



SUNY EMPIRE
STATE COLLEGE

**Policy and Procedure
To Request a Reasonable Accommodation
For College Employees and Applicants**

*Office of Human Resources
September 2016*

Policy:

SUNY Empire State College is committed to assuring equal employment opportunity and equal access to services, programs and activities for persons with disabilities. It is the policy of the College to provide reasonable accommodation(s) to a qualified person with a disability to enable such person to perform the essential functions of the position for which he/she is employed or is applying for employment.

Scope:

The Policy and Procedure applies to all employment practices and actions. It includes, but is not limited to, recruitment, the job application process, hiring, training, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, and promotions.

Employees or applicants with disabilities may request reasonable accommodation, regardless of title, salary grade, or bargaining unit.

This Policy and Procedure applies to both temporary and permanent disabilities.

Purpose:

The purpose of this Policy and Procedure is to assist the College, as an employer and an integral campus in the SUNY System, an agency of the State of New York, to:

- Assure equal employment opportunities and practices;
- Provide equal opportunities for participation in education and training programs;
- Enhance the retention and upward mobility of qualified employees with disabilities;
- Ensure equal accessibilities to procedures for swift and judicious resolution of complaints arising out of this Policy.

Legal Authority:

This Policy and Procedure is based upon the federal Americans with Disabilities Act (ADA) of 1990 (42 USC 12101 et seq), as amended, which mandates that employers make reasonable accommodations for otherwise qualified employees with disabilities, unless it can be demonstrated that providing such accommodations would result in undue financial or operational hardships, together with the Rehabilitation Act of 1973, Parts 503 & 504, as amended. This Policy and Procedure is also based upon the New York State Executive Law, Article 15, more commonly known as the "New York State Human Rights Law" (NYS DHRL), as amended,

Key Terms:

Below is a summary of certain key terms to assist employees in understanding this Reasonable Accommodation Policy and Procedure. However, both the ADA and the NYSDHRL set forth specific statutory definitions of a number of key terms for determining whether an employee has a qualified disability for which a reasonable accommodation must be made under the statutes. The College is bound to abide by all laws and regulations that are applicable at the time of the application of this Reasonable Accommodation Policy and Procedure to any given employee's circumstances. Therefore, for the text of the statutory definitions of these key terms, please see www.ADA.gov and <http://www.dhr.ny.gov/>, respectively.

Disability

Under the ADA, a disability is a physical or mental impairment that substantially limits a major life activity (i.e., hearing, speaking, seeing, walking) or a record of substantially limiting impairment, or someone regarded as having a substantially limiting impairment. Under the NYSDHR, a disability is a physical, mental, or medical impairment resulting from anatomical, physiological, genetic or neurological conditions that prevents the exercise of normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, or a record of such impairment, or a condition regarded by others as such impairment.

Essential Job Functions

These are the essential job duties that an employee must be able to perform with or without a reasonable accommodation. Usual characteristics of the essential functions of a job are time spent, consequences of error, skill or expertise involved, and the availability of other employees. Under normal circumstances the essential duties would be included in the employee's performance program.

Reasonable Accommodation

This is any change or adjustment to a job or work environment which allows an employee with a disability to perform the essential functions of a job. Typical accommodations include job restructuring, reassignment, and equipment and furniture modifications.

Undue Hardship

This is an accommodation which would be unduly costly, extensive, disruptive, or would substantially alter operations. Such accommodations need not be provided. Nevertheless, please note that the University does have the obligation to explore and locate other suitable accommodations which would not constitute undue hardship if possible.

Light Duty

The University will continue its policy of requiring that employees be able to perform the essential duties of their position. With the exception of the temporary alternate duty assignments available in Worker Compensation cases, there are no enduring "light duty" assignments.

Procedure for Requesting a Reasonable Accommodation:

Job Applicant

A job applicant may request an accommodation from the Office of Human Resources (OHR) by completing an **Application for and Report of a Reasonable Accommodation form (Section A)** and submitting the same to OHR. The responsibility for requesting or initiating a request for a reasonable accommodation lies with the applicant with a disability. Upon receipt of the Application, OHR will determine whether an accommodation is appropriate, and if so, the accommodation. If there is an expense to the accommodation, it will work with the hiring department for that department to cover the expense, or at the College's discretion, for the expense to be paid from another budget line at the College.

Employee

The employee requesting an accommodation obtains, completes, and forwards Section A of the **Application for and Report of a Reasonable Accommodation form (Section A)** with any supporting documentation to his or her supervisor. The responsibility for requesting or initiating a request for a reasonable accommodation lies with the employee with a disability.

The supervisor completes Section B of the **Application for and Report of a Reasonable Accommodation form (Section B)** and recommends review and consideration for approval or states the request has insufficient information for making a decision at this time or recommends denial.

