

The University of Wisconsin Oshkosh
Policy #
GEN 1.2.(2). Reasonable Accommodations Policy



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1. PURPOSE

It is the policy of the University of Wisconsin Oshkosh to provide reasonable accommodations for qualified individuals with a disability who are employees or applicants for employment. The University of Wisconsin Oshkosh will adhere to all applicable federal and state laws, regulations, and guidelines with respect to providing reasonable accommodations, which are required to afford equal employment opportunity to qualified individuals with a disability. Reasonable 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.

2. RESPONSIBLE OFFICER

The UW Oshkosh Equal Opportunity and Access Office serves as the Coordinator for the American's with Disabilities Act (ADA) and for Section 504 of the Rehabilitation Act.

3. SCOPE

This policy applies to all university employees and applicants for employment.

4. DEFINITIONS

(a) **"Disability"** means, with respect to an individual:

- A physical or mental impairment that substantially limits one or more of the major life activities of such an individual;
- A record of having such an impairment; or
- Being regarded as having such impairment.

The determination of whether an impairment is a disability shall be determined on a case-by-case basis. The definition of "disability" shall be construed in favor of a broad coverage of conditions and should not require extensive analysis.

(b) **"Regarded As Disabled"** is an individual who is regarded as being disabled whether, or not, a disability actually exists. The individual is protected from discrimination on the basis of the perceived disability, but does not have the right to receive a reasonable accommodation on the basis of such perceived disability.

(c) **"Substantially limiting"** is defined as an impairment that significantly restricts the duration, manner, or condition under which an individual can perform a major life activity compared to an average person in the general population. The term should be construed broadly in favor of expansive coverage, and may be evaluated on an individualized basis considering the difficulty, time and effort required to perform activities. An impairment that is episodic or in remission but would substantially

limit a major life activity when active is a disability. The determination of whether an impairment substantially limits a major life activity shall be made *without* the consideration of the positive effects of any mitigating measures, except for ordinary eyeglasses or contact lenses.

- (d) **"Major life activities"** include but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include major bodily functions including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- (e) **"Qualified individual with a disability."** An individual with a disability whose experience, education and/or training enable the person, with reasonable accommodation, to perform the essential functions of the job. An individual who poses a **direct threat** to self or others is not qualified under the ADA or applicable state law. A direct threat is defined as any significant risk to the health or safety of the individual or others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services.
- (f) **"Essential Function"** A job function is essential if removal of that function would fundamentally change the job, the position exists to perform that function, the function is highly specialized, or there are a limited number of employees who can perform that function.
- (g) **"Reasonable accommodation"** is defined as any modification or adjustment to a job, an employment practice, or the work environment that are necessary to provide equal employment opportunities to qualified job applicants and/or enable an employee to perform the essential functions and duties of his or her work.

Institutions are not required to supply individuals with attendants, individually prescribed equipment or devices such as hearing aids or wheelchairs, readers for personal use or study, or other items or services of a personal nature.

Accommodations are not reasonable if they require the waiver or removal of an essential function or duty of an employee's position or create an undue hardship.

An institution is obligated to provide a reasonable accommodation only for the known disabilities of an otherwise qualified individual.

- (h) **"Undue Hardship"** is defined as "an action that requires 'significant difficulty or expense' in relation to the size of the employer, the resources available, and the nature of the operation." In general, undue hardship includes any action that is: (1) unduly costly; (2) extensive; (3) substantial; (4) disruptive; or (5) that would fundamentally alter the nature or operation of the business.

5. POLICY STATEMENT

1. Applicants for Employment.

- a. Applicants who may need an accommodation for a disability to participate in the selection process should contact the Office of Equal Opportunity & Access.
- b. University departments conducting recruitments must notify all applicants who will be invited to interview of the University policy to provide reasonable accommodation for applicants and employees with disabilities and contact information for the Office of Equal Opportunity & Access if they need to request an accommodation.
- c. If applicants are asked questions regarding their ability to perform required job duties, all applicants should be asked the same questions. This question may be prefaced with a statement regarding the University's willingness to provide reasonable accommodations.

Note: Applicants may not be asked whether or not they have a disability.

- d. Qualified applicants cannot be denied employment solely based on a need to provide a reasonable accommodation. However, if an applicant who receives a tentative job offer cannot reasonably be accommodated, the offer must be rescinded.

