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# **HANDBOOK FOR PROCESSING ACCOMMODATION REQUESTS FROM INDIVIDUALS WITH DISABILITIES**



## **EMPLOYEE RELATIONS & COMPLIANCE**

Thom Harpole, Director  
Administration Bldg. 228 – MC 1695  
Phone: 619-594-6464  
Fax: 619-594-1881

# San Diego State University

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## Handbook for Processing Accommodation Requests from Individuals with Disabilities

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### Attachments:

Application for Assistive Equipment/Auxiliary Assistance Program Form  
Medical Verification Form

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## **I. How the Accommodation Process Complies with SDSU Policy Regarding Individuals with Disabilities**

In accordance with Sections 503 and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, San Diego State University adopts the policy of nondiscrimination to ensure that any person with a disability will not, on the basis of that disability, be denied access to any program, service, or opportunity provided by the campus. In order to comply with the reasonable accommodation requirements of the laws and regulations cited in this policy and California's Fair Employment and Housing Act (California Government Code § 12926-12928, 12940, 19230) SDSU is committed to providing reasonable accommodations to its employees and applicants for employment in order to assure that individuals with disabilities have full access to equal employment opportunities.

As an employer, SDSU provides reasonable accommodations:

- When an applicant with a disability needs an accommodation in order to be considered for a job;
- When an employee with a disability needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and
- When an employee with a disability needs an accommodation to participate in equal benefits and privileges of employment (see Definition of Key Terms).

As an institution of higher education, SDSU is required to provide academic adjustments, i.e., modify courses, academic programs, activities, and services offered at any campus or off-campus location and to provide accommodations to students and the general public unless doing so would create an undue hardship or cause a fundamental alteration of the course, program, activity, or service.

Requests for accommodations for students with disabilities\* shall be directed to Student Disabilities Services (SDS) at Calpulli Center, Suite 3101 (third floor) or at (619) 594-6473 or (619) 594-2929 (TDD/TTY). SDS works with students and faculty to arrange appropriate accommodations that provide equal opportunity and access for students. Accommodations vary from one student to the next even among students with the same disability. Information regarding SDS and accommodations for students is also available at the SDS website <http://www.sa.sdsu.edu/sds/index.html>.

Members of the general public with disabilities who need accommodations to access SDSU sponsored events shall request an accommodation through the campus organization sponsoring the event at least seven days prior to the event, if at all possible. All event announcements must include a contact for requesting accommodations.

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\* Students who wish to request an accommodation or support services are subject to the CSU System's Policy for the Provision of Accommodations and Support Services to Students with Disabilities outlined in AA 2005-35 available at <http://www.calstate.edu/AcadAff/codedmemos/AA-2002-20.pdf>.

SDSU will process requests for accommodation and, where appropriate, provide reasonable accommodations in a prompt, fair, and efficient manner. Employees, students, job applicants, or members of the general public who believe their request for accommodation has been unjustifiably denied, or that they are being discriminated against on the basis of their disability, shall contact the Director of the Office of Employee Relations and Compliance by calling (619) 594-6464.

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## II. Definition of Key Terms

Legal definitions are taken directly from California's Fair Employment and Housing Act (Government Code Section 12925-12928) and the Americans with Disabilities Act (29 CFR 1630). Where definitions provided by GC § 12926 (amended by Assembly Bill 2222, effective January 2001) provide broader protection for employees than those provided by the Americans with Disabilities Act, those definitions are the ones used by SDSU.

- **Reasonable Accommodations** are 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 that position. An employer need not provide an employee's preferred accommodation as long as the employer provides an effective accommodation.

Reasonable accommodations must be provided to qualified part-time, full-time, permanent, temporary, or probationary employees. A reasonable accommodation need not be the best or most expensive accommodation available, as long as it is effective for the purpose. Reasonable accommodations do not include adjustments to a job and/or work environment that alter essential job functions, create positions that would otherwise not exist, lower performance standards, or provide transportation or personal care needs.

Although many individuals with disabilities can apply for and perform jobs without any accommodations, there are workplace barriers that keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed). Accommodation removes workplace barriers for individuals with disabilities. There are a number of possible reasonable accommodations that an employer may be required to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- Making existing facilities accessible and usable by an individual with a disability;
- Job restructuring by reallocating or redistributing marginal job functions;

- Modifying work schedules;
- Acquiring or modifying equipment or devices;
- Modifying tests, training materials, or policies;
- Providing qualified readers or interpreters; and
- Reassignment to a vacant position.

Reassignment must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position she or he holds, with or without reasonable accommodation. Reassignment is a “last resort” accommodation that must be considered if there are no effective accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other possible accommodations would impose undue hardship. Reassignment is available only to employees, not to applicants. In addition, reassignment may be made only to a vacant position. The law does not require that employers create new positions or move employees from their jobs in order to create a vacancy.

