



# **REASONABLE ACCOMMODATIONS**

**A GUIDE FOR MANAGERS and SUPERVISORS**

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# **CITY UNIVERSITY OF NEW YORK REASONABLE ACCOMMODATIONS A GUIDE FOR MANAGERS and SUPERVISORS**

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# **CITY UNIVERSITY OF NEW YORK**

## **THE REASONABLE ACCOMMODATION PROCESS**

### **A GUIDE FOR SUPERVISORS and MANAGERS**

#### **1. What is a Reasonable Accommodation?**

Reasonable accommodations, in a general sense, are modifications made to remove workplace barriers and enable qualified individuals to perform their jobs. A reasonable accommodation allows a qualified person with a disability to perform the essential functions of the job and can be any change to the application or hiring process, to the way the job is done, or the work environment.

CUNY provides reasonable accommodations to employees in connection to:

- A disability
- Pregnancy, childbirth, or a medical condition related to pregnancy or childbirth
- Religious practices
- Status as a victim of domestic violence, sex offense or stalking

#### **2. What are Essential Functions?**

Essential functions are job duties typically, but not exclusively, found on a job description, which are considered fundamental such that the individual cannot do the job without performing them. Essential functions are determined by the department in conjunction with Human Resources. A Qualified Individual is an employee or applicant with a disability who satisfies the skill, experience, education, and other job-related requirements for the position, and who can perform the essential functions of the job with or without a reasonable accommodation.

#### **3. Importance of Reasonable Accommodations**

It is important to provide accommodations for the following reasons:

- Ensuring equal opportunity in the application process
- Allowing a qualified individual with a disability to perform the essential functions of a job
- Making it possible for an employee with a disability to enjoy equal benefits and privileges of employment

Reasonable accommodations include making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; and providing qualified readers or interpreters. Many job accommodations cost little and often involve minor changes to a work environment. Reasonable accommodations should not be viewed as “special treatment” and often benefit all employees. For example, facility enhancements such as ramps, accessible restrooms, and ergonomic workstations benefit more than just employees with disabilities.

## 4. Expectations of Supervisors/Managers

As a manager, you are not expected to assess or approve reasonable accommodation requests, but you have an important role in the process. Managers should understand:

- How to recognize a request for a disability accommodation or other accommodation.
- **Human Resources should be contacted once a reasonable accommodation request is received.**
- Requests for disability accommodations are strictly confidential.

CUNY recognizes that there may be times when employees and their supervisors can resolve accommodation requests informally. However, in many cases, such requests require a more formal process. Employees would work with a designated decision-maker e.g., the director of Human Resources, who would consider the request and arrange for accommodations as needed. If an accommodation request is denied, employees can submit an appeal in writing to the 504/ADA Coordinator.

### A. When Should Employers Speak to Employees about Accommodations?

Employers are only permitted to ask disability related questions or about the need for accommodation when the question is what is known as "job-related and consistent with business necessity." This can be true under various circumstances, including when the employer has good reason to believe that an accommodation is needed because of a known disability.

Below are instances when employers can offer reasonable accommodations.

- An employer has a reasonable belief, based on objective evidence, that an employee's ability to perform essential job functions is/will be impaired by a medical condition, or
- An employer has a reasonable belief, based on objective evidence, that an employee may pose a direct threat due to a medical condition, or
- An employee asks for a reasonable accommodation and the employee's disability or need for accommodation is not known or obvious.

## 5. Reasonable Accommodations and COVID-19

The employee is responsible for letting their supervisor know that they are requesting a reasonable accommodation due to a condition that makes them a high-risk candidate for COVID-19.

In general, the risk of getting severely ill from COVID-19 increases with age. Older adults and individuals at any age with certain medical conditions, are at increased risk for severe illness from COVID-19. Those medical conditions currently include chronic obstructive pulmonary disease, serious heart conditions (e.g., heart failure, coronary artery disease), immunocompromised state from solid organ transplant, body mass index (BMI) of 30 or higher, sickle cell disease, type 2 diabetes, and chronic kidney disease.

