an accommodation imposes an undue hardship.

Considerations for a Reasonable Accommodation

A reasonable accommodation enables an employee to perform the essential functions of the job. Collaborate with the employee to identify possible reasonable accommodations. The following examples are recommended for consideration when appropriate by the Department of Fair Employment and Housing [Case Analysis Manual 2008 Update, pages 80-91]

• Making existing facilities used by employees readily accessible to and usable by individuals with disabilities
• Job Restructuring—reallocating or redistributing marginal job functions
• Leaves of absence
• Altering when, how or where an essential job function is performed
• Acquisition/Modification of tools, equipment, devices, furnishings, etc.
• Adjustment or modification of examinations and training materials
• Adjustment or modification of workplace policies, procedures or regulations, including adjustments to a policy governing leaves of absence
• Part-time or a modified schedule, such as changing start or end time, and allowing for time off for medical appointments
• Provision of a qualified reader or interpreter
• Telecommuting or working from home
• Reassignment to an active, vacant position for which the employee is qualified with or without accommodations, may be required if accommodations are not effective

You should consult with the disability management specialist or rehabilitation counselor regarding possible reasonable accommodations before deciding whether the employee can or cannot be accommodated.

Communicating with Employees on Disability Leave

It is a good idea to maintain regular communication with an employee on disability leave to support the employee during the leave. This communication process can assist your workload planning as the employee begins a transition from disability leave back to work.

Support is an important component of communication. Consider sending a personal note or a card from department co-workers. It is important to reinforce a positive return-to-work message.

It is also important to remember however, that communication should not include any discussion or questions of private or confidential medical information. If the employee voluntarily discloses medical information, do not inquire further about the medical condition, but steer the topic to any potential functional limitations that may be anticipated with the employee’s return to work.

When an employee is ready to return to work, it is important to determine the capability to perform the essential job functions. Suggested questions include:

• When do you expect that you will be able to return to work?"
• Do you have any restrictions or limitations?"
• What do you need to assist your return to work?"

Do not say, "I need someone to perform at 100%". It is very important to note that the employee is not required to be "100%" when they return to work from medical leave.

Remember, communication with an employee on disability leave is appropriate and necessary to keep communication channels open with the employee and to demonstrate concern. This will help to ensure a seamless transition from sick/disability leave back to work.

Personnel Practices

Maintain appropriate and fair personnel practices when addressing the concerns of an employee with a disability.

Provide Equal Opportunity: Provide qualified employees with disabilities with equal opportunities to obtain promotions and awards. Ensure that employees with disabilities have access to training and career development programs.

Address Personnel Issues: Manage an employee with a disability as you would other employees when it comes to adverse actions and performance problems. It is very important; however, to ensure that performance problems are not related to the inability to provide a reasonable accommodation and are based solely on an inability to perform after a reasonable accommodation is made.
Managers should not lower performance standards or expectations for employees with disabilities. Managers are not required to hire or retain anyone who is not qualified to perform a job.

**Address Co-worker Concerns:** If a co-worker communicates concern that a reasonable accommodation is provided to an employee with a disability, the University’s position is that this supports the mission of the University, and is an appropriate Human Resources practice that acknowledges talent management, values employees, maintains productivity, and saves time and money.
Conclusion

Your support of the Interactive Process is critical for the University of California. A manager is key to ensure that the University fulfills its obligations under the law.

The University policies and procedures (specifically PPSM 66 and 81) are provided as a resource and may be found on the UC At Your Service website: http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/personnel_policies/index.html

In addition, your local Human Resources office, disability management specialist or rehabilitation counselors are available to help you successfully complete the Interactive Process.

There are several web-based resources that are helpful in identifying possible accommodations supporting an employee with a disability. The most comprehensive is the Job Accommodation Network (JAN) website located at: http://www.jan.wvu.edu/

It is important to note that this document was distributed in March 2009. Since disability related employment law is dynamic, it is advised that if you make an employment related decision on behalf of the University based upon the information in this document that you also check with your local Human Resources, disability management specialists, or rehabilitation counselors for any updates.

Finally, at the end of the video we highlight a quote attributed to Eleanor Roosevelt.

“By working together, we can accomplish great things.”

This is the spirit of the Interactive Process, a dialogue between the University and the employee with a disability.
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