An employee must (1) satisfy the requisite skill, experience, education, and other job-related requirements of the proposed position, and (2) be able to perform the essential functions of the position with or without accommodation. If the employee is qualified for the position, she or he should be reassigned to the job as a reasonable accommodation and should not have to compete for it.

Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.

- **Individual with a Disability** is any person who has a physical or mental impairment, has a record of such an impairment or is regarded as having an impairment that limits (by making difficult) one or more major life activities, such as caring for oneself, performing manual tasks, seeing, hearing, speaking, breathing, and working.
- **Qualified Individual with a Disability** is an individual with a disability who (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) can perform the essential functions of the position, with or without reasonable accommodation.
- **Essential Functions** are those job duties that are so fundamental to the position that the individual holds or desire that she or he cannot do the job without performing them. A function can be “essential” if, among other things:
  - The position exists specifically to perform that function;
  - There are a limited number of other employees who could perform the function; or
  - The function is specialized and the individual is hired based on his or her ability to perform it.

Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description.

- **Major Life Activity** includes physical, mental, and social activities such as walking, speaking, breathing, hearing, seeing, thinking, interacting with others, learning, performing manual tasks, concentrating, lifting, and working.
- **Physical Disability** includes but is not limited to, all of the following: having a record or history of, or being regarded as having had any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that effects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.
- **Mental Disability** includes but is not limited to, all of the following: having a record or history of, or being regarded as having had any mental or psychological disorder or condition, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disability.

*A physical or mental disability is qualifying if it limits, i.e., makes difficult, a major life activity without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.*

- **Undue Hardship** means an action requiring *significant difficulty or expense*. Determination of undue hardship is always made on a case-by-case basis, considering several factors, including:
  - The nature and cost of the accommodation needed;
  - The overall financial resources of the University making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
  - The overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity, i.e., the State of California);
  - The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employee;
  - The impact of the accommodation on the operation of the facility.

An employer cannot claim undue hardship based on co-workers' fears or prejudices toward the individual's disability. Nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of co-workers. Employers, however, may be able to show undue hardship where provision of a reasonable accommodation would be unduly disruptive to other employee's ability to work.

Example: A crane operator, due to his disability, requests an adjustment in his work schedule so that he starts work at 8:00 a.m. rather than at 7:00 a.m., and finishes one hour later in the evening. The crane operator works with three other employees who cannot perform their jobs without the crane operator. As a result, if the employer grants this requested accommodation, it would have to require the other three workers to adjust their hours, find other work for them to do from 7:00 to 8:00, or have the workers do nothing. The employer is not required to take any of these actions because they all significantly disrupt the operations of the business. Thus, the employer can deny the requested accommodation, but should discuss with the employee if there are other possible accommodations that would not result in undue hardship.

- **Direct Threat:** a significant risk of substantial harm to the health and safety of others that cannot be eliminated by reasonable accommodation. The threat cannot be speculative or remote and must be based on objective medical or other factual data.
- **Benefits and privileges of employment** include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs (FSAP), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings). If an employee with a disability needs a reasonable accommodation in order to gain access to, and have an equal opportunity to participate in, these benefits and privileges, then the employer must provide the accommodation unless it can show undue hardship.
- **Medical Information:** California law mandates that employers establish appropriate procedures to ensure all employee medical records and information will remain confidential and will be protected from unauthorized use and disclosure. Failing to establish such procedures is a misdemeanor and allows an employee to collect damages, attorney's fees, and the cost of litigation. (Civil Code Section 56.35) The types of records protected under these laws include:
  - A physician's report;
  - A family and medical leave request form if an employee voluntarily discloses the nature of his or her illness on the form;
  - Return-to-work releases;
  - Workers' compensation records;
  - Information about disabilities being accommodated; and
  - Other records that relate in any way to an employee's medical history.

The ADA and FEHA also require that medical history information of an applicant or employee be maintained on separate forms, treated as confidential, and kept in separate files from that employee's general personnel information (42 U.S.C. 12112(c)(3)(b)) Such information may be disclosed only if:

- Supervisors or managers need information regarding necessary restrictions or accommodations for work duties;

- First aid personnel might require the information to administer emergency treatment; or
- Government officials investigating ADA or FEHA compliance so request.
- **Reasonable documentation** is information needed only to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. The employer may ask for reasonable documentation about:
  - An individual's impairment;
  - The nature, severity, and duration of the impairment;
  - The activity or activities that the impairment limits; and
  - The extent to which the impairment limits the individual's ability to perform the activity or activities;
  - Why the disability necessitates the accommodation the individual has requested.

Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. An employer cannot request genetic information of an individual or family member of the individual. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires an accommodation.

