Managing Accommodation and Medical Leave Issues

Office of the Vice Provost – Academic Affairs
January 14, 2015
Part I

Managing Reasonable Accommodations and Medical Leaves For Faculty
AGENDA

- Introductions
- Legal Considerations (Campus Counsel)
- Policy/Best Practices (Academic Affairs)
- Interactive Process/Reasonable Accommodation (Disability Management Services)
- Case Scenarios
- Review of Handout
INTRODUCTIONS
LEGAL CONSIDERATIONS

Sheila O’Rourke,
Associate Campus Counsel
Federal and State employment law protects:
  - “Qualified”
  - “Individuals with disabilities”

Legal obligations:
  - Provide “reasonable accommodation”
  - Engage in “interactive process”
  - May not “discriminate”
  - May not “retaliate”

Protection includes employees and applicants
Legal Considerations

Definition of “Qualified”

- Must satisfy the employer's requirements for the job, such as education, employment experience, skills or licenses, AND
- Must be able to perform the “essential functions” of the job with or without reasonable accommodation.
Definition of “disability” is broad

- a physical or mental impairment that limits a major life activity;
- a history of such a disability; OR
- Is regarded as having such a disability, even if he or she does not have a disability

Includes: emotional, mental, cognitive impairments such as autism, PTSD, depression
Definition of “Disability” does NOT include:

- Gambling, kleptomania, pyromania
- Disorders from current unlawful use of controlled substances or other drugs
- Sexual behavior disorders (pedophilia, exhibitionism, voyeurism)
- Mild conditions that do not limit a major life activity, as determined on a case by case basis, i.e. common cold, minor sprains, non-migraine headaches
Legal Considerations

Definition of “Essential Functions”

A function may be essential because the reason the position exists is to perform that function;

A function may be essential because there are a limited number of faculty among whom the function could be distributed;

A function may be essential because it is highly specialized and the incumbent is hired for his or her expertise or ability to perform that function
Legal Considerations

Reasonable accommodations

- Must be made on a case by case basis in accordance with individual limitations and job requirements;
- Must take the employees preferences into account, BUT not have to be the best option or the preferred option, only an effective one;
- Should not include doing the “essential functions” of the employee’s job
- May include periods of leave
Legal Considerations

The big picture – reducing legal risk

- Strive for consistent expectations and requirements evenly applied across the department
- Treat the individual with a disability the same as you would your most valuable colleague
- Don’t improvise! There are complicated legal obligations - REACH OUT FOR ASSISTANCE
POLICY & BEST PRACTICES

Matilda Aidam, Director
Faculty Relations and Development
Academic Affairs
APM 710 – Medical Leave

Provides quarters of paid leave for own illness/injury based on the faculty members years of service, in 10 year increments:

- 0-10 years – 2 quarters/1 semester
- 10-20 years – 3 quarters/2 semesters/12 months (fiscal)
- 20-30 years – (same as above)

Use or lose - Unused portions of the leave do not get carried over.
APM 715 – Family and Medical Leave (FMLA)
Providing FMLA leave for the appointee’s own illness can be a form of accommodation.

If someone is on leave based on APM 710, FMLA should be designated.

This is not additional leave, just a designation.
Policies

APM 711 – Reasonable Accommodation for Academic Appointees with Disabilities

Provide guidance to ensure consistency in implementation of accommodations for academics.

Addresses the need for University and the academic member to engage in an “interactive process” to identify possible options for reasonably accommodating their disability. (DMS will cover this process further.)

We recommend you encourage new faculty to buy Supplemental Disability Insurance with the 6 month waiting period.
APM 080 – Medical separation
Used only in cases where a long term or serious disability occurs that cannot be reasonably accommodated.

Prior to initiating medical separation process, the University will engage in an interactive process, per APM 711.
Best Practices

Keep the information confidential and only limited to those who need to know and are directly involved to avoid the appointee receiving differential treatment.

Be consistent in your response to these issues, including leaves or requests for medical accommodations.

Though cases are all different, being consistent in approach is crucial so you are not seen as being arbitrary.

Collaborate with your resources. Start with the Deans office, and use both DMS and AA.
Document! Documentation takes time but it’s very important to show engagement in the interactive process.

AA and DMS can assist with finalizing the more involved documentation.

Those individuals who have been ill or injured and on leave or can show through medical documentation that they were incapacitated, can request deferrals without reduction to offscale.