2. Employees.

- a. Employees are responsible for initiating requests for any desired disability related workplace accommodation, unless the need for the accommodation is obvious. Where circumstances permit, the employee should notify the employer in writing by completing the Reasonable Accommodation Request Form and submitting it to the Office of Equal Opportunity & Access. The employee making the request is required to cooperate throughout the process by attending meetings to discuss the needed accommodation and timely providing medical documentation where necessary. Accommodations shall not be required to apply retroactively.
- b. Employees will be told about their right to request reasonable accommodations: (1) during orientation for new employees; (2) at the time of the biennial survey to allow employees to self-identify as persons with disabilities; (3) in the UW Oshkosh Faculty and Academic Staff Handbook, and University Staff policies.
- c. An employee may be required to provide verification of a disability and accommodation recommendations from a treating specialist. The employee must bear the initial cost of verification. (This may be covered by the employee's health insurance.) If UW-Oshkosh requests a second opinion, the university will bear the cost.
 - NOTE: All medical information obtained throughout the determination process is considered a "confidential medical record." It must be solicited and received by the Office of Equal Opportunity & Access, who will provide only information about necessary restrictions and accommodations to managers and supervisors. All medical information and the completed Reasonable Accommodation Request Form will be kept in confidential medical records files, separate from personnel records.

3. Interactive Process

- a. The interactive process through which the employee provides any necessary medical documentation and the employer works with the employee to decide upon what accommodation is reasonable will occur between the Office of Equal Opportunity & Access and the employee who is seeking the accommodation. Consultation with other offices (such as IT for technological solutions or Facilities for furniture solutions) will be made as necessary within the confidentiality requirements of the regulations. What constitutes a reasonable accommodation will be made on a case-by-case basis, utilizing input from the affected employee whenever possible. The Office of Equal Opportunity & Access is responsible for documenting and maintaining records of all reasonable accommodations.

4. Supervisor Responsibilities

- a. Supervisors are responsible for notifying the Office of Equal Opportunity & Access of any employee accommodation or request for accommodation brought to their attention. Note that in certain circumstances it may be appropriate for the employer to initiate the accommodation process. This should only be done in consultation with the Office of Equal Opportunity & Access. Once a reasonable accommodation has been approved, supervisors are responsible for implementing the reasonable accommodation. Supervisors have the responsibility to keep the request confidential except as necessary for the accommodation.

5. Funding

- a. Financial responsibility for providing reasonable accommodations (other than barrier removal projects) belongs to the employing unit. If the employing unit does not have the

financial resources to provide reasonable accommodations from its own budget, the dean or director of the school/college/division should be consulted regarding other sources of funding.

6. When a Reasonable Accommodation is not Required

- a. The University is not required to provide a reasonable accommodation if it would impose undue hardship on the employer. Undue hardship refers to any accommodation that would be unduly costly, expensive, substantial or disruptive, or that would fundamentally alter the nature or operation of the business.
- b. The University is not required to employ an individual who poses a significant risk of harm to the health or safety of self or others and who cannot perform the job at a safe level even with reasonable accommodation. In determining whether an individual poses a significant risk of harm, the employer must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or the best available objective evidence, to ascertain:
 - the nature, duration, and severity of the risk;
 - the imminence of the risk;
 - the probability that the potential injury will actually occur; and
 - whether reasonable modification of policies, practices, or procedures will mitigate the risk.

The Office of Equal Opportunity & Access will consult with legal counsel before denying a reasonable accommodation.

7. The Appeal Process

- a. If a current employee disagrees with a decision regarding an accommodation request for employment, they have a right to appeal the decision using the following procedure. Applicants do not have access to this procedure. They have the option to follow the usual discrimination complaint procedure (Department of Workforce Development – Equal Rights Division, EEOC, etc.)
- b. When an accommodation request is denied, an employee may, within 30 calendar days, appeal the decision to the Director of Equal Opportunity & Access. The appeal must be in writing, stating the reason for the disagreement.
- c. The Director will reevaluate the decision, considering any additional information from medical or vocational rehabilitation experts. The Director may consult with staff from outside agencies including but not limited to OSER/DAA, DHSS/DVR or DOA 504 coordinator in the appeal process--taking care to provide confidentiality for the employee.
- d. The Director then discusses all information regarding the appeal with the Chancellor. The Chancellor makes the final decision regarding the appeal.
- e. The employee receives the final decision regarding the appeal in writing within 30 calendar days after the appeal was filed.

6. REFERENCES

This policy shall be interpreted in accordance with the rights and protections of individuals under the Americans with Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments of 2008, Section 504 of the Rehabilitation Act of 1973, The Wisconsin Fair Employment Act and other applicable state and federal laws that prohibit discrimination on the basis of a disability.