

**UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM**

SECTION: Human Resources

NUMBER: 02.E.09

AREA: Miscellaneous Benefits

SUBJECT: Reasonable Workplace Accommodations for Employees With Disabilities

1. PURPOSE

The University of Houston System (the “System”) adheres to the mandates of the [Rehabilitation Act of 1973](#), the [Americans with Disabilities Act of 1990](#), the [ADA Amendments Act of 2008](#), and the [Texas Commission on Human Rights Act](#), as applicable. The System has developed this Reasonable Workplace Accommodations for Employees with Disabilities Policy to assist with the submission and processing of workplace accommodation requests.

This policy applies to employees of the System and/or its component institutions who have a disability as defined by this policy, as well as federal and state law.

2. POLICY

It is the policy of the System that all qualified employees with disabilities are afforded equal employment opportunity in compliance with federal and state laws. The System, in keeping with its values and goals, provides reasonable workplace accommodations to employees with disabilities.

The policy of the University of Houston System and its components is to ensure equal opportunity in all its educational programs and activities, and all terms and conditions of employment without regard to age, race, color, disability, religion, national origin, veteran’s status, genetic information, or sex (including pregnancy), except where such a distinction is required by law. Additionally, UH System prohibits discrimination in all aspects of employment and educational programs on the basis of sexual orientation, gender identity, or gender expression. For the UH System’s Official Non-Discrimination Statement, see [SAM.01.D.05 – Equal Opportunity and Non-Discrimination Statement](#).

3. DEFINITIONS

A. ADA Coordinator - The individual who has been appointed by the System or component institution as the person responsible for ensuring that the System or component institution is in compliance with the provisions of this policy.

- B. Person with a Disability - An employee with a physical or mental impairment who, as a result of such impairment, is substantially limited in performing one or more major life activities. This includes employees who not only have the impairment, but also employees who have a “record of” such an impairment. This also includes employees who have been “regarded as” having such an impairment; however, an individual who is considered a person with a disability solely on the basis of being “regarded as” having a disability is not entitled to a reasonable accommodation.
- C. Qualified Person with a Disability - An employee who meets the definition of a Person with a Disability and who also possesses the skills, experience, knowledge, and educational, licensing and other job requirements of a position s/he presently holds or will hold and who, with or without a reasonable workplace accommodation, can perform the essential functions of that position.
- D. Essential Functions - Job tasks that are fundamental, not marginal, to the performance of the position.
- a. An employee’s physical presence at the work site is presumed to be an Essential Function of the job unless otherwise noted in the job description. An employee requesting to work from home has the burden of rebutting this presumption.
- ~~D.E.~~ Genetic Information - An individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member; or an embryo lawfully held by an individual or family member receiving assistive reproductive services.
- ~~E.F.~~ Reasonable Accommodation - A reasonable adjustment or modification in the work environment or in the manner a job or position held is customarily performed, that enables a Qualified Person with a Disability to perform the Essential Functions of that position, so long as it does not create an undue hardship to the System or component institution. An individual who is considered a Person with a Disability solely on the basis of being regarded as having a disability is not entitled to a Reasonable Accommodation.
- ~~F.G.~~ Major Life Activity - An activity that is considered important for living and that the average individual can perform with little or no difficulty. Major life activities include, but are not limited to, walking, talking, eating, sleeping, seeing, hearing, breathing, learning, working, standing, lifting, bending, reading, concentrating, thinking, communicating, caring for oneself, or the operation of a major bodily function (including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).

G.H. Substantial Limitation - An impairment or restriction whereby an individual cannot perform one or more Major Life Activity (ies), or is hindered as to the condition, manner, or duration under which an individual can perform one or more Major Life Activity (ies), as compared to the average individual in the general performance of the affected activity or activities.

H.I. Licensed Health Care Practitioner - An individual who has successfully completed a prescribed program of study in a health field and who has obtained a license or certificate indicating his or her competence to practice in that field.

