



DEPARTMENT OF HUMAN RESOURCES

SUNY Downstate Disability & Workplace Policy: **Reasonable Accommodations under the Americans with Disabilities Act**

I. APPLICABILITY

The policy as outlined applies to all applicants and employees working at SUNY Downstate, defined as those employed by New York State.

II. PURPOSE

It is the policy and intent of the State University of New York - Downstate Health Sciences University (SUNY Downstate) that no otherwise qualified individual be excluded from applying for employment, or be subject to discrimination if employed by SUNY Downstate, solely by reason of physical or mental disabilities, or pregnancy-related conditions.

SUNY Downstate will not discriminate against any qualified employee or applicant for employment based on physical or mental disability or pregnancy-related condition. SUNY Downstate agrees to take affirmative action to employ, advance employment, and otherwise treat qualified individuals with disabilities without discrimination in all employment practices including, but not limited to: advertising, recruitment, employment, promotion, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training and professional development.

Adoption of this policy complies with Section 503/504 of the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA) and the State Division of Human Rights regulations for New York. When requested, we will work to provide applicants with disabilities reasonable accommodations during the recruitment/placement process. Our employees will also be provided reasonable accommodations, when requested, to enable them to perform the essential functions of the positions in which they are employed.

The responsibility for initiating a request for accommodations lies with the individual applicant, or employee with a disability. In accordance with federal and state regulations, SUNY Downstate will treat disability-related information in a confidential manner.

III. DEFINITIONS

The following definitions are based on New York State Human Rights Law. This Law protects all individuals with physical, mental or medical impairments that either impede normal bodily function, or are demonstrable by medically accepted diagnostic technique. The protection of the federal statutes is limited to those impairments that substantially limit one or more major life activities.

A. Covered Individuals

- i. **Person with a Disability:** A person who has “a physical, mental or medical impairment” that substantially limits one or more major life function, who upon provision of reasonable accommodation if needed, is able to perform, in a reasonable manner, the activities involved in the job or occupation sought or held.

Person with a disability also includes a person who has a record or history of impairment, even if they do not currently have impairment. These individuals are protected from discrimination, but only current impairments need to be reasonably accommodated.

Persons who have a condition regarded by others as an impairment, or who are incorrectly perceived as having an impairment, are also protected from discrimination. However, only actual impairments need to be reasonably accommodated.

- ii. **Person with Pregnancy-Related Condition:** Any person who has a medical condition related to pregnancy or childbirth that inhibits the exercise of normal bodily function, or is demonstrable by medically accepted clinical or laboratory diagnostic techniques, where such condition, after the provision of a reasonable accommodation, does not prevent such person from performing, in a reasonable manner, the activities involved in the job or occupation sought or held.
- iii. **Physical, Mental or Medical Impairment:** Any impairment “resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.”

- B. Interactive Process:** a discussion about an applicant's or employee's disability-- the applicant or employee, health care provider and employer each share information about the nature of the disability and the limitations that may affect their ability to perform the essential job duties. This discussion is the foundation of compliance with the Americans with Disabilities Act.
- C. Essential Job Functions:** Essential functions are those job activities that are fundamental to the position that are determined by the employer to be core to performing job. A function is essential if not performing or modifying that function would fundamentally change the job and/ or occupation for which the position exists.
- D. Qualified Person with a Disability:** A person with a disability who, as defined, can reasonably perform the activities (i.e., the essential functions) involved in the job and who satisfies the requisite skill, experience, education and other job-related requirements of the position which the individual holds or desires.
- E. Reasonable Performance:** The New York State Human Rights Law protects from discrimination those individuals who can reasonably perform the job, with reasonable accommodation, if needed, despite the person's impairment. Reasonable performance is not perfect performance or performance unaffected by the disability, but reasonable job performance reasonably meeting the employer's needs to achieve their business goals. Ability to reasonably perform the "activities involved in the job or occupation" means the ability, with or without accommodation, to satisfactorily perform the essential functions of the job or occupation. Satisfactory performance means minimum acceptable performance of the essential functions of the job as established by the employer. The employer's judgment as to what is minimum acceptable performance will prevail, as long as standards for performance are applied equally to all employees in the same position. Such standards for satisfactory performance may include minimum productivity standards or quotas.
- F. Reasonable Accommodation:** Reasonable Accommodation refers to the modifications or adjustments to a job application process which enables a qualified individual with a disability to be considered for the position sought and to modifications or adjustments to the work environment or the manner or circumstances under which a job is performed which permits the employee to perform their job in a reasonable manner. An accommodation is reasonable if it removes or mitigates the barriers to performance caused by the individual's impairment and does not cause undue hardship to the employer.

The New York Human Rights Law, the Rehabilitation Act of 1973, and the ADA and the ADAA require that certain employers provide reasonable accommodation to the known physical or mental limitations of otherwise qualified applicants or employees with disabilities, unless it can be demonstrated that providing such accommodations would impose an undue hardship (defined below) on the operation of its business.

