

UWM REASONABLE ACCOMMODATION POLICY AND PROCEDURES FOR EMPLOYEES

No: S-45.1

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Authority:

Wisconsin Fair Employment Act (Wis. Stat. Ch. 111)
Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794)
Regent Policy 96-6 (adopted in December 1996; replaced 88-9, adopted in
July 1988)
UWM Administration

I. STATEMENT OF PURPOSE

It is the policy of the University of Wisconsin-Milwaukee (UWM) to provide reasonable accommodations for qualified individuals with disabilities who are employees or applicants for employment.¹ UWM will abide by all applicable federal and state laws, regulations, rules, and guidelines regarding the provision of reasonable accommodations to afford equal employment opportunity to qualified individuals with disabilities. Such accommodations will be provided in a timely and cost-effective manner. Employment opportunities shall not be denied because of the need to make reasonable accommodations to an individual's disability.

This policy is applicable to all UWM employment classifications, including full- or part-time, student, LTE, classified, faculty, or academic staff.

II. DEFINITIONS

A. An **Individual with a Disability** is one who:

1. Has a physical or mental impairment which substantially limits one or more major life activities or makes achievement unusually difficult or limits the capacity to work; or
2. Has a record of such an impairment; or
3. Is perceived as having such an impairment.

¹ UWM's procedures with respect to students with disabilities are administered by the Student Accessibility Center. This policy does not replace students' rights to equal access to educational programs provided under law and/or in separate policies.

- B. A **Qualified Individual with a Disability** is one whose experience, education and/or training enable the person, with or without reasonable accommodation, to perform the essential functions of the job.
- C. An **Applicant**, for the purpose of this policy only, is an individual who has initiated the process of applying for a position of employment at UWM.
- D. An **Employee**, for the purpose of this policy only, is an individual who has accepted an offer of employment
- E. A **Reasonable Accommodation** is an effort on the part of the employer to accommodate an individual's disability by making adjustments to the employment application process, the job or the work environment which will enable that individual to interview for or perform the essential functions of the job, but which do not pose an undue hardship to the employer. Reasonable accommodations may include, but are not limited to, making facilities accessible, adjusting work schedules, providing assisting devices or equipment, or modifying work sites. Reasonable accommodations are subject to the UWM Policy on Responsibility for Funding Reasonable Accommodations.
- F. A **Disability Accommodations Request Form** is the form that must be completed by any employee seeking an accommodation under this policy. The form is available from the Department of Human Resources.
- G. An **Undue Hardship** refers to any accommodation that would be unduly costly, extensive, substantial or disruptive or that would fundamentally alter the nature or operation of the business, as determined by the Dean or Division Head in consultation with the Disabilities in Employment Coordinator and the Office of Legal Affairs.
- H. The **Essential Functions** are those job duties that are primary or intrinsic to a given position. They do not include those duties that are marginal or incidental to the position.
- I. The **Disabilities in Employment Coordinator (the "DEC")** is the administrator in the Department of Human Resources who is responsible for reviewing and responding to accommodations requests and who is a resource on disabilities issues, as indicated throughout this policy. Any supervisor or individual employee or applicant for employment may contact the DEC, at any time, for more information about UWM's policies and procedures with respect to accommodation of disabilities.

III. PROCEDURES WHEN AN INDIVIDUAL HAS A HEALTH CONDITION THAT MAY AFFECT THEIR EMPLOYMENT

A. Applicants for Employment

1. Before the Interview or Examination

- a. All applicants who are invited to interview or to take an employment examination at UWM shall be informed, at the time of such invitation, of the UWM policy to provide reasonable accommodations for applicants and employees with disabilities.
 - (1) The following paragraph shall be included in any letter of invitation to an applicant:

"It is the policy of UWM to provide reasonable accommodations for qualified individuals with disabilities who are employees or applicants for employment. If you need assistance or accommodation to interview (or to test) because of a disability, please contact me at (phone number of person signing letter). Employment opportunities will not be denied because of the need to make reasonable accommodations for an individual's disability."
 - (2) Applicants who receive invitations by telephone to interview or test shall be informed of the foregoing information at the time of invitation.
- b. Applicants may request accommodations for the interview or testing process orally by contacting the individual responsible for the interview or test. The responsible individual shall contact the DEC for advice on making arrangements to accommodate an applicant with a disability or health condition in the interview or testing process in a manner that is fair to the other candidates. Any request for an accommodation in an interview or test, and the response, shall be documented and forwarded to the DEC.