- **Genetic Information:** As defined by GINA, includes 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.
- **Decision-Maker:** The person who makes the determination whether the employee requesting the accommodation is a qualified individual with a disability and/or whether a reasonable accommodation exists will be referred to as the "decision maker." There are four possible decision-makers:
  - A Human Resources Manager;
  - An employee's supervisor;
  - An appropriate administrator; and
  - The campus ADA coordinator.
- **ADA Coordinator:** The President has delegated general oversight for assuring compliance with the campus "Non-discrimination Policy Regarding Individuals with Disabilities to the Director of the Office of Employee Relations and Compliance. The Director is responsible for providing information and services and for monitoring campus compliance relating to disability issues and is referred to as the ADA Coordinator.

- **Appropriate Administrator:** The immediate HEERA-designated manager (Administrator I, II, III, or IV) to whom the employee is normally accountable, or who has been designated by the University President.

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### **III. Recognizing Requests that Require Consideration for Reasonable Accommodation**

A request for accommodation does not have to include any special words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” An individual with a disability may request a workplace adjustment or change whenever she or he chooses, even if she or he has not previously disclosed the existence of a disability. Any SDSU employee or applicant may consult the Office of Employee Relations and Compliance for further information or assistance in regard to requesting or processing a request for such an accommodation.

- An employee may request an accommodation orally or in writing from his or her supervisor; another supervisor or manager in his/her immediate chain of command; an appropriate administrator; or the Office of Employee Relations and Compliance. Once a request has been made, the University has been put on notice and the process begins. The statements, “I can’t move those boxes because of my back” and “I’m having trouble getting to work at my scheduled starting time because of medical treatments I’m undergoing,” constitute requests that need to be considered for reasonable accommodation. Managers and Administrators must be attuned to recognizing these kinds of statements as such.
- An applicant may request an accommodation orally or in writing from any SDSU employee with whom the applicant has contact in connection with the application process. The Center for Human Resources is responsible for training staff who are involved in the application process to recognize requests for accommodation and to handle them appropriately. Human Resource Managers shall ensure that all staff and faculty having contact with applicants know how to recognize and handle requests for reasonable accommodation.
- A family member, health professional, or other representative may request an accommodation on behalf of a SDSU employee or applicant. The request shall go to one of the same persons to whom the employee or applicant would make the request.

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### **IV. Requests for Assistive Equipment/Auxiliary Assistance Program Funds**

This program receives limited funds from the Chancellor’s Office for the purpose of purchasing assistive technology and adaptive equipment and devices and to pay for

readers, sign language interpreters and other forms of aid that facilitate the performance of assigned job duties and responsibilities.

Written documentation is required to request program funding. Application forms are available by contacting the Office of Employee Relations and Compliance by calling (619) 594-6464 or at their website at <http://oerc.sdsu.edu/assistdevice.html>.

The same medical verification, disability, time line, and confidentiality requirements of any other accommodation request apply to requests for this funding. These funds are not intended for the purchase of normal office equipment such as computers and workstations.

Supervisors, managers, and administrators who receive employee requests for the type of accommodation described under this section may obtain an application form for their employee or direct their employee to obtain an application form in order to request these funds. The decision to fund these requests will be made by the Office of Employee Relations and Compliance and will be communicated to the requesting employee and the employee's appropriate administrator in writing.

Equipment and devices purchased using these funds remains the property of the Assistive Equipment/Auxiliary Assistance Program, on loan to the department and assigned to a specific employee. In the event that an employee is transferred or reassigned to another department within SDSU, the equipment purchased on behalf of that employee may continue to be used by the employee as long as the need for the equipment continues. If the recipient employee is separated from the University or, if for any other reason, the employee no longer needs the purchased equipment, the equipment must be returned to the Office of Employee Relations and Compliance.

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## **V. Determining Who Will Handle the Request**

As the first step in processing a request for accommodation, the SDSU faculty or staff member who receives the request must determine who will be responsible for evaluating the request and forward it, if necessary. The person who evaluates the request for accommodation will be referred to as the "decision-maker."

There are some accommodations that would be appropriate for a first-line supervisor to evaluate and approve, absent undue hardship to the operation of the office.

**EXAMPLE** – David has a disability that causes extreme fatigue at the end of each day. David is an accountant, and is expected to attend budget planning meetings with his supervisor and another colleague every Wednesday afternoon. David asks his supervisor whether the meetings can be changed to the morning so that he can attend them when he does not feel tired.

The request shall be forwarded to the appropriate person as soon as possible but in no more than five business days. The request recipient, including the Office of Employee Relations and Compliance, must notify the employee's appropriate administrator promptly, that an accommodation request has been made.