While pregnancy-related conditions are treated as temporary disabilities for purposes of applying existing regulations under the Human Rights Law, pregnancy-related conditions need not meet any definition of disability to trigger an employer's obligation to accommodate under the law. Any medically-advised restrictions or needs related to pregnancy will trigger the need to accommodate, including such things as the need for extra bathroom breaks, or increased water intake.

G. Undue Hardship: an action requiring significant difficulty or expense by the employer. In determining whether an accommodation would impose an undue hardship on a covered entity factors to be considered include, but are not limited to:

- The nature and cost of the accommodation; and
- The type of operation which the business, program or enterprise is engaged in, including the composition and structure of the workforce; and
- The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources or the impact of such accommodation upon the operation of the facilities.

IV. POLICY/ PROCEDURES/GUIDELINES

Reasonable Accommodations will be provided for individuals with disabilities when such accommodations are related to performing the essential functions of a job, competing for a job, or to benefits and privileges of employment where such accommodations do not impose an undue financial and/or operational hardship to SUNY Downstate, or endanger the health and safety of the individuals or others.

Determinations on reasonable accommodation requests will be made on a flexible, case-by-case basis and will consider all relevant laws, factors and documentation.

A. Procedures for Requesting and Receiving Reasonable Accommodations:

- i. Reasonable accommodation(s) include adjustments to either the work environment or to the manner/circumstance under which the position held or desired is customarily performed. The accommodation should enable a qualified individual with a disability to perform the essential functions of the job/position.
- ii. A request and determination of a reasonable accommodation(s) is handled through the campus Designees for Reasonable Accommodations (DRA) in the Department of Human Resources – Office of Employee & Labor Relations (OELR).
- iii. Those in need of an accommodation in order to perform the essential functions of their position shall make a request verbally or in writing to the campus DRA at 718-270-3019, or directly to their supervisor/chair who will in turn contact the campus DRA.

Designee for Reasonable Accommodations
SUNY Downstate Health Sciences University
Office of Employee & Labor Relations
450 Clarkson Avenue, MSC #1224
Brooklyn, NY 11203
Tel: (718) 270-3019
Fax: (718) 270-4684
ADA@Downstate.edu

- iv. The individual requesting accommodation should complete the 'Form A - Request for Reasonable Accommodation' provided to them and submit it to the campus DRA. If additional information or medical documentation is needed, the individual requesting accommodation should complete the 'Form D – Medical Inquiry Form' provided to them and return to the assigned campus DRA.
- v. If requested documentation is not returned in 30 calendar days from the date issued to the employee, the assigned campus DRA will issue a notice to the employee that their request for reasonable accommodation will no longer be actively considered until the requested documents have been submitted. *(Delays in providing requested documentation may result in an inability to implement certain accommodations, if approved, until a later date.)*
- vi. Verification of a disability is required. It is the responsibility of the individual with a disability to provide documentation that supports their

request for reasonable accommodation. The documentation provided to the assigned campus DRA must clearly indicate:

1. The existence of a disability (as defined by state and federal regulations); and
2. That the disability impedes normal bodily function(s) or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.; including the nature and extent of the limitation(s); and
3. A statement of what accommodation(s) is recommended/requested.
4. The purpose of the interactive process is to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation must communicate with the appropriate persons throughout the entire process, but particularly where: the specific limitations or barriers are unclear; an effective accommodation is not obvious; the parties are considering different forms of reasonable accommodation; or the current accommodation is no longer effective and another effective accommodation must be identified. As part of the Interactive Process of requesting a reasonable accommodation(s), it is important that the employee or applicant, in confidence, advise the assigned campus DRA precisely how limitations from a disability/impairment affect the ability to perform the duties of their position.

a) Steps in the Interactive Process include:

- Communicate/interact with the employee to identify the nature of the disability, and the employee's functional limitations with respect to performing the essential functions of the position.
- Determine whether the submitted medical documentation substantiates a disability under state and federal regulations and review specific request(s) for accommodation(s), and if necessary, consult with, or request additional documentation from the healthcare provider.
- If need be, schedule a medical evaluation with the NYS Department of Civil Service - Employee Health Services

or another appropriate health care professional in order to verify claimed disability.

- Alternative accommodations can be suggested, and the individual should consider whether they would be effective or not. SUNY Downstate does not have to provide the specific accommodation requested, but must offer an effective reasonable alternative, unless to do so would create an undue hardship for the institution and/or endanger the health and safety of employees and/or others.
- vii. Upon submission of the requested forms, the assigned campus DRA will conduct a comprehensive review of all the provided documentation, engage in the interactive process and, if need be, arrange for a job analysis to determine whether and what type of accommodations would be effective.
- viii. If a review of the request and of supporting documentation is vague, inconclusive, or if it is determined that medical documentation is otherwise insufficient, the assigned campus DRA will specify to the applicant why the documentation is unacceptable. The applicant will then be allowed to submit additional supporting documentation. If, after this additional documentation has been submitted, the need for an accommodation is still not clearly established, the employee may be asked to submit to a medical examination by an Independent Medical Examiner or State Doctor paid for by SUNY Downstate.