4. APPOINTMENT OF ADA COORDINATOR

Each component institution shall appoint an ADA Coordinator to serve the following functions:

- A. Serve as a point of contact for the component institution community regarding reasonable workplace accommodations;
- B. Facilitate the workplace accommodations request process;
- C. Maintain the records of associated workplace accommodation requests;
- D. Comply with all other aspects of this policy.

5. SUPPORTING POLICY INFORMATION

5.1. Confidentiality - Records or information obtained by the ADA Coordinator as part of the accommodation request process that reflect diagnosis, evaluation, or treatment of an employee's medical or mental health condition are confidential and shall be maintained by the ADA Coordinator in a separate file. Such records or information shall be shared with only those employees who the ADA Coordinator and/or the System General Counsel or his/her designee determines have a "need to know" such information and/or the content of such records in order to implement the workplace accommodation process, and shall not otherwise be released to anyone except as required by law.

5.2. Information obtained by the ADA Coordinator during the accommodation request process is not obtained as part of psychological counseling services and is not subject to the confidentiality regulations applicable to such counseling services.

6. PROCEDURE FOR WORKPLACE ACCOMMODATION

6.1. Step One: Request

A request for a reasonable workplace accommodation should begin with the employee. The employee should contact the ADA Coordinator to obtain and

thereafter complete the [Request for Workplace Accommodation form](#) and then submit a copy of the completed form to his/her supervisor, with the original of the completed form going to the ADA Coordinator. Supervisors who receive a request for an accommodation from an employee shall immediately notify the ADA Coordinator.

6.2. Step Two: Medical Certification/Documentation of Disability

- A. Documentation of a disability will be required when a disability and/or need for a workplace accommodation is not obvious. Unless the disability and/or need for a workplace accommodation is obvious, the ADA Coordinator shall provide the employee with a copy of his/her job description, ~~and a Consent Form~~, and a [Medical Certification form to be completed by the employee's Licensed Health Care Practitioner](#).
- B. The [Medical Certification form](#) will instruct the employee's Licensed Health Care Practitioner to refrain from providing any Genetic Information, as defined in this policy, in completing the form.
- C. ~~The~~ The employee shall submit the [Medical Certification form](#) ~~and the Consent Form~~ to the ADA Coordinator. The ADA Coordinator and the employee's supervisor will review the forms to continue with the interactive reasonable workplace accommodation process. The employee's [Request for Workplace Accommodation, Medical Certification form](#) and other related documents shall be maintained by the ADA Coordinator.
- D. ~~The ADA Coordinator will review the medical documentation provided by the employee's Licensed Health Care Practitioner to determine if the employee qualifies as a Person With a Disability.~~
- ~~C.E.~~ ~~If the information provided by the employee and the medical documentation provided by the employee's Licensed Health Care Practitioner indicates that the employee is not able to perform the Essential Functions of their position, the ADA Coordinator will notify the employee and Human Resources within five (5) business days.~~

6.3. Step Three: Non-Receipt of Documentation

- A. ~~—The ADA Coordinator will notify the employee in writing that if the ADA Coordinator does not receive the required documentation and information from the employee within 28 calendar days of being informed of a disability by the employee, the ADA Coordinator will notify the employee in writing and request that the employee submit the required documentation, including the Request for Workplace Accommodation form and the Medical Certification form, to the ADA Coordinator within ten (10) working days.~~

~~B.A.~~ ~~If the ADA Coordinator does not receive the required information within ten (10) working days of this notification to the employee, the request for accommodation will be cancelled for lack of necessary information.~~

~~C.B.~~ The employee will not be barred from filing another request for a reasonable workplace accommodation, or restarting the reasonable workplace accommodation process, if he or she so chooses. However, the ADA Coordinator cannot proceed with the reasonable workplace accommodation process absent the receipt of the above-referenced documentation.

6.4. Step Four: Independent Medical Opinion

A. The component institution has the authority to obtain, at the component institution's expense, an independent medical opinion concerning the impairment for which an employee seeks an accommodation, including additional suggestions or recommendations regarding reasonable workplace accommodations, yet excluding Genetic Information.

