

August 12, 2011

This memorandum is designed to inform our employees and administrative staff of their rights if they are or become disabled. It is also designed to inform these same people of the District's and college's obligations to our disabled employees. The primary goal is to establish a more consistent framework to help employees return to work whenever possible. In this area, the District and Colleges look to three guiding principles: (1) to treat our employees fairly; (2) to provide consistency in application of the law and District Policies and Regulations; and (3) to comply with state and federal law.

In this endeavor, we seek to work within our existing job structure to create reasonable accommodations to allow our employees to perform the essential functions of their jobs with or without reasonable accommodations. We do not wish to create "new" job classifications, or to be perceived as having created "new" positions for employees. **However, because no two individuals are alike, it is not possible to anticipate all circumstances that may arise in this area and our Mission, Core Values and Culture may require some flexibility in appropriate circumstances.**

The complexity of the federal Americans with Disability Act (ADA), Workers' Compensation Law and the state Fair Employment and Housing Act (FEHA) and our policies require our Employee Benefits, Workers' Compensation and Human Resources staff to coordinate their efforts when attempting to assist employees who have been hurt or injured, or become disabled. As a result, employees may work with one or all of these departments when confronted with a disability.

The District and Colleges are committed to their obligation to consistently engage in the interactive process with qualified employees and to provide reasonable accommodations for qualified workers with disabilities. The reasonable accommodation process embodied in FEHA/ADA is not a separate obligation that begins and ends at particular times or resides in a single department, but is one that begins upon notice of a disability and ends if and when the disability ends. Further, it is one that takes into account the expertise of each of these three departments and the campus community and requires them to act in a joint manner to coordinate leaves, benefits, and other alternatives to create reasonable accommodations in the appropriate circumstances.

LEGAL FRAMEWORK

The federal ADA requires the District to reasonably accommodate qualified individuals with disabilities in hiring, firing, benefits and other terms, conditions and privileges of employment. The law prohibits discrimination based on disability in every aspect of the employment relationship with its employees. Similarly, **the analogous state law, the Fair Employment and Housing Act (FEHA), extends these protections more broadly and includes an obligation to engage in a timely good faith interactive process with the employee to determine which reasonable accommodations may be appropriate.** The goal of the ADA and FEHA process is to get employees back to work. Where these laws intersect, the District and Colleges are charged with providing employees with the maximum protection available under either law.

DEFINITION OF A DISABLED PERSON

Under the ADA, a disabled person is one who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such impairment, or who is perceived as having such an impairment. Mitigating measures (hearing aids, medication) are not taken into account under the federal law to determine if this standard has been met (except for eyeglasses). Examples of major life activities include: walking, seeing, hearing, speaking, breathing, learning, concentrating, thinking, communicating, working, performing manual tasks, caring for one's self, eating, sitting, standing, lifting, bending, sleeping and reading. Major life activities also include the operation of major bodily functions. To have a disability (or to have a record of a disability) an individual must be substantially limited in performing a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual in performing a major life activity to be considered "substantially limiting." Rather, determination of whether an individual is experiencing a substantial limitation in performing a major life activity is a common-sense assessment based on comparing an individual's ability to perform a specific major life activity (which could be a major bodily function) with that of most people in the general population. **Under the ADA, a non-chronic impairment of short duration with no long term or permanent impact is not a disability.** Thus, according to the Equal Employment Opportunity Commission (EEOC), broken limbs, sprained joints, concussions, appendicitis, and the flu are not disabilities.

FEHA contains these same standards for disabilities and mitigating measures. FEHA's administering agency has concluded that the non-chronic illness of short duration is exempt from the FEHA requirements.

Both the ADA and FEHA prohibit discrimination against any person with a record of a disability or who is regarded as disabled.

A qualified individual with a disability under the ADA and FEHA is an individual who (a) satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and (b) who can perform the essential functions of such position, with or without reasonable accommodation. This standard requires a person to meet all requirements for the job that are job related and consistent with business necessity. The essential functions of a job are the fundamental job duties of the employment position the individual with a disability holds or desires, but does not include the marginal functions of the position.

INTERACTIVE PROCESS

Once it is ascertained that a person is a qualified individual with a disability, the District and Colleges have an obligation to engage in a timely and interactive process with the employee to determine if the employee can perform the essential functions of his or her job with or without reasonable accommodations. Employees should inform HR or their supervisors of their need for reasonable accommodations. The timely part is relative to the circumstances of the injury or disability. The interactive part is a two-way street and requires both the employee and the employer to participate. This process also can include participation by the employee's equity representative, the employee's supervisor and other relevant parties. For non-obvious disabilities, the employee's disability must be supported by medical documentary evidence of the limitations the employee is experiencing. Further, the District and Colleges ultimately decide whether a requested accommodation is reasonable or not.

REASONABLE ACCOMMODATIONS

For existing employees, reasonable accommodations may include: sick leave, unpaid additional leave, modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of the position; or modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities. Thus, a reasonable accommodation may include reassignment to a vacant position for which they are qualified, job restructuring (reallocating non-essential job functions), providing a leave of absence, part time or modified work schedules, providing assistance in the performance of an essential job function, modifying equipment or devices, providing qualified readers or interpreters.

The ADA’s prohibition on assessing the positive effects of mitigating measures applies only to the determination of whether an individual meets the definition of “disability.” All other determinations—including the need for a reasonable accommodation and whether an individual poses a direct threat—can take into account the positive and negative effects of a mitigating measure. For example, if an individual with a disability uses a mitigating measure which eliminates the need for a reasonable accommodation, then an employer will have no obligation to provide one.

UNREASONABLE ACCOMMODATIONS

Unreasonable accommodations are not required. Unreasonable accommodations include giving the employee a promotion to a position they are not qualified for, lowering the quality or quantity standards, or providing personal use items like glasses and hearing aids. The reasonable accommodation standard does not require the District or College to offer a promotion or a job for which an individual does not have the legitimate skills, experience, education or other qualifications of the job sought. This standard does not require the District or College to reassign the essential functions of the job or create a new position for the qualified individual.

WORKERS’ COMPENSATION

Under the workers’ compensation law, if an employee sustains an occupational injury, workers’ compensation laws may provide the employee with medical treatment and vocational rehabilitation; compensate the employee for job-related temporary and permanent disability; and protect the employee from retaliation for exercising workers’ compensation rights.

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