



POLICIES AND PROCEDURES

**Subject: Disability Accommodation for
Applicants and Employees**

Policy No. 2

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Approved by: Cheryl J. Norton, President, Southern Connecticut State University

Signature:

Policy Statement

It is the policy of Southern Connecticut State University to provide equal access and opportunity to job applicants and otherwise qualified persons with disabilities in compliance with the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act (ADA) of 1990 and ADA Amendments Act of 2008 (ADAAA) effective January 1, 2009. The University prohibits discrimination on the basis of disability in all aspects of the application process and the employment relationship. The ADAAA rejects strict interpretation of the definition of disability, and makes it absolutely clear that the ADA is intended to provide broad coverage to protect anyone who faces discrimination on the basis of disability.

Scope

This policy applies to applicants for employment with, and employees of, the University who have a physical or mental impairment that substantially limits one or more major life activities; have a record of such impairment; or are regarded as having such impairment. (The law also covers people who experience discrimination based on a perception of impairment regardless of whether the individual experiences disability (ADAAA))

Note: The ADAAA states that "the definition of disability...shall be construed in favor of broad coverage of individuals under [the ADA], to the maximum extent permitted by the terms of [the ADA]." Also, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when it is active.

General Procedures

1. Initiating the Accommodation Process

An "Accommodation Request Form" must be completed by the following individuals:

- **Applicants** for employment can initiate a request for accommodation by contacting the Human Resources Office. Any staff member that receives a request for accommodation shall immediately notify the HR Office.
- **Employees** can initiate the accommodation process by requesting an accommodation for a disability from HR or by making such a request to the employee's immediate supervisor, either verbally or in writing.
- **Supervisors** who receive a request for accommodation shall immediately notify HR so that the official processing of the request can begin.

Any supervisor who, in the course of job performance counseling, is informed by an employee that a physical or mental condition may be affecting the employee's work performance shall refer the employee to HR and notify that office of such referral.

The individual making the accommodation request is required, among other things, to cooperate throughout the accommodation process by attending meetings to discuss the accommodation needs, to timely provide current medical information and provide documentation of skills, abilities, training, and/or work experience, as requested.

2. Processing the Accommodation Request

Requests for reasonable accommodation shall be considered by determining the following issues:

1. whether the worker in question is qualified to perform work
2. whether the worker in question has a disability that limits his or her ability to perform satisfactorily the essential functions of the job he or she holds or desires; and
3. if so, whether the disability may be reasonably accommodated without imposing an undue hardship on the University.

All three issues must be found in the affirmative in order for the University to grant reasonable accommodation and has the discretion to select the accommodation it considers most appropriate, giving due consideration to the suggestions and preferences of the applicant or employee seeking accommodation.

Upon receipt or referral of an accommodation request from an applicant or an employee, HR shall initiate an interactive process and begin the accommodation procedure. For a current employee, the process will involve, in appropriate cases, verifying the disability for which the accommodation is requested, contacting the supervisor to determine or verify essential job functions and, after a determination that the disability is covered under the law, engaging in or facilitating discussions with the employee and supervisor concerning possible accommodations.

In situations where the impairment, the degree of impairment, or the major life activities affected by the impairment are non-apparent, applicants or employees will be required to provide written documentation, in most cases by the use of a medical certificate, concerning the impairment at the time an accommodation is requested.

3. Documentation of a Disability

Documentation of a disability will be required when a disability and/or need for accommodation is not obvious.

Applicant or Employee Responsibility

An applicant or employee shall provide HR with adequate documentation from a qualified health care professional of a non-obvious disability or impairment. Reasonable accommodations will not be provided prior to the receipt of this documentation.

Documentation Requirements

The documentation provided by an applicant or employee must be from a qualified health care professional and must clearly identify and describe the following:

- The specific impairment(s) causing the disability;
- The major life functions or activities affected by the impairment; and
- The degree of limitation to those functions and activities caused by the impairment.

Non-receipt of Documentation

If the Human Resources Office does not receive the required documentation and information from the health care provider within two (2) weeks of being informed of a disability by the applicant or employee, it will notify the applicant or employee in writing and request that he or she contact the health care provider. If HR does not receive the required information within two (2) weeks of this notification, the request for accommodation will be cancelled for lack of necessary information.

Receipt of Documentation

After receiving the documentation from the health care provider, HR will review the medical information to determine its adequacy. If the information provided is incomplete, unclear or inconsistent, HR can request that the applicant or employee to obtain additional or clarifying information from the health care provider.

Independent Medical Information

The Associate Vice President of Human Resources and Labor Relations has the authority to obtain, at University expense, an independent medical opinion concerning the impairment for which an employee seeks an accommodation. The failure of an employee to cooperate in obtaining such an opinion will result in the cancellation of the request for accommodation.

4. Disability Determination

The Human Resources Office, with the information provided by the treating physician, shall determine if the applicant or employee has a substantially limiting impairment of a major life activity that prevents the individual from performing one or more essential application or job functions, or from enjoying the same benefits and employment privileges as are enjoyed by similarly situated employees without disabilities. In cases of persons with non-apparent disabilities, this determination shall be made after receipt and review of adequate documentation from a health care provider.