1. ~~If this request is made during the interactive process described in Section 6.5.E. below, the decision two request an Independent Medical Opinion will be made in consultation with by consulting the employee's Department, the ADA Coordinator, Human Resources and other pertinent persons.~~
2. ~~If the request is made during the appeal stage of this process (Section 7 below), the information obtained will be provided to the ADA Coordinator for their consideration, and the process will resume at Section 6.55.A.2. below.~~
3. ~~The party requesting the Independent Medical Opinion is responsible for the cost of obtaining this opinion.~~
4. ~~Obtaining an Independent Medical Opinion should be completed as quickly as possible, and within 30 calendar days whenever possible.~~

A.B. The failure of an employee to cooperate in obtaining such independent medical opinion will result in the cancellation of the request for accommodation.

6.5. Step Five: Interactive Reasonable Workplace Accommodation Review

A. Once all required documentation has been provided to and/or obtained by the ADA Coordinator, the ADA Coordinator shall determine if the employee is a "Qualified Person with a Disability." If the requesting employee is a "Qualified Person with a Disability," the ADA Coordinator and the employee's supervisor will engage in an interactive review to

determine whether the workplace accommodation requested by the employee is reasonable and, if so, whether it should be approved and implemented. As part of this interactive review, the ADA Coordinator and the employee's supervisor will take the following steps:

1. Analyze the particular job involved and determine its purpose and essential functions.
2. Consult with the employee to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation.

3. In consultation with the employee, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position. ~~and~~

4. Consult with the employee's supervisor regarding the potential accommodations discussed in Section 6.5.A.3 above and possible undue hardships related to these modifications. ~~and~~

~~3.~~

4.5. Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the component institution.

- B. If the ADA Coordinator and the employee's supervisor do not agree that the employee's request for workplace accommodation is reasonable or for any other reason(s) do not agree that it should be made, the employee, the ADA Coordinator, and the employee's supervisor will make reasonable efforts to work together to determine what other alternatives may be considered if, and as, appropriate.
- C. After engaging in this interactive process, the ADA Coordinator shall make a final recommendation as to an appropriate workplace accommodation, if any, to the employee and the employee's supervisor.
- D. The ADA Coordinator will issue a final recommendation within ten (10) working days of receiving the required documentation. Any approved reasonable workplace accommodation shall be implemented in a timely fashion.
- E. If the employee's supervisor rejects the ADA Coordinator's final recommendation, the employee's supervisor must provide the ADA Coordinator a written justification for the rejection within ten (10) working days of receiving the ADA Coordinator's final recommendation. In such instances, the requesting employee may utilize the appeal procedure

outlined in [Section 7 of this policy](#).

- F. Once a determination has been reached regarding the request, a [Workplace Accommodation Response form](#) will be completed and signed by the requesting employee, the requesting employee's supervisor, and the ADA Coordinator.

6.6. Step Six: Expectations of Accommodated Employees

Employees who have been granted a reasonable workplace accommodation must maintain the component institution's standards of performance, attendance, and conduct as specified by the accommodated employee's department or unit.

7. STEP SEVEN: APPEAL OF ADA COORDINATOR'S WORKPLACE ACCOMMODATION RESPONSE

- A. An employee who believes that his or her request for a workplace accommodation has been unreasonably denied or otherwise disagrees with the ADA Coordinator's Workplace Accommodation Response may file a written appeal with the appropriate Vice President to whom the employee ultimately reports within ten (10) working days of the date on the [Workplace Accommodation Response form](#). In the event that the employee holds a position with reporting lines of authority under different Vice Presidents, the Vice Presidents will jointly agree which one shall consider the appeal.
- B. The appropriate Vice President shall review the [Request for Workplace Accommodation](#), [Medical Certification](#), and the [Workplace Accommodation Response](#) forms, along with any other records or information submitted to the ADA Coordinator during the initial workplace accommodation review and, within twenty (20) working days of the date of the appeal, determine whether the ADA Coordinator's Workplace Accommodation Response should be upheld.
- C. If the appropriate Vice President determines that the ADA Coordinator's Workplace Accommodation Response should not be upheld, the appropriate Vice President in consultation with the ADA Coordinator and the employee's supervisor shall determine an alternative reasonable workplace accommodation [within ten \(10\) working days](#).
- D. The Vice President's decision is final and not appealable. The Vice President's decision is not subject to the complaint provisions below (see Section 8 of this policy).