We have a track record of providing workable solutions and have a number of success stories.
THE INTERACTIVE PROCESS

Fredna Karneges & Dave Ritz
Disability Management Services
It is unlawful under both Federal and California State laws and is contrary to UC policy for employers to fail to engage in the interactive process in a timely way and in good faith.
The interactive process is an on-going dialogue between employer and employee when an employer becomes aware of, or has knowledge that the employee may have a medical condition, disability, or other circumstance that could require reasonable accommodation.
When you become aware that a faculty member may need help start the Interactive Process (IP).

Starting the IP is as simple as asking, “Can I help you?”

Simultaneously, ask for help from your resources: Disability Management Services (DMS) and Academic Affairs.
The Interactive Process Starts:

- You may ask for limitations and restrictions that will help define reasonable accommodation(s).
- DMS will help you obtain this information, convey what is useful and keep the information confidential.
- Discuss the limitations and restriction with the faculty member to obtain an idea of what kinds of accommodation(s) might be needed.
- With help from your resources, explore what accommodation(s) will be most effective for your needs and document the accommodation. DMS and AP will assist with the documentation.
A reasonable accommodation is a logical adjustment to the job that allows a person with a disability to perform the essential functions of the position.

An adjustment which allows a person with a disability to participate in any and all aspects of the employment process, including recruitment, application and promotion, as well as all other employee privileges & benefits.
Types of Accommodations

- Making existing facilities readily accessible to and usable by the disabled appointee.
- Providing classrooms with appropriate accessibility and instructional facilities.
- Restructuring the job to eliminate non-essential job functions.
- Granting a leave of absence in accordance with policy, see APM 710, APM 711, and APM 715.
Types of Accommodations

- Reduction of appointment percentage on a temporary basis with corresponding reduction in duties, compensation and benefits.
- Modifying the appointee’s work schedule (when the faculty member teaches).
- Acquiring or modifying equipment or devices (voice recognition software, document camera).
- Providing qualified readers, interpreters, typing assistance.
- Reassignment to an available alternative position for which the academic appointee is qualified.
- Leave
Recap

Good Faith Interactive Process is required by California Law and UC Academic Policy.

Failure to engage in the Interactive Process can be a violation of the law.

Analyze the essential functions of the Job.

Rely on current Medical Documentation (functional limitations, do not keep diagnosis info.)

Discuss possible Reasonable Accommodations.

Finalize and document the accommodations.

Disability Management Services and Academic Affairs are your resources for this process.
Part II

Accommodating Students with Disabilities

Jeanne Wilson, Director, Student Disability Center
AGENDA

- Laws and Policies Governing Academic Accommodations
- The Accommodations Process for Students
- Overlapping Roles, Dual Accommodations Processes: Teaching Assistants & Research Assistants
- Grievance Procedures
- Case Scenarios
Federal Laws & Student Accommodations:

- **Section 504 of the Rehabilitation Act of 1973**
  - Applies to all programs and activities of entities that receive Federal financial assistance

- **Title II of the Americans with Disabilities Act of 1990 (ADA)**
  - Applies to all services, programs, and activities of public entities

- As both a recipient of Federal financial assistance and a public entity, UC Davis must comply with both these laws.
Federal Laws & Student Accommodations:

The ADA, Section 504, and implementing regulations require UC Davis to ensure that its academic programs accessible to students with disabilities. Examples of modifications to make academic programs accessible include:

- Adapting “the manner in which specific courses are conducted”
- Changing “the length of time permitted for the completion of degree requirements”
- Permitting “substitution of specific courses required for completion of degree requirements”
Applicants for UC Davis academic programs must meet the same criteria as all other applicants--they must be “otherwise qualified” with or without accommodations.

Students with disabilities have the right not to disclose, BUT to be eligible to receive accommodations, they must

- disclose their disability to the SDC, and
- submit clinical documentation of their disability describing their specific functional limitations and how their ability to learn/academic performance are impacted
Not Reasonable Accommodations:

- Providing personal attendants, individually prescribed devices, or other devices/services of a personal nature
- Making adjustments or waiving requirements that would fundamentally alter the nature and/or standards of academic program

Whether an adjustment is a “fundamental alteration” is *not* determined by faculty, but through interactive process involving instructor, student, SDC, and academic department.

