

Policy and Procedure

Policy Number: 506

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Division/Department: Human Resources

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Subject: Reasonable Accommodations in Employment

Authorities: Minnesota State Colleges and Universities (MnSCU) Board Procedure 1.B.0.1

Purpose: This procedure sets forth the process to be used for responding to requests for reasonable accommodations in employment based on an applicant's or employee's disability. The scope of this procedure is limited to reasonable accommodations, and is not intended to fully describe other provisions of the Americans with Disabilities Act or the Minnesota Human Rights Act.

Policy: It is the policy of MnSCU to encourage the employment and promotion of any qualified individual including qualified individuals with disabilities. The system office, college or university will not discriminate in providing reasonable accommodations to qualified individuals with a disability in regard to job application procedures, hiring, advancement, discharge, employee compensation, job training or other terms, conditions, and privileges of employment.

Definitions:

For purposes of this procedure, the following terms have the meaning given them.

Employer: The employer is the system office, college or university.

Essential Functions: Essential functions are the fundamental job duties of the position in question. The term does not include the marginal functions of the position.

A job function may be considered essential for any of several reasons, including but not limited to the following:

- The function may be essential because the reason the position exists is to perform that function;
- The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or
- The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Evidence of whether a particular function is essential includes, but is not limited to:

- The employer's judgment as to which functions are essential;

- Written job descriptions;
- The amount of time spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;
- The terms of a collective bargaining agreement;
- The work experience of past incumbents in the job; and/or
- The current work experience of incumbents in similar jobs.

Individual with a Disability: An individual with a disability for the purposes of determining reasonable accommodations is any applicant, current employee, including student employees, or employees seeking promotion, who has a physical or mental impairment which substantially or materially limits one or more of such individual's major life activities. Generally, a disabling physical or mental condition which is expected to be temporary and from which the individual is expected to recover is not a disability under this procedure.

Qualified Individual with a Disability: A qualified individual with a disability is an individual with a disability who meets the requisite skill, education, experience and other job-related requirements of the job and who, with or without reasonable accommodation, can perform the essential functions of the job.

Reasonable Accommodations: A reasonable accommodation is a modification or adjustment to a job or employment practice or the work environment that enables a qualified individual with a disability to perform the essential functions of the job as identified at the time of the reasonable accommodation request and to access equal employment opportunities. Reasonable accommodations may also include those things which make a facility and its operations readily accessible to and usable by individuals with disabilities. Under the law, the employer has a responsibility to make reasonable accommodations for individuals with a disability only if the disability is known and it is not an undue hardship under Part 6, Subpart C.

Identification of Assigned Staff Member: The system office, and each college and university shall assign and identify a staff member responsible for administering requests for reasonable accommodations.

Right to Representation: In accordance with applicable collective bargaining agreement language, employees may have the right to request and receive union representation during the reasonable accommodations process.

Providing Reasonable Accommodations: Job Relatedness. Reasonable accommodations will be provided only for job-related needs of individuals with a disability. The primary factor in evaluating an accommodation's job relatedness is whether the accommodation specifically assists the individual to perform the essential functions of the job as identified at the time of the reasonable accommodation request. If the requested accommodation is primarily for the benefit of the individual with a disability to assist that individual in daily personal activities, the employer is not required to provide the accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both

the employer and the qualified individual with a disability; it may include the appropriate union representative as provided by the applicable collective bargaining agreement.

Essential Functions: The system office, college or university may deny employment or advancement in employment based on the inability of an individual with a disability to perform the essential functions of the job and may decline to make accommodations to the physical or mental needs of an employee or job applicant with a disability if:

- a. the accommodation would impose an undue hardship college;
- b. the individual with a disability, with or without reasonable accommodations, is not qualified to perform the essential functions of that particular job; or
- c. having the individual in the job would create a direct threat because of a significant risk to the health and safety of the individual or others and the risk cannot be eliminated by reasonable accommodation.