8. MODIFICATION OF APPROVED ACCOMMODATION PLAN

- A. An approved accommodation plan can be reviewed for possible modification at the request of the employee, the employee's supervisor, Human Resources, Risk Management, or the ADA Coordinator.
- B. The person requesting the review or modification must notify the ADA Coordinator that a modification is necessary as soon as possible, and specifically state the reason for the request.
- C. Modifications will be handled the same way as original requests for accommodation, except that if the modification is not based on a change in job requirements or health condition, additional medical documentation may not be required.

89. COMPLAINTS

89.1. Pursuance of Complaints Within the Component Institution

An employee who believes that he or she has been discriminated against on the basis of a disability, or retaliated against due to a request for an accommodation made pursuant to this policy, may contact the appropriate component institution's office charged with addressing complaints of employment discrimination and/or harassment. See [SAM 01.D.07](#). This does not include complaints against the ADA Coordinator or appropriate Vice President regarding a decision or recommendation made pursuant to this policy. Those decisions cannot be grieved pursuant to the component institution's policy regarding employment discrimination and/or harassment.

89.2. Pursuance of Complaints Outside the Component Institution

This policy does not preclude anyone from pursuing a complaint of discrimination with external agencies. Additional avenues for filing a complaint at any time before, during or after use of the component institution's policy regarding employment discrimination and/or harassment, but within the time limits required by law, may include, but are not necessarily limited to, the Equal Employment Opportunity Commission and the Texas Workforce Commission.

910. EFFECT OF REASONABLE ACCOMMODATION

- 10.1. Accommodations will not be granted retroactively.
- 10.2. The filing of a complaint of harassment, discrimination, or retaliation under this Policy will not stop or delay any disciplinary action related to the Complainant who has been found to not be performing up to acceptable standards or who has violated University rules, policies, or procedures.

11. REVIEW AND RESPONSIBILITY

Responsible Party: Vice Chancellor for Legal Affairs and General Counsel

Review: Every three years on or before February 1

1012. APPROVAL

Approved: ~~Dona Cornell~~
Vice Chancellor for Legal Affairs and General Counsel

~~Renu Khator~~
Chancellor

Date: ~~June 29, 2016~~

REVISION LOG

Revision Number	Approval Date	Description of Changes
1	04/19/2013	Initial version
2	06/29/2016	Added in Section 2 GENDA/Title IX statement per U.S. Department of Education's Office of Civil Rights requirements.
<u>3</u>	<u>TBD</u>	<u>Added information to Section III.D on essential functions regarding physical presence at the work site. Added a Consent Form to the Step Two process in Section 6.2 as required paperwork. Added Section 6.2.D on ADA Coordinator reviewing medical paperwork provided by Licensed Health Care Practitioner, and Section 6.2.E on the possibility for employee' inability to perform essential functions. Modified Section 6.3 on process for non-receipt of documentation. Added information to Section 6.4 on the process for an independent medical opinion. Added Section 6.5.A.4 on consultation with employee's supervisor regarding potential accommodation and possible undue hardship. Added employee as receiving party to recommendation for workplace accommodation in Section 6.5.C. Added ten (10) working days for supervisor's written justification for workplace accommodation rejection in Section 6.5.E. Added ten (1) working days for alternative reasonable workplace accommodation in Section 7.C. Added Section 8 on modification of approved accommodation plan process. Added Section 10 on the rules for the effect of reasonable accommodation</u>