A comprehensive list of associated medical conditions potentially increasing risk for severe COVID-19 disease is located on the CDC website at <https://www.cdc.gov/media/releases/2020/p0625-update-expands-covid-19.html>.

Accommodations may include additional or enhanced Personal Protective Equipment (PPE) beyond what may generally be provided to employee's returning to the workplace. Other enhanced protective measures may include erecting a barrier that provides separation between the employee and others. Accommodations may also include telecommuting, or alternate, compressed or voluntary reduction in work schedules, where appropriate.

While masks are required to reduce the spread of COVID-19, there may be medical reasons when wearing a mask may not be feasible. In these instances, employees would request a reasonable accommodation to the mask or face covering requirement due to a medical condition under the existing process.

The Age Discrimination in Employment Act (ADEA) prohibits employment discrimination against individuals age 40 and older. The ADEA would prohibit a covered employer from involuntarily excluding an individual from the workplace based on his or her being 65 or older, even if the employer acted for benevolent reasons such as protecting the employee due to higher risk of severe illness from COVID-19. It is important to note that workers age 65 and older may have medical conditions that are under the protection of the ADA as individuals with disabilities. As such, they may request reasonable accommodation for their disability, not their age.

### **A. General Accommodations**

Staff who have concerns about returning to work onsite for other non-disability reasons (i.e., childcare, health of others in their household) may be eligible for other options such as leaves. Non-disability accommodation requests are also known as *general accommodation* requests.

Although the ADA prohibits discrimination based on association with an individual with a disability, it does not require an employer to accommodate an employee without a disability based on the disability-related needs of a family member or other person with whom they are associated. For example, an employee without a disability is not entitled under the ADA to telework as an accommodation in order to protect a family member with a disability from potential COVID-19 exposure. Of course, an employer is free to provide such additional options if it chooses and is able to do so; CUNY encourages colleges to be as flexible as possible in granting such requests. An employer choosing to offer additional flexibility beyond what the law requires should be careful not to create a disparate impact to members of a protected EEO category. Be sure to consult with CDO and/or OHR if necessary.

As outlined in *CUNY's Detailed Reasonable Accommodation Procedures* (see Additional Resources below), any employee seeking a reasonable accommodation should contact Human Resources at the College or unit where they work.

## 6. Reasonable Accommodations for Employees with Performance Issues

When addressing performance or conduct issues, the manager/supervisor should consult with Human Resources and follow these general guidelines:

- clearly state the performance/conduct expectations,
- provide specific examples of what has been observed,
- explain what must be done to meet the standards,
- ask the employee what is needed to meet the requirements or perform job duties (e.g., how can I help?). This creates a safe space for disclosure and encourages the employee to ask for help or indicate that a modification or adjustment is needed for a reason related to a medical impairment – request an accommodation -- in order to address performance/conduct issues.

## 7. Additional Resources

### **CUNY's Detailed Reasonable Accommodation Policy and Procedure**

<https://www.cuny.edu/wp-content/uploads/sites/4/page-assets/about/administration/offices/legal-affairs/policies-procedures/reasonable-accommodations-and-academic-adjustments/Procedures-for-Implementing-Reasonable-Accommodations-9.21.2016.pdf>

### **HOW CAN I HELP?**

<https://askjan.org/blogs/jan/2018/10/how-can-i-help.cfm>

### **MOTHER MAY I? MUST I? SHOULD I?**

<https://askjan.org/articles/Mother-May-I-Must-I-Should-I.cfm>

### **EEOC**

<https://www.eeoc.gov/coronavirus>

### **DEPARTMENT OF JUSTICE**

<https://www.justice.gov/opa/pr/departments-justice-warns-inaccurate-flyers-and-postings-regarding-use-face-masks-and>