5. Reasonable Accommodation Determination

When an applicant is found to have a disability covered under the law, HR will work with the individual to make accommodations to the application process and at the appropriate time, will work with the individual and the department head to identify and discuss accommodations that will enable the individual to perform the essential functions of the job or enjoy the same benefits and privileges as similarly situated employees without disabilities.

If the accommodation would pose a threat of harm to the employee, staff, students and others; or if the accommodation would result in undue hardship, that is the accommodation is too costly, extensive, and substantially disruptive or would fundamentally alter the nature or operation of the University, the accommodation may not be provided. The University does not create new positions, displace other employees, or offer a promotion as a form of accommodation.

A qualified individual with a disability can refuse an accommodation, but if the individual is unable or unwilling to perform the essential functions of a job at a

satisfactory level without the accommodation, he or she will be separated from employment. Refusal to cooperate in the accommodation process may result in separation.

If an employee cannot be accommodated, including placement in an alternative position, the employee will be separated from University employment after the employee's entitlements under the Family and Medical Leave Act (FMLA), if any, are exhausted.

No Reverse Discrimination

The ADAAA amendments make clear that there is no such thing as reverse disability discrimination claims. Reverse discrimination claims have occurred where non-disabled employees have claimed they should receive the same reasonable accommodations that a disabled employee has received. The ADAAA makes it clear that disabled employees may obtain certain changes to their jobs to which other employees are just not entitled

Confidentiality

Any records or information obtained by Human Resources as a part of the accommodation process that reflects diagnosis, evaluation, or treatment of an employee's medical or mental health condition are confidential and shall be maintained by the Human Resources Office in a separate file. Such records shall be shared with only those University employees who have a need to know in order to implement the accommodation process and shall not be released except as required by law.

ADA Compliance Officer

The Associate Vice President of Human Resources and Labor Relations reports to the President of the University and is responsible for developing, coordinating, monitoring and reporting on compliance activities. Faculty, staff, students and visitors to the campus are encouraged to report any architectural, programmatic or attitudinal barrier that appears to deny full participation to any program, benefit or service offered by the University.

Complaint Process

If any applicant or employee is not satisfied with the response to an accommodation request they may contact the Human Resources Office or the Office of Diversity and Equity located in Schwartz Hall, Room 100 or by calling them at (203) 392-5491 to be sure that appropriate consideration has been given to your request.

The University has a process for resolution of complaints alleging discrimination on the basis of disability, including failure to accommodate a disability. You also have the right to file a complaint with an external federal or state enforcement agency.

The complaint should be made as soon as possible after actions that are believed to be discriminatory have occurred.

Any supervisor or other administrator who receives a written or oral complaint of disability discrimination from an employee shall forward it immediately to the Director of ODE for investigation.

The President will, based on the report provided by the Director of ODE, make a final decision on the matter within a reasonable time.

No Retaliation or Coercion

The University will not retaliate against, coerce, intimidate, threaten, harass, or interfere with any individual exercising or enjoying his or her rights under the ADA or Connecticut law or because an individual aided or encouraged any other individual in the exercise of rights granted or protected by the ADA or Connecticut.

Definitions

- An individual with a **disability** is a person with:
 - a physical or mental impairment that **substantially limits** one or more major life activities;
 - has a **record** of such impairment;
 - or is **regarded as** having such impairment.

A charging party must satisfy at least one of these three parts of the definition to be considered an individual with a "disability."

The definition of "**disability**" is construed in favor of broad coverage to the maximum extent permitted. Also note that an "impairment" that is episodic or in remission is a "disability" if it would **substantially limit** a major life activity when active. (See ADAAA)

The ADAAA prohibits the consideration of **mitigating measures** such as medications (i.e. for blood pressure), or medical supplies, prosthetics, hearing aids, mobility devices and assistive technology, in determining whether an individual has a disability.

- **Direct threat** is a significant risk of substantial harm that cannot be eliminated or reduced to an acceptable level by a reasonable accommodation.

- **Equal employment opportunity** means an opportunity for a qualified individual with a disability to perform the essential job functions or to enjoy the benefits and privileges of employment that are available to similarly situated individuals who are not disabled.
- **Essential functions** are the fundamental job duties or requirements of a position. Essential functions are such that they cannot be eliminated or substantially modified without changing the nature of the position. Essential functions do not include the marginal functions of the position.
- **Health Care Professional** means a person who has completed a course of study and is licensed to practice in a field of health care which includes the diagnoses and assessment of the particular disability or disabilities in question and is the basis of the accommodation request.
- **Impairment** is a physiological disorder affecting one or more of a number of body systems or a mental or psychological disorder.