2. During Interviews

- a. Interviewers may ask applicants about their ability to perform job-related functions.² These questions should be prefaced with a statement regarding UWM's willingness to make reasonable accommodations. If applicants are to be asked questions regarding their ability to perform job duties, all applicants shall be asked the same questions.
- b. Prior to an offer of employment, interviewers **may not** ask an applicant or a reference **any** question that is likely to elicit

² For example, an interviewer may ask, "Can you perform the duties of this job?"

information about a disability, even if the questions are job-related.³

- c. If an applicant indicates in the interview process that he or she has a disability or may need an accommodation, the interviewers should state that UWM has a policy of making reasonable accommodations and that this may be discussed further at the post-offer stage, but should **not** ask follow-up questions regarding the disability.
- d. If, during the interview process, an interviewer becomes concerned that the applicant's health condition or disability may prevent them from performing their job, the interviewer shall contact the DEC to discuss the matter further. The DEC will consult with the Unit Personnel Representative ("UPR") and the Office of Legal Affairs to determine whether and when inquiries may be made about the applicant's ability to perform the job.

3. After an Offer is Made

- a. Once an offer is made to an applicant, the applicant may be asked:
 - (1) Whether he or she needs a reasonable accommodation to perform the job, but only if this is done for all who are offered a position in this job categorygroup. If an applicant indicates that he or she needs a reasonable accommodation, the applicant will be asked to complete a Disability Accommodation Request Form.
 - (2) To take a medical examination or to answer job-related questions about the applicant's health condition, but only if this is done for all applicants who are offered a position within that job group.⁴ If it is not the general practice to require medical information or an examination from this category of applicants at the post-offer stage, no applicant may be asked to provide such information or take such an examination.
- b. Following legitimate disability-related inquiries described in paragraph a. above, an offer may be withdrawn due to the

³ For example, the interviewer may not ask, "Do you have any physical impairments or health conditions that would affect your ability to perform the job?" nor "Will you need reasonable accommodation to perform this job?"

⁴ For example, such a test may be required of all laboratory workers who work with animals and may be particularly sensitive to animal allergies.

applicant's physical or mental health condition **only if the withdrawal has been discussed with and approved by the DEC**, who shall consult with the Office of Legal Affairs on such matters, **and** one of the following applies:

- (1) The applicant is unable to perform the job functions even with a reasonable accommodation;
- (2) The applicant can perform the job functions but would pose a significant risk to the health or safety of him/herself or others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services; or
- (3) All available accommodations will cause the employer undue hardship.

B. Employees

1. How an Employee May Request an Accommodation

Employees may request accommodations in different ways. The most direct way is for an employee to tell his or her supervisor for the employing unit that the employee needs an accommodation of a disability to do the job. Sometimes, however, an employee may not be so direct, and instead may simply indicate that his or her medical condition is causing difficulties on the job.⁵ Supervisors should respond to all such requests, both direct and indirect, as requests for an accommodation of a disability.

2. Supervisory Response

- a. When a supervisor receives either a direct or indirect request for an accommodation, the supervisor is responsible for initiating an interactive discussion to explore with the employee whether the employee is interested in requesting an accommodation and/or the nature of possible accommodations.⁶
- b. Once the supervisor understands that the employee would like to pursue a request for accommodation, the supervisor shall ask the employee to complete a Disability Accommodation Request Form.

⁵ For example, an employee may, while being counseled for inattentiveness on the job, explain that she is on medication that causes fatigue.

⁶ For example, the supervisor may meet with the employee and say, "I know you have mentioned that your condition is causing you problems with your performance. Is there anything UWM can do to help you perform your duties?"

3. Review and Consideration of Request

- a. After the supervisor receives the completed Disability Accommodation Request Form, he or she shall submit both to the DEC, with a copy to the Dean or Division Head and the UPR.
- b. The DEC will review the request and if appropriate, advise the employee to provide documentation from his or her doctor that explains, in light of the employee's job duties⁷: (a) what the medical condition is; (b) how it impairs the employee's ability to perform job duties; and (c) what reasonable accommodations may allow the employee to perform his or her job. The DEC will also consult with appropriate individuals, including the employee, the employee's physician, the employee's supervisor, the UPR, the Unit Business Representative for the school/college/division, the DEC, the Labor Relations Coordinator, and/or anyone else with knowledge or information regarding the request. If, after consulting with the above individuals, the DEC has any particular questions or concerns about the request, he or she should contact the Office of Legal Affairs to discuss the matter.
- c. The DEC shall consider the following factors in determining the feasibility and reasonableness of any request for accommodation:
 - (1) Is medical verification of the disability complete?
 - (2) Does the individual's medical condition constitute a disability (such factor should be considered with advice from the Office of Legal Affairs)?
 - (3) Are the job functions for which the accommodation is requested essential?
 - (4) Is the applicant or employee otherwise qualified to perform the essential job functions?
 - (5) Does the requested accommodation achieve the desired result of allowing the individual to perform the essential job functions?
 - (6) Will the accommodation adversely affect the productivity or work environment of other employees?