Undue Hardship: In determining whether providing a reasonable accommodation would impose an undue hardship on the employer, the factors to be considered include:

- a. The nature and net cost of the accommodation needed;
- b. The overall financial resources of the employer involved in the provision of the reasonable accommodation, the number of persons employed, and the effect on expenses and resources;
- c. The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, and the number, type and location of its facilities;
- d. The type of operation or operations of the employer, including the composition, structure and functions of the workforce, and the geographic separateness and administrative or fiscal relationship of the employer in question to the covered entity; and
- e. The impact of the accommodation upon the operation of the employer, including the impact on the ability of other employees to perform their duties and the impact on the employer's ability to conduct business.

Documentation: Documentation of a disability is required as part of the reasonable accommodation process unless the nature and extent of the disability is already known to the employer, or as a practical matter, the requested accommodation is minimal and the employer makes modifications for its convenience, regardless of whether the employee or applicant meets the requirements for a reasonable accommodation under this procedure.

Choice of Accommodations: The employer is not required to provide the specific accommodation requested by the individual and may choose an effective accommodation which is less expensive or easier to provide. Accommodations provided to the individual are the financial responsibility of the employer.

Request Process: The colleges is responsible for establishing a process for individuals with disabilities to make requests for reasonable accommodations in compliance with the Americans with Disabilities Act or the Minnesota Human Rights Act. Such process should include the following:

1. MnSCU policy statement and definitions;
2. Assignment and identification of a staff member responsible for administering requests for reasonable accommodations;
3. Provide a process for appealing a reasonable accommodations decision.

Application. Nothing in this procedure is intended to expand, diminish or alter the provisions of the Americans with Disabilities Act or the Minnesota Human Rights Act.

Procedure:

The Director of Human Resources is responsible for administering requests for reasonable accommodations in employment.

In accordance with applicable collective bargaining agreement language, employees may have the right to request and receive union representation during the reasonable accommodation process.

Current Employees and Employees Seeking Promotion:

The employee shall inform his/her supervisor or the Director of Human Resources of the need for an accommodation. The Director of Human Resources may request documentation of the individual's functional limitations to support the request. Any medical documentation must be collected and maintained on separate forms and in separate locked files. No one will be told or have access to medical information unless the disability might require emergency treatment. When a qualified individual with a disability has requested an accommodation, the employer shall, in consultation with the individual:

- Discuss the purpose and essential functions of the particular job involved. Completion of a step-by-step job analysis may be necessary.
- Determine the precise job-related limitation(s)
- Identify the potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job.
- Select and implement the accommodation that is the most appropriate for both the individual and the employer. While an individual's preference will be given consideration, the employer is free to choose among equally effective accommodations and may choose the one that is less expensive or easier to provide.
- Work with the employee to obtain technical assistance as needed. The employer will provide a decision to the employee within a reasonable amount of time.

If an accommodation cannot overcome the existing barriers or if the accommodation would cause an undue hardship on the operation of the business, the employee and the employer shall work together to determine whether reassignment may be an appropriate

accommodation.

Job Applicants: The job applicant shall inform the Director of Human Resources of the need for an accommodation. The Director of Human Resources will discuss the needed accommodation and possible alternatives with the applicant.

The Director of Human Resources will make a decision regarding the request for an accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

Appeal Process

Employees or applicants who are dissatisfied with the decision(s) pertaining to his/her accommodation request may file an appeal with the President within a reasonable period of time for a final decision.

If the individual believes the decision is based on discriminatory reasons, he/she may file a complaint through the Report/Complaint of Discrimination/Harassment process outlined in Policy #108.

Responsibilities: See Policy and Procedure above

Dissemination: Supervisors will be responsible for communicating this policy to employees in their departments.

Reviewed by Executive Cabinet: 12/02/03

Reviewed by Faculty Senate: N/A

Approved: _____
Robert L. Musgrove, Ph.D., President

Date: _____

Reviewed by Executive Cabinet: 01/18/2010

Reviewed by Faculty Senate: N/A

Approved: _____
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