The following conditions are not impairments:

- environmental, cultural, and economic disadvantages
 - homosexuality and bisexuality
 - pregnancy
 - physical characteristics
 - common personality traits
 - normal deviations in height, weight, or strength.
- **Interactive process** is the good faith effort by both SCSU and a qualified individual with a disability seeking reasonable accommodation to engage in discussion and exchange information and ideas necessary to administrate this procedure.
 - The **job analysis** evaluates the position's physical or cognitive requirements and identifies essential job elements. **Essential job elements** are those that the applicant or employee must be able to perform, with or without accommodation. They cannot be removed from the position without changing its nature. Duties that are not essential may be modified, eliminated, replaced, or restructured as part of the accommodation process.
 - **Need to know** is the basis upon which it is determined who should be made aware of medical restrictions, accommodation requests and other pertinent information that may be confidential or protected by privacy rights or statutes.
 - A **qualified individual with a disability** is defined as one who possesses the requisite skills, education, experience and training for a position, and who

can, with or without reasonable accommodation, perform the essential functions of the position the individual desires or holds.

- A **major life activity** is an activity that an average person can perform with little or no difficulty. Examples are:
 - walking, seeing, hearing, speaking, breathing,
 - performing manual tasks,
 - caring for oneself,
 - working, sitting, standing, lifting, eating, sleeping, bending,
 - reading, learning, concentrating, thinking, and communicating.

The ADAAA also introduces a non-exclusive list of major bodily functions which constitute **major life activities**. The list includes, but is not limited to:

- functions of the immune system;
 - normal cell growth; and
 - functions involving the digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive systems.
- **Reasonable accommodation** means modifying or adjusting practices, procedures, policies, job duties, or the work environment or job application process so that a qualified individual with a disability can perform a position's essential functions, and/or enjoy equal employment opportunity. Reasonable accommodation will be implemented as long as:
 - It is medically necessary as documented by competent medical evidence establishing a relationship between the disability and the need for accommodation, and
 - It does not impose an undue hardship on the University.

The ADAAA provides that transitory and minor impairments which have an actual or expected duration of less than six months are not considered disabilities under the “**regarded as**” prong of the definition of disability. An employer is not required to provide a reasonable accommodation or make reasonable modifications to policies, practices, or procedures for an individual who meets the “regarded as” prong of the definition of disability. The ADAAA provides that **reasonable accommodations** are only required for individuals who can demonstrate they have an impairment that substantially limits a major life activity, or a record of such impairment.

- An individual has a **record** of a substantially limiting impairment if she or he:
 - has a history of a substantially limiting impairment or
 - has been misclassified as having a substantially limiting impairment.

- An individual is **regarded as** having a substantially limiting impairment if he or she:
 - has an impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation,
 - has an impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment, or
 - has no impairment but is treated by a covered entity as having a substantially limiting impairment.

An employer regards an individual as having an impairment that substantially limits the major life activity of working if it treats the individual as having an impairment that disqualifies or significantly restricts the individual from working in a class of jobs or a broad range of jobs in various classes.

- **Substantially limits:** When a person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities.
 - An impairment is substantially limiting if it prohibits or significantly restricts an individual's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity.
 - The determination of whether an impairment substantially limits a major life activity depends on the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long-term impact of the impairment.
 - An impairment substantially limits an individual's ability to work if it prevents or significantly restricts the individual from performing a class of jobs or a broad range of jobs in various classes.
 - Although very short-term, temporary restrictions generally are not substantially limiting, an impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities if they are severe.
 - Chronic or episodic disorders that are substantially limiting when active or have a high likelihood of recurrence in substantially limiting forms may be disabilities.
 - An individual who has two or more impairments that are not substantially limiting by themselves but that together

substantially limit one or more major life activities, has a disability.

- **Undue hardship** means, among other things, an excessively costly, extensive, substantial, or disruptive modification, or one that would fundamentally alter the nature or operation of the institution or program.

Exclusions

A person who currently uses illegal drugs is not protected by the ADA. However a person who is in or has completed drug rehab and is no longer illegally using drugs is covered under the ADA.

A record or perception of occasional, casual use of drugs does not constitute a disability.

Also excluded because they are not impairments are pregnancy, homosexuality and bisexuality, sexual and behavior disorders such as transvestitism, transsexuals, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders. Compulsive gambling, kleptomania or pyromania, or psychoactive substance disorders resulting from current illegal use of drugs are also excluded.

Authority and Reference

- Sections 503 and 504 of the Rehabilitation Act of 1973 as amended;
- Americans with Disabilities Act of 1990
- 29 C.F.R Part 1630: 29 C.F.R Part 1640: 29 C.F.R Part 1641
- Veterans w/Service-Connected Disabilities in the Workplace and the ADA.
- Title VI and VII of the Civil Rights Act of 1964
- Equal Employment Opportunity Commission
- US Department of Labor, Office of Disability Employment
- US Department of Justice, Disability Rights Section
- Executive Order 12250 (President Carter)
- Conn. Gen. Stat. 10-297; 46a-64; 17b-608; 31-136; 4-61aa; 17a-274 (c).
- SCSU Employee Handbook
- Connecticut State University System Board of Trustees Policy Book 1.14 *"Policy on Persons with Disabilities"* (BR #2000-62)
- State of Connecticut Manager's Guide (Compiled by DAS)
- ADA Amendments Act Of 2008

Exceptions

Any exceptions to the procedures in this Policy shall require prior written approval from the President of this University.