- A. Requests for accommodation from applicants will be referred to and handled by the Human Resources Manager responsible for the recruitment and/or selection process.
- B. The Office of Employee Relations and Compliance will be available, as needed, to provide assistance to employees and decision-makers in processing all requests for accommodation and may be the best choice as decision-maker in the following circumstances:
  - 1. Accommodation requests to purchase adaptive equipment, assistive devices, or auxiliary aid may be forwarded to the Office of Employee Relations and Compliance for consideration for their purchase with Assistive Equipment/ Auxiliary Assistance Program (AE/AAP) funds, as long as they are available. These funds are not intended for the purchase of normal office equipment such as computers and workstations. Requests for AE/AAP funds remain the property of that program and must be returned to the Office of Employee Relations and Compliance upon the recipient employee's separation from the University. Once these funds have been depleted or are no longer available., accommodations, with the possible exception of the removal of architectural barriers, will be provided at the expense of the employee's department.
  - 2. Requests for the removal of an architectural barrier(s), including reconfigured work spaces shall be forwarded to the Office of Employee Relations and Compliance.
  - 3. Requests for materials in alternative formats (e.g., Braille, large print) which cannot be handled by the supervisor or appropriate administrator shall be referred to the Office of Employee Relations and Compliance.
  - 4. The Office of Employee Relations and Compliance will coordinate requests for reassignment to another job with Human Resources.
- C. All decision-makers must have designated back-ups to continue receiving, processing requests for accommodations and providing reasonable accommodations when the decision-maker is unavailable. Decision-makers shall ensure that individuals know who has been designated as back-up. The time frames discussed in Section VI, below, will not be suspended or extended because of the unavailability of a decision-maker.
  - 1. The back-up for a supervisor is the appropriate administrator for that area.

2. The administrator for each area and the Office of Employee Relations and Compliance must each designate a back-up.

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## **VI. Time Frames for Processing Requests for Accommodations and Providing Reasonable Accommodations**

SDSU will process requests for accommodation and provide accommodations, where they are appropriate, in as short a time frame as reasonably possible. SDSU recognizes, however, that the time necessary to process a request will depend on the nature of the accommodation requested and whether it is necessary to obtain supporting information.

- A. **Expedited processing:** In certain circumstances, a request for accommodation requires an expedited review and decision in a time frame that is shorter than the 15 or 20 business days discussed below. This includes where a reasonable accommodation is needed:
  1. **To enable an applicant to apply for a job.** Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for accommodation in order to ensure that an applicant with a disability has an equal opportunity to apply for a job. Therefore, the Center for Human Resources shall consider such a request a priority and move as quickly as possible to provide a reasonable accommodation.
  2. **To enable an employee to attend a meeting scheduled to occur shortly.** For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.
- B. If a request for an accommodation can be processed by the requesting employee's supervisor or appropriate administrator, no supporting medical information is required, and no extenuating circumstances apply, the request shall be processed and the accommodation, if granted, provided in no more than 15 business days from the date the supervisor or administrator receives the request, and sooner, if possible. Since decision-makers may need the full 15 days to engage in the interactive process and collect all relevant information about possible accommodations, they shall not delay beginning this process. Failure to meet this timeframe solely because a decision-maker delayed processing the request is not an extenuating circumstance. (See Section D for information on "extenuating circumstances.")
  1. If the decision-maker believes that it is necessary to obtain medical information to determine whether the requesting individual has a disability and/or to identify the functional limitations, the decision-maker will make such request to the Office of Employee Relations and Compliance as soon as possible but no later than five days after his or her receipt of the request for accommodation. SDSU recognizes

that the need for medical information may not become apparent until after the interactive process has begun.

2. If the decision-maker requests that the Office of Employee Relations and Compliance obtain medical information, the 15-day period is frozen. If the Office of Employee Relations and Compliance determines that medical information is not needed, the Office of Employee Relations and Compliance will notify the decision-maker to continue processing the request and the 15-day time period resumes.
3. If the Office of Employee Relations and Compliance determines that medical documentation is needed, the decision shall be made and if a reasonable accommodation is identified, it will be provided within 15 days from the date the decision-maker receives the relevant medical information from the Office of Employee Relations and Compliance.

Examples of accommodations that can easily be provided within this 15-day timeframe include:

- An employee with diabetes who sits in an open area asks for four breaks a day to test her blood sugar levels so that she may do these tests in private.
  - An employee who takes anti-depressants which make it hard for her/him to get up in time to get to the office at 9:00 a.m., requests that she or he be allowed to start work at 10:00 a.m. and still put in an 8-hour day.
  - A supervisor distributes detailed agendas at the beginning of each staff meeting. An employee with a learning disability asks that the agenda be distributed ahead of time because the disability makes it difficult to read and she or he needs more time to prepare.
- C. Where the Office of Employee Relations and Compliance is the decision-maker, she or he will make a decision on the request. The accommodation, if granted, will be provided within 20 business days from the date the request was initially made, absent extenuating circumstances. If medical documentation is necessary, the decision will be made within 20 business days from the receipt of the documentation, absent additional extenuating circumstances.
- D. **Extenuating Circumstances:** All SDSU faculty and staff are expected to act as quickly as reasonably possible in processing requests and providing accommodations. It is SDSU's position that extenuating circumstances be narrowly defined as circumstances that could not reasonably have been anticipated or avoided, preventing an expeditious process. When extenuating circumstances are present, the time for processing a request for accommodation and providing the accommodation will be extended as reasonably necessary. Extenuating circumstances include:

