



## **Reasonable Accommodations for Employees with Disabilities**

### **I. Introduction**

It is the policy of Western Kentucky University to provide reasonable accommodations upon request for qualified individuals with a disability who are employees or applicants for employment. Western Kentucky University will adhere to all applicable federal and local laws, regulations, and guidelines with respect to providing reasonable accommodations in order to provide equal employment opportunities to qualified individuals with a disability.

### **II. Definitions**

**Accessible** – Easy to approach, enter, operate, participate in, or use safely and with dignity by people with disabilities.

**Disability** – The term “disability” means, with respect to an individual,

- (a) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (b) a record of such impairment; or
- (c) being regarded as having such an impairment.

**Essential Functions of a Job** – Those fundamental job duties that must be performed in order to accomplish the overall goal of the position.

**Major Life Activities** – Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working and the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*An individual does not have to show a workplace-related limitation to be covered under the ADA. Working is just one of the major life activities that may be substantially limited.*

**Mental Impairment** – Any psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

In should be noted the legislation makes no attempt to include a list of all the specific diseases, conditions or infections that would constitute physical or mental impairments because it would be impossible to maintain a comprehensive list. However a few examples are cited including: orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular

dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, specific learning disabilities, HIV infection, AIDS, past drug addiction, and alcoholism.

*The issue is not simply whether impairment exists, but whether the impairment substantially limits major life activity.*

**Physical Impairment** – Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine. Examples would include: cerebral palsy, muscular dystrophy, cancer, diabetes, heart disease, multiple sclerosis, HIV infection, and AIDS.

**Qualified Individual with a Disability** – A qualified individual with a disability means an individual with a disability who, with or without reasonable accommodations, can perform the essential functions of the employment position that such individual holds or desires.

**Reasonable Accommodations** – Reasonable accommodations may include making existing facilities used by employees, students, and the public readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules; reassignment to a vacant position, acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

**Regarded as Having a Disability** – The individual establishes that he or she has been subjected to an action prohibited under this regulation because of an actual or perceived physical or mental impairment, whether or not the impairment limits or is perceived to limit a major life activity. However, this will not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

**Substantially Limits** – Inability to perform a major life activity, or significant restriction as to the conditions, manner, or duration under which an individual can perform a particular major life activity.

### **III. Policy and Procedure**

#### **A. Designated Campus Contact for Accommodation Requests**

The office of Equal Employment Opportunity/Affirmative Action/University ADA Services (EEO) is responsible for working with applicants for employment and employees who have requested or are in need of accommodations and shall have sole authority to approve workplace accommodations. For example, EEO will evaluate completed medical forms and may follow up with the health care provider for clarification and additional information, if necessary.

## **B. The Accommodation Process**

### **1. Employee or Applicant Request for Accommodation**

Employees are responsible for initiating requests for any desired disability-related workplace accommodation. An employee should make a request for a reasonable accommodation by submitting a **Disability Accommodation Request Form** to EEO. The employee making the request is required to cooperate throughout the process by attending meetings to discuss the needed accommodation and providing timely medical documentation when necessary. The employee may be asked to have his/her doctor complete a **Documentation of Disability Form** and return the form to EEO. If the form is requested, the employee will need to provide the document to the office of EEO who will then send the information to the physician.

The office of Equal Employment Opportunity/Affirmative Action/University ADA Services can also act to provide a reasonable accommodation to an employee with a known disability based on an oral request. In these cases, however, the Disability Accommodation Request form should be submitted for recordkeeping purposes.

Applicants for employment who may need an accommodation for a disability to participate in the selection process should contact EEO. Any information that applicants provide will be treated confidentially, maintained separately from application materials, and used only in accordance with the Americans with Disabilities Act.

Supervisors are responsible for notifying EEO of any request for accommodation brought to their attention. If the employee has not requested an accommodation and the supervisor believes that the employee may need an accommodation, the supervisor should provide this information to EEO. Supervisors are not authorized to grant or deny accommodation requests.

### **2. Interactive Process**

Upon receipt of the employee's request for accommodation and medical information, or information from a supervisor that an employee may need an accommodation, EEO will engage in an interactive process with the employee in order to determine a reasonable accommodation. EEO may consult with other offices (such as IT for technological solutions) as necessary. In addition, EEO may require an individual to go to an appropriate health professional of Western Kentucky University's choice if EEO determines in its sole discretion, that the employee has provided insufficient information from his/her treating physician (or other health care professional) to substantiate that he/she has an ADA disability and needs a reasonable accommodation.