⁷ It is often helpful to inform the employee to provide his or her doctor with a copy of the employee's job description or a summary of the employee's duties. If the employee does not have a copy of these types of documents, the supervisor should provide one or both to the employee.

- (7) Is the cost feasible within the budget of the employing department or college/division? If not, can the college/division obtain funding from another source?⁸
 - (8) Are there other cost-effective options which will allow the individual to perform the essential functions of the job?
 - (9) Is the request for equipment which will principally benefit job performance, or is it primarily something of a personal nature that an individual could be expected to provide?
 - (10) If an employee has developed or acquired a disability and is unable to perform the essential functions of the present job, even with reasonable accommodation, is there alternative placement either within UWM or elsewhere within the UW System?⁹
- d. If the DEC agrees to grant the request, a record of such determination shall be submitted for approval to the Dean or Division Head. If the DEC is contemplating denial of the request or the College/Division does not have appropriate funding to grant it, he or she shall consult with the Office of Legal Affairs prior to denial.
 - e. The DEC must inform the employee in writing of the decision regarding the accommodation request within 30 days after receipt of the employee's completed request and medical documentation, unless specific circumstances require additional time, in which case the DEC shall so inform the employee in writing prior to expiration of the 30-day period.
4. Once a request for an accommodation is approved or denied, the UPR and the employee's supervisor are responsible for monitoring the situation to ensure that the accommodation is sufficient to allow the employee to perform his or her job and the most appropriate and feasible accommodation available. If the UPR and/or the employee's supervisor believe that an adjustment in the accommodation is necessary, he or she will bring this to the attention of the DEC.

⁸ See the UWM Policy on Responsibility for Funding Reasonable Accommodations, at <http://www.uwm.edu/Dept/DSAD/SAC/fundpolicy.htm>.

⁹ For classified employees, the Personnel Representative should consult with the Labor Relations Coordinator on the appropriate process for seeking alternative employment opportunities.

C. Documentation and Confidentiality

1. The DEC shall send copies of the completed Disability Accommodation Request Form to the employee, the employee's supervisor, and the UPR.
2. The DEC shall retain the original Disability Accommodation Request Form and the medical documentation in a confidential file, kept separate from the employee's official or unofficial personnel files. Each recipient of the Disability Accommodation Request Form should also maintain the forms in confidential files, separate from the employee's personnel files.
3. The information and documentation pertaining to the employee's health condition must be kept confidential and may be shared only as follows¹⁰:
 - (a) To supervisors and administrators involved in the decision-making process with respect to the accommodation request;
 - (b) To supervisors and managers who may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations;
 - (c) To first aid and safety personnel (e.g. the University Police Department or University Safety & Assurances), if the disability might require emergency treatment;
 - (d) To government officials investigating compliance with the ADA or WFEA, upon request;
 - (e) To state workers' compensation offices, state second injury funds or workers' compensation insurance carriers in accordance with state workers' compensation laws; and
 - (f) For health insurance purposes.

IV. APPEAL PROCESS FOR EMPLOYEES

If an employee is dissatisfied with any determination made with respect to a request for an accommodation, he or she may bring his or her concerns to the attention of the DEC. The DEC will investigate the situation and respond to the employee, in writing, within 30 calendar days. If, after receiving the DEC's response, the employee still feels dissatisfied with the outcome, the employee may bring a complaint under the UWM Discriminatory Conduct Enforcement Procedures, No. S-47, available online at:

¹⁰ If fellow employees ask questions about an employee's disability or reasons why an accommodation is provided, the supervisor should simply state that the matter is a confidential personnel matter.

http://www.uwm.edu/Dept/SecU/acad%2Badmin_policies/S47.pdf. Such complaints should be directed to the Office of Equity and Diversity Services (see http://www.uwm.edu/OD_C/).

Policy Approved:

/s/ _____ Date _____
Signature of Chancellor