1. An outstanding initial or follow-up request for medical information, or when the Office of Employee Relations and Compliance is evaluating medical information which has been provided;
  2. The purchase of equipment which may take longer than 15 or 20 business days because of requirements under campus procurement procedures;
  3. When equipment must be back-ordered, the vendor typically used by SDSU for goods or services has unexpectedly gone out of business, or the vendor cannot promptly supply the needed goods or services or another vendor is not immediately available;
  4. When the employee with a disability needs to try equipment on a trial basis to ensure that it is effective before SDSU buys it;
  5. When the accommodation involves new staff hires; or
  6. When an accommodation involves the removal of architectural barriers.
- E. Where extenuating circumstances are present, the decision-maker must notify the individual of the reason for the delay, and the approximate date on which a decision, or provision of the reasonable accommodation, is expected. Any further developments or changes shall also be communicated promptly to the individual.
1. If a delay is attributable to the need to obtain or evaluate medical documentation and SDSU has not yet determined that the individual is entitled to an accommodation, SDSU may also modify the employee's job duties on a temporary basis. In such a case, the decision-maker will notify the Office of Employee Relations and Compliance. This office will notify the employee in writing that the job modification is being provided on a temporary basis for no longer than 90 days pending a decision on the accommodation request.
  2. SDSU decision-makers who approve such temporary measures will work with the Office of Employee Relations and Compliance to ensure that the temporary measures do not take the place of a permanent accommodation and that all necessary steps to identify and provide a reasonable accommodation are being taken.

Delaying the process or provision of an accommodation because a particular staff member is unavailable to process the request is not a valid extenuating circumstance. (See Section V on designating back-ups to handle requests when the decision-maker is unavailable.)

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## VII. Determining Whether the Individual Requesting the Accommodation Has a Qualifying Disability – Requests for Medical Information

An individual is only qualified if he or she fits the definition of “an individual with a disability” and “a qualified individual with a disability.” (See Section II Definition of Key Terms) In some cases the disability and need for accommodation will be obvious or otherwise already known to the decision-maker. If the decision-maker can observe that the employee has a disabling condition without requesting medical information (e.g., employee is blind or uses a wheelchair, cane, or hearing aid), SDSU will not seek any further medical information. To do so would be a violation of all the above laws and regulations, as well as the California Confidentiality of Medical Information Act.

However, when a disability and/or need for accommodation is not obvious otherwise already known to the decision-maker, SDSU may require that the individual provide reasonable documentation (See Section II Definition of Key Terms) about the disability and his or her functional limitations.

- A. If a supervisor or other decision-maker believes that medical verification of the disability and a definition of functional limitations is necessary in order to evaluate a request for accommodation, she or he will make a request to the Office of Employee Relations and Compliance to obtain such information.
- B. If the Office of Employee Relations and Compliance agrees that documentation is necessary, she or he will request the necessary information following the requirements set forth in the EEOC’s *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act*.<sup>†</sup>
  1. The Office of Employee Relations and Compliance will seek information or documentation about the disability and/or functional limitations from the individual, and/or ask the individual to obtain such information from an appropriate professional, such as a physician, psychologist, social worker, or rehabilitation counselor. In order to get the most helpful possible information, all requests for information shall describe the nature of the job, the essential functions the individual is expected to perform, and any other relevant information. The Office of Employee Relations and Compliance may work with the supervisor and/or appropriate administrator in seeking relevant information.
  2. Once the documentation of limitation is received, the Office of Employee Relations and Compliance will evaluate it, in consultation with a physician chosen by SDSU, if necessary.

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<sup>†</sup> This document is available at <http://www.eeoc.gov/docs/qanda-inquiries.html>.