B. Approval / Denial of Accommodation

- i. Approval of a reasonable accommodation as requested: If the employee's specific reasonable accommodation request is approved, upon completion of an analysis of all relevant facts and documents, the assigned campus DRA will notify the employee, in writing, of the approved accommodation(s) and the effective date that such will be provided.
- ii. Approval of an alternate accommodation: If the institution determines that a reasonable accommodation is warranted, upon completion of an analysis of all relevant facts and documents, SUNY Downstate may offer an alternative accommodation from the accommodation requested. The DRA will notify the employee, in writing, of the approved modified accommodation(s) and the effective date that such will be provided.

- iii. Denial of a reasonable accommodation request: If the request for a reasonable accommodation(s) is denied, upon completion of a thorough review/analysis of all relevant facts and documents, the assigned campus DRA will notify the employee, in writing, of the reason(s) for request denial.

C. Appeal Procedure

In the event an employee's request for a Reasonable Accommodation under the ADA is (A) denied, or (B) approved with a modified accommodation, the employee may choose to accept the decision, which ends the process, or pursue one of the options below.

Employees may initiate these alternatives after the first denial of their request for an accommodation. Although these time limitations vary, the time for filing a complaint pursuant to all the alternatives begins when the employee receives a determination regarding their request for an accommodation. However, employees should consult with the appropriate anti-discrimination agency as to the time limitations for initiating such an action.

- i. Internal Appeal

Any individual who is denied an accommodation may seek a request for appeal of the decision to the Vice President for Human Resources (718-270-4394) who will review the case information and make a final determination regarding the accommodation request. This request for appeal must be submitted in writing within 30 calendar days from the date the applicant or employee was notified of the modified accommodation or denial. To file an appeal, employees should complete "Form F – Request to Appeal a Reasonable Accommodation Determination."

- ii. Complaint Procedure for the Review of Allegations of Unlawful Discrimination

Individuals with a disability who consider themselves victims of discrimination and have been unable to arrive at a mutually acceptable resolution with the designated campus contact and appropriate personnel may file a complaint with the CDO / Office of Diversity & Inclusion. Individuals should contact:

Title IX Director/Chief Diversity Officer
SUNY Downstate Health Sciences University
Office of Diversity & Inclusion
450 Clarkson Avenue, MSC #1220
Brooklyn, NY 11203
Tel: (718) 270-1738
AskODI@Downstate.edu

Procedures for employees wishing to file a complaint may be obtained from the TIXC and/or CDO. The TIXC and/or CDO shall receive any complaint of alleged discrimination, shall assist the complainant in defining the charge, and shall provide the complainant with information regarding the options for filing internal and/or external complaints.

iii. External Appeals

In addition to the options stated above, other external alternatives may also be available. These include, but are not limited to:

1. Filing a complaint with any compliance agency designated under [Sections 503/504 of the Rehabilitation Act of 1973](#);
2. Filing a complaint with the [New York State Division of Human Rights](#);
3. Filing a complaint with the [Equal Employment Opportunity Commission](#) or any appropriate federal oversight agency under the American with Disabilities Act; and
4. Filing a private right of action to challenge the alleged discriminatory act, under the New York State Human Rights Law, or any applicable statute.

V. RESPONSIBILITIES

A. Employees

- i. The responsibility for initiating a request for accommodation lies with the individual with a disability.
- ii. Employees must provide sufficient documentation, from an appropriate qualified professional, to support the request.
- iii. Employees must submit documentation and request to the DRA.
- iv. Employees must engage in the interactive process. In the event information is requested by assigned campus DRA, employees must provide requested information.

B. Supervisors

- i. Supervisors/Departments do not have authority to approve employee requests for reasonable accommodation.
- ii. Supervisors must forward any and all requests for a Reasonable Accommodation to the DRA at ADA@downstate.edu.
- iii. Supervisors must engage in the interactive process. In the event information is requested by assigned campus DRA, supervisors must provide requested information.

C. Designee for Reasonable Accommodations (DRA)

- i. The assigned DRA must treat disability-related information in a confidential manner. Medical records associated with this request are confidential and secured in a separate file in Human Resources – Office of Employee & Labor Relations. Medical documentation submitted or obtained may only be used to evaluate the request for accommodation and will only be shared with personnel who have a “right to know.” This may include any staff who assists in the event the employee requires emergency treatment due to their disability.
- ii. The assigned DRA must process requests for Reasonable Accommodations in consultation with the appropriate parties, which may include the supervisor/department in the case of an employee.
- iii. The assigned campus DRA is responsible for collecting information on all employee requests for reasonable accommodation including the number made and the type of accommodation provided to employees.
- iv. The assigned DRA must render determinations on requests for reasonable accommodation. Supervisors/Departments do not have authority to approve employee requests for reasonable accommodation.
- v. On an annual basis: review and update policy.
- vi. Distribute the updated policy to Employees & Supervisors.

VI. RESOURCES

- [Job Accommodation Network](#)
- [EEOC Regulations](#)
- [Division of Human Rights](#)