The supervisor forwards the completed form and any supporting documentation to the OHR for review.

Based on all documentation, if the ADA Coordinator agrees that the requested accommodation is reasonable, the employee will receive written confirmation (**Accommodation Approval Letter**). If it is determined that the accommodation is not justified, or the accommodation is not reasonable given the disability, then the employee will receive notification of the denial of her or his request for a reasonable accommodation (**Accommodation Denial Letter**). If it is determined additional information is needed, the **Notification of Need for Additional Information Supporting Request for a Reasonable Accommodation** will be sent to the applicant.

Further, OHR determines if the employee is entitled to an accommodation and that the proposed accommodation is reasonable as defined by the ADA and other applicable laws, regulations, rules and Executive Orders, as the case may be, then OHR will consult with the employee and the employee's supervisor about the appropriate methods of implementing the requested accommodation or some variation thereof. OHR will conduct a job audit of the duties and responsibilities of the position in instances where the essential duties are an issue.

Undue Hardship, Budgetary Considerations and Assistance

If the supervisor states on the Application for and Report of a Reasonable Accommodation that the department or unit is prevented from directly accommodating the request due solely to budgetary considerations, and if it is subsequently determined by OHR that the request or some mutually agreed upon variation thereof may be accommodated without undue financial hardship to the institution as a whole, then OHR will contact the appropriate Vice President, Assistant Vice President, or Dean who will be asked to assist in locating funds through channels within his or her own division.

It is expected that required job accommodations will typically be funded directly by the employee's department or division. Unresolved questions regarding undue financial hardship should be addressed through the usual reporting structure, and will ultimately be decided by the President.

In determining whether an accommodation would cause an undue hardship, the department head or supervisor may consider the impact of an accommodation on the ability of other employees to do their jobs. However, a supervisor or department head may not claim undue hardship solely because providing an accommodation has a negative impact on the morale of other employees; nor can an employer claim undue hardship because of "disruption" due to employee's fears about, or prejudices toward, a person's disability. For example: If restructuring a job to accommodate an individual with a disability creates a heavier workload for other employees, this may constitute an undue hardship. But if other employees complain because an individual with a disability is allowed to take additional unpaid leave or to have a special flexible work schedule as a reasonable accommodation such complaints or other negative reactions would not constitute an undue hardship.

Medical Documentation

If a review of the request and supporting documentation is inconclusive, or if it is determined that medical documentation is inadequate or otherwise problematic, then OHR will inform the applicant as to why the documentation is unacceptable, and the applicant will be allowed to submit additional supporting documentation. If, after this additional documentation has been submitted and the need for an accommodation is still not clearly established, then the employee may be asked to submit to a medical examination or see an appropriate medical professional designated and paid for by the College. If the department asks that an evaluation be performed, then the cost associated with an evaluation (if any) will be paid for by the department.

Technical Assistance

The College may seek technical assistance from a medical professional, State or local rehabilitation agencies or disability constituent organizations in determining how best to address an individual's specific request. In addition, the department may wish to have an employee's disability needs evaluated by an outside agency to determine what type of accommodation, including equipment, is best suited for a particular type of disability.

Confidentiality, Use and Storage of Documentation

All documentation will be held in the strictest of confidence and kept separate from personnel records by OHR.

Documentation and reports from medical exams will be used solely to assist OHR in making an informed decision about the employee's request for an accommodation.

Notification

After a decision is made by OHR as to what is and is not an appropriate accommodation, then the employee will receive a written notification from OHR. OHR notifies the employee of the disposition of the request for an accommodation within two weeks of receiving all necessary information including medical documentation if appropriate.

Appeal Rights

The employee has the opportunity to appeal a decision regarding a reasonable accommodation by submitting a written complaint to the Office of Diversity and Inclusion. The Office of Diversity and Inclusion shall first mediate to try to resolve the issues informally between the employee and the College to find an acceptable accommodation. If a mutually acceptable accommodation cannot be determined, then the Chief Diversity Officer for Institutional Equity and Inclusion shall investigate the complaint and will make the decision on the appeal following consultation with the ADA Coordinator and the Office of the President.

If the individual requesting an accommodation believes that a decision to deny the request was based on illegal discrimination, then a complaint may be filed with the NYS Division of Human Rights by contacting 1-888-392-3644 or go to <http://www.dhr.ny.gov/how-file-complaint>, or with the United States Department of Justice, Civil Rights Division by contacting 1-800-514-0301 or go to http://www.ada.gov/fact_on_complaint.htm.

For assistance with this Policy, Applications, Accommodations and Appeals, please contact the college's ADA Coordinator, Lindsay Holcomb, at 518-581-2239 or Lindsay.Holcomb@esc.edu.