3. If the information provided by the health professional (or the information volunteered by the individual requesting the accommodation) is insufficient to enable SDSU to determine whether an accommodation is appropriate, the Office of Employee Relations and Compliance may ask for further information.
    - a. First, however, the Office of Employee Relations and Compliance will explain to the individual seeking the accommodation, in specific terms, why the information which has been provided is insufficient, what additional information is needed, and why it is necessary in processing the accommodation request.
    - b. The individual requesting the accommodation may then ask the health care or other appropriate professional to provide the missing information.
    - c. Alternatively, the Office of Employee Relations and Compliance and the individual requesting the accommodation may agree that the individual will sign a limited release, and that SDSU may thereafter submit a list of specific questions to the individual's health care professional or may otherwise contact the individual's doctor.
  4. If, after a reasonable period of time, there is still not sufficient information to demonstrate that the individual has a disability necessitating a reasonable accommodation, the Office of Employee Relations and Compliance may request that the individual be examined by a physician chosen by SDSU. If an individual's disability or need for reasonable accommodation is not obvious, and he or she refuses to provide the reasonable documentation requested by the employer, then he or she is not entitled to reasonable accommodation.
  5. The Office of Employee Relations and Compliance will let the decision-maker know whether the documentation demonstrates that a reasonable accommodation is appropriate and provide, if necessary, any additional relevant information about the individual's functional limitation.
- C. If the Office of Employee Relations and Compliance determines that no additional medical information is necessary, the request for accommodation will be returned promptly to the decision-maker to complete the processing.
- D. In some cases, the individual requesting the accommodation may choose to supply medical information directly to the decision-maker without being asked. In these cases, the decision-maker will consider such documentation and if additional information is needed, the decision-maker will work with the Office of Employee Relations and Compliance as set forth in this section. (See Section XII for instructions on storage of this information.)

The failure to provide appropriate documentation or to cooperate in SDSU's efforts to obtain such documentation can result in a denial of the request for accommodation.

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## **VIII. Confidentiality Requirements Regarding Medical Information Obtained in the Reasonable Accommodation Process**

Medical information obtained in connection with this process must be kept confidential. This means that all medical information, including information about functional limitations and reasonable accommodation needs that SDSU obtains in connection with a request for accommodation, must be kept in files separate from the individual's personnel file. It also means that any SDSU employee who obtains or receives such information is strictly bound by these confidentiality requirements.

- A. The Office of Employee Relations and Compliance will maintain custody of all records obtained or created during the processing of a request for accommodation, including medical records, and will respond to all requests for disclosure of the records. All records will be maintained in accordance with the Privacy Act and the requirements of 29 C.F.R. 1611.
- B. This information may be disclosed only as follows:
  - 1. Supervisors and managers who need to know (including the decision-maker who requested that the Office of Employee Relations and Compliance obtain medical information) may be told about necessary restrictions regarding the work or duties of the employee and about the necessary accommodation(s), but medical information shall only be disclosed if absolutely necessary.
  - 2. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
  - 3. The information may, in certain circumstances, be disclosed to workers' compensation offices or insurance carriers.
- C. Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements that attach to it.

An employer may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. The Office of Employee Relations and Compliance specifically prohibits the disclosure of functional limitations and reasonable accommodation except in certain limited situations, which do not include disclosure to coworkers. An employee with a disability may voluntarily choose to disclose to coworkers his or her disability and/or the fact that he or she is receiving reasonable accommodation. Any coercion by the employer to convince the employee to disclose this information does not constitute voluntary disclosure.

**Legal Requirements Regarding Medical Information Obtained under the Genetic Information Nondisclosure Act (GINA) of 2008:** Under Title II of GINA, employers must not make employment decisions affecting the terms, conditions or privileges of employment based on genetic information. For example, this means employers must not hire, discharge, promote, or make compensation decisions based on genetic information. Likewise, employers must not segregate, limit, or classify employees based on genetic information in a way that adversely affects employees.

Employers are further prohibited from retaliating against any individual because such individual has opposed an act in violation of GINA or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing involving an alleged GINA violation.

Employers must not request, require, or purchase genetic information regarding an employee or a family member of an employee.

Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. Genetic information also includes an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual, and the genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

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## **IX. The Interactive Process**

The next step is for the decision-maker and the individual requesting the accommodation to engage in an interactive process to determine what, if any, accommodation shall be provided. This means that the two parties must talk to each other about the request, the process for determining whether an accommodation will be provided, and potential accommodations.

Communication is an essential component of the process. The decision-maker will have the principal responsibility of identifying possible accommodations. She or he will take a proactive approach in searching out and considering possible accommodations by communicating with the person in need of the accommodation and consulting appropriate resources for assistance. The individual with a disability shall participate to the extent possible by providing information unique to his or her needs with the goal of helping the decision-maker determine whether an effective accommodation exists. Resources available to help both the decision-maker and the individual requesting the

accommodation to identify possible accommodations are listed in Appendix C. The Office of Employee Relations and Compliance is also available to provide assistance.