Burden is on campus to demonstrate “fundamental alteration,” must explore reasonable alternatives.
Eligibility for ADA Accommodations

Nationally, almost 11% of undergraduates report that they have a long-term disability.

Many students with disabilities do not identify themselves or seek accommodations, especially during the application process and when first starting their academic program.

Many have strong learning skills that have enabled them to succeed in the past without even realizing they have a disability.

At UC Davis, less than 3% of students register with the SDC for long-term disabilities.
Accommodating Students with Disabilities

- UC Davis must provide reasonable academic accommodations to students with disabilities.
- Students, faculty, SDC, and administration share responsibility for ensuring accommodations.
- Students with disabilities are exempt from rules that would limit their participation in academic programs, e.g., rules against making audio recordings of class or against bringing dogs to class -- permitted to record class and to bring service dogs.
Auxiliary Aids/Accommodations

- Must provide necessary auxiliary aids to ensure program accessibility and avoid discriminating against students with impaired sensory, mobility, manual, or speaking skills.
- The SDC authorizes and provides, assists with, arranges, and/or pays for auxiliary services.
- SDC advises students on disability management and compensatory strategies to facilitate independence and self-determination.
- SDC loans/makes available accessible/assistive technology devices and software, and provides technical training and consultation to students.
Auxiliary Aids may be provided as services or in the form of accessible technology, and include:

- E-Text or other alternate formats for textbooks, course materials, assignments, and tests
- Sign language interpreting, captioning, or other effective methods of making oral materials available to students with hearing impairments
- Lab assistants, test assistants (readers/scribes)
- Classroom equipment adapted for use by students with sensory, manual, or mobility impairments
- Other similar devices, actions, or services
Eligible students with verified disabilities may be authorized by the SDC to receive reasonable accommodations appropriate to their functional limitations, such as:

- Extended time, separate room, breaks as needed, or use of a computer for tests;
- Notetakers, audio recordings of class, or use of a note-taking device or software in class;
- Alternate formats for books, Smartsite readings, handouts, and tests;
- Part-time status, waiver of minimum progress
Special Case: TAs and RAs

Teaching Assistants and Research Assistants have dual roles as both students and employees

As students, they work with the SDC and go through the accommodations process for classroom and test accommodations

As employees, they have rights to accessibility and non-discrimination in employment like those of faculty, but covered by different policies

Some employment responsibilities may be paid but may also be “graded” academic requirements
A TA or RA with a disability who is having difficulty meeting employment responsibilities should work with DMS and her/his supervisor to determine accommodations.

Consult with both DMS and SDC when responding to TAs and RAs who have disclosed, or who appear to have, disabilities.
Section 538(H) states that faculty have responsibility for providing accommodations authorized by the SDC.

Faculty should immediately consult SDC for questions about authorized accommodations.

Faculty do not have authority to make unilateral decisions about how/whether to provide accommodations, must use interactive process.

If faculty, SDC, and student cannot agree, VC Student Affairs may convene review committee.
The Accommodations Process

Student submits documentation from qualified diagnosing clinician verifying and describing student’s current specific functional limitations

Documentation explains how limitations impact student’s ability to learn/academic performance

Specialist reviews documentation, meets with student to discuss limitations, and determines eligibility for services

Specialist authorizes individualized accommodations based on student’s limitations in context of academic program requirements
Accommodations Process

Once basic accommodations are authorized, student must still request accommodations for each course each quarter.

Accommodations are approved and letters of accommodation are sent (starting Spring, faculty will access letters through on-line portal).

Instructor should contact SDC for questions about/help with providing accommodations or if there are concerns that accommodations will fundamentally alter the nature of the course or academic standards/requirements.
Grievance Procedures

- SDC Appeal Process
- Role of ADA Compliance Coordinator
- PPM 280-05 Process
  - Grade Change Committee
  - Faculty Code of Conduct
- Complaints to the Office of Civil Rights
Contact the SDC:

Student Disability Center
Room 54 Cowell Building
530-752-3184; sdc@ucdavis.edu;
http://sdc.ucdavis.edu

Director: Jeanne Wilson, jxwilson@ucdavis.edu

Specialists:
Christine O’Dell, Learning Disabilities, caodell@ucdavis.edu
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Case Scenarios
RESOURCES

Disability Management Services Counselors

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Thank You for Attending