*Note: When a request for accommodation is made by a third party, the decision-maker shall, before proceeding, confirm with the applicant or employee with a disability that, in fact, an accommodation is wanted. It may not be possible to confirm the request if the employee has, for example, been hospitalized in an acute condition. In this situation, SDSU will process the third party's request and will consult directly with the individual needing the accommodation as soon as it is practicable.*

The decision-maker shall take the following steps:

- A. Talk with the individual requesting an accommodation to identify the precise job limitations imposed by the person's disability. Determine whether the limitations will affect the employee's essential functions. Through the interactive process, new methods of achieving the essential functions of a position may be identified. Qualified individuals with disabilities will be expected to meet job performance standards whether or not an accommodation is needed.
- B. While the individual with a disability does not have to be able to specify the precise accommodation, he or she does need to describe the problems posed by the workplace barrier. On-going communication is particularly important where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different possible reasonable accommodations. It is important to involve the employee in identifying a range of potential accommodations and in assessing the effectiveness of each in enabling the employee to perform the essential functions of the position.
- C. The employer may choose among reasonable accommodations as long as the chosen accommodation is effective. Thus, as part of the interactive process, the employer may offer alternative suggestions for accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability. If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective (i.e., it would remove a workplace barrier, thereby providing the individual with an equal opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment). Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide.

The employer has the ultimate discretion to choose between effective accommodations and need not provide the accommodation requested by the employee or recommended by the employee's health care provider.

- D. In those cases where the disability, the need for accommodation, and the type of accommodation that shall be provided are clear, extensive discussions are not necessary. Even so, the decision-maker shall consult with the individual with a disability to ensure that a full exchange of relevant information takes place.
- E. The decision-maker or any SDSU administrator who receives information in connection with a request for accommodation may share information connected with that request only with others who have a need to know the information in order to make the determination of an accommodation request. See Section VII for specific rules governing the confidentiality of medical information.

*For example, the Communications and Computing Services could be consulted in connection with request for adaptive equipment for computers. However, that office has no need to know any information about the medical condition of the person seeking the accommodation. It only needs to know his or her functional limitations insofar as these limitations affect technology needs.*

- F. There are specific considerations in the interactive process when responding to a request for reassignment.
  - 1. Reassignment will be considered only if no accommodations are available to enable the individual to perform his or her current job.
  - 2. In considering whether there are positions available for reassignment, the Office of Employee Relations and Compliance will work with both Human Resources and the individual requesting the accommodation to identify: (1) all vacant University positions for which the employee may be qualified, with or without accommodation; and (2) all positions which Human Resources has reason to believe will become vacant over the next 60 business days and for which the employee may be qualified. The unit will first focus on positions which are equivalent to the employee's current job in terms of pay, status, and other relevant factors. If there is no vacant equivalent position, SDSU shall consider vacant lower level positions for which the individual is qualified.

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## **X. Granting a Reasonable Accommodation Request**

- A. Once the decision-maker determines that a reasonable accommodation will be provided, that decision shall be immediately communicated to the individual. Although the initial communication does not need to be in writing, it must be followed by a written memo to the employee. A copy shall be sent to the Office of Employee Relations and Compliance so that the accommodation can be documented for compliance purposes.

- B. If the accommodation cannot be provided immediately, the decision-maker must inform the individual in writing of the projected timeframe for providing the accommodation.
- C. If there is a delay in providing an accommodation that has been approved, the decision-maker must investigate whether temporary measures can be taken to assist the employee. The decision-maker may provide measures that are not reasonable accommodations within the meaning of the law (e.g., temporary removal of an essential function) if, (1) they do not interfere with the operations of the University; and (2) the employee is clearly informed, in writing, that they are being provided only on a temporary, interim basis. (See Section VI, E, 2)

*For example, there may be a delay in receiving adaptive equipment for an employee with a vision disability. During the delay, the supervisor might arrange for other employees to act as readers. This temporary measure may not be as effective as the adaptive equipment, but it will allow the employee to perform as much of the job as possible until the equipment arrives.*

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## **XI. Denying a Request for Accommodation**

If the decision-maker determines that a request for an accommodation will be denied, before communicating the denial to the requesting employee, she or he must contact the Office of Employee Relations and Compliance, who will review the requested accommodation and the reasons for denial.

Reasons for denying a request for accommodation may include the following (keeping in mind that the actual notice to the individual must include specific reasons for the denial, for example, why the accommodation would not be effective or why it would result in undue hardship):

- A. The decision-maker may deny a specific requested accommodation, but offer to make a different one in its place which was not agreed to during the interactive process. Written notice to the requesting individual shall explain both the reasons for the denial of the requested accommodation and the reasons that the decision-maker believes that the chosen accommodation will be effective.
- B. All accommodations considered:
  - 1. Pose a direct threat to the requesting employee or to others;
  - 2. Require the removal of one or more essential functions;
  - 3. Require the lowering of a performance or production standard;
  - 4. Result in undue hardship; or

5. The failure to provide appropriate documentation or to cooperate in SDSU's efforts to obtain such documentation can result in a denial of the request for accommodation. (see Section VII)
- C. If the Office of Employee Relations and Compliance agrees that no reasonable accommodation is available or warranted, he or she will communicate this to the decision-maker.
- D. The decision-maker will communicate the denial to the employee by written memo. The explanation for the denial shall be written in plain language, clearly stating the specific reasons for the denial.
- E. If the Office of Employee Relations and Compliance believes that the accommodation requested was reasonable or that another accommodation that is reasonable exists, he or she will contact the decision-maker and discuss this finding.

The written notice of denial also informs the individual that she or he may seek reconsideration and/or redress through existing collective bargaining agreements and/or Executive Order 1089 (Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and *Procedures* for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties) and appropriate State (Department of Fair Employment and Housing, (800) 884-1684 or (800) 700-2320 [TTY]) and Federal (Equal Employment Opportunity Commission, (800) 669-4000 or (800) 669-6820 [TTY]) enforcement agencies. If an employee or applicant wishes to pursue the EEO complaint process, he or she must do so within 45 days of the denial, even if she/he is also participating in the University's dispute resolution process, as outlined above.

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## **XII. Informal Dispute Resolution**

Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation. If an individual wishes reconsideration, she or he shall first ask the decision-maker to reconsider the decision. The individual may present additional information in support of his or her request. The decision-maker will respond to the request for reconsideration within five business days.

- A. If the decision-maker was the supervisor, and she or he does not reverse the decision, the individual can ask the appropriate administrator to do so. The appropriate administrator will respond to this request within ten business days.
- B. If the decision-maker was the appropriate administrator, and she or he does not reverse the decision, the individual can ask the Office of Employee Relations and Compliance to do so. The Office of Employee Relations and Compliance will respond to this request within ten business days.

Employees who believe an accommodation has been inappropriately denied or has not been provided in a timely manner pursuant to these procedures may seek reconsideration an/or redress through existing collective bargaining agreements and/or Executive Order 675 (System-wide Complaint Procedure for Discrimination Complaints by Employees Not Eligible to File a Discrimination Complaint or Grievance under a Collective Bargaining Agreement) and appropriate State (Department of Fair Employment and Housing, (800) 884-1684 or (800) 700-2320 [TTY]) and Federal (Equal Employment Opportunity Commission, (800) 669-4000 or (800) 669-6820 [TTY]) enforcement agencies. If an employee or applicant wishes to pursue the EEO complaint process, he or she must do so within 45 days of the denial, even if she/he is also participating in the University's dispute resolution process, as outlined above.

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### **XIII. Information Tracking and Reporting**

The decision-maker will provide the Office of Employee Relations and Compliance with copies of all information including medical documentation she or he received as part of processing the request. The Office of Employee Relations and Compliance will maintain these records for the longer of the employee's tenure with SDSU or five years.

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### **XIV. Inquiries and Distribution**

Any person wanting further information concerning these procedures may contact the Office of Employee Relations and Compliance at (619) 594-6464, or via email at [gself@mail.sdsu.edu](mailto:gself@mail.sdsu.edu).

These Procedures shall be posted on the Office of Employee Relations and Compliance website at <http://oerc.sdsu.edu/assistdevice.html>. Copies may be obtained from the Office of Employee Relations and Compliance upon request.

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### **XV. Selected Reasonable Accommodation Resources**

#### **U.S. Equal Employment Opportunity Commission**

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute 42 U.S.C. 12101 et seq. (1994), and the regulations 29 C.F.R. 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretative Guidance accompanying the Title I regulations (also known as the Appendix to the regulations), 29 C.F.R. pt. 1630 app. 1630.2(o), (p), 1630.9 (1997), and (2) *A Technical Assistance Manual on the*

*Employment Provisions (Title I) of the Americans with Disabilities Act III*, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405: 7371, 7374-76 (1996); (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the *ADA Technical Assistance manual and Resource Directory* and the poster, are also available through the Internet at <http://www.eeoc.gov>.

### **Job Accommodation Network (JAN)**

1-800-232-9675 (Voice/TT)  
<http://janweb.icdi.wvu.edu/>

A service of the President's Committee on Employment of People with Disabilities, JAN can provide information, free-of-charge, about many types of reasonable accommodations.

### **ADA Disability and Business Technical Assistance Centers (DBTACs)**

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

### **Registry of Interpreters for the Deaf**

1-301-608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

**RESNA Technical Assistance Project**

1-703-524-6686 (Voice) 1-703-524-6639 (TT)

<http://www.resna.org/>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities.

Services may include:

- Information and referral centers to help determine what devices may assist a person with a disability (including access to large databases containing information on thousands of commercially available assistive technology products);
- Centers where individuals can try out devices and equipment;
- Assistance in obtaining funding for and repairing devices; and
- Equipment exchange and recycling programs.

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**Attachments:**

Application for Assistive Equipment/Auxiliary Assistance Program form

Medical Verification form