What constitutes a reasonable accommodation will be determined on a case by case basis, utilizing input from the affected employee whenever possible. EEO is responsible for documenting all reasonable accommodations and will ask the employee to sign documentation of the final agreed-upon accommodation.

### **3. Implementation of Accommodation**

Once a reasonable accommodation has been agreed upon between the employee and EEO as noted above, supervisors are responsible for implementing the reasonable accommodation. Supervisors have the responsibility to keep the request confidential except as necessary for implementing the accommodation. Supervisors are also responsible for monitoring the effectiveness of the accommodation, in consultation with the employee and EEO.

### **4. Denial of Accommodation Request**

The University is not required to provide a reasonable accommodation if (i) providing the accommodation would impose undue hardship to the University, or (ii) performance of the job with the accommodation poses a significant risk of substantial harm to the health or safety of the employee or others.

**Undue Hardship** - Undue hardship means an action requiring significant difficulty or expense, when considered in light of the following factors:

- (a) The nature and cost of the accommodation
- (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility, effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;
- (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.
- (e) In the *Cleveland v. Federal Express Corp* case, “The EEOC and some courts stated that accommodations might pose as an undue hardship specifically because of the adverse effect on other employees. The EEOC stated that undue hardship may result where an accommodation ‘would be unduly disruptive to other employees’ ability to work. For example, the EEOC stated that if modifying one employee’s schedule as an accommodation would so overburden another employee that he would not be able to handle his duties, the employer could show undue hardship. The EEOC noted that such modification would be deemed to cause an undue hardship ‘because it adversely affects the ability of other employees to perform their essential functions in a timely manner.’”

**Risk of Substantial Harm** - In determining whether an individual poses a significant risk of substantial harm to himself or others, Western Kentucky University will make an individualized

assessment, based on reasonable judgment that relies on current medical knowledge or the best available objective evidence, to ascertain:

- the nature, duration, and severity of the risk;
- the imminence of the risk;
- the probability that the potential injury will actually occur; and
- whether reasonable modification of policies, practices, or procedures will mitigate the risk.

The office of Equal Employment Opportunity/Affirmative Action/University ADA Services will consult with the General Counsel before denying a reasonable accommodation.

## **5. Grievances**

The office of Equal Employment Opportunity/Affirmative Action/University ADA Services is responsible for investigating and resolving complaints of discrimination, harassment and related retaliation within Western Kentucky University (WKU), whether the complaints originate internally or externally. Complaints can come from a number of sources including, but not limited to, employees, faculty, staff, students, vendors and government agencies.

### **Your Rights and Responsibilities as a Grievant**

### **Your Rights and Responsibilities as a Respondent**

### **How to File a Complaint**

### **The Investigation**

### **The Decision**

### **FAQs**

## **IV. Rights, Grievances,**

### **A. Your Rights and Responsibilities as a Grievant**

The Office of Equal Employment Opportunity/Affirmative Action/University ADA Services facilitates equal access through individualized accommodation, consultations, physical and programmatic access, education, outreach, and review of policies and procedures. The EEO office accepts grievances of discrimination, harassment, and related retaliation on the basis of race, sex, religion, color, national or ethnic origin, age, disability, and veteran status in the areas of:

- Employment
- Academics
- Any other setting involving a WKU person or entity

If you believe someone within WKU has discriminated against, harassed or retaliated against you, please contact the EEO office. Grievances may be filed at any time; however, it may be to your advantage to contact the EEO office as soon as possible after the act in question occurred. If the EEO office is not the proper place to handle your complaint, it will direct you to the appropriate department.

## **B. Your Rights and Responsibilities as a Respondent**

As the person responding to the grievance, you will be informed of the allegations and given every opportunity to ask questions, provide information and offer names of witnesses or other relevant people. The EEO office attempts at all times to protect you from unfounded allegations of discrimination. As such, it expects full and truthful cooperation from you and that you will respect confidentiality.

The EEO office procedure is administrative. In an investigation, the EEO office may request access to premises, records and documents relevant to the grievance. Your cooperation in an objective investigation can assure you of a fair decision on the grievance.

Consistent with WKU's nondiscrimination policies, you must not retaliate against a person who files a complaint, participates in an investigation, encourages one to file, or opposes discrimination. In addition, you must not interfere with an investigation.

## **How to File a Complaint**

To file a grievance of discrimination, harassment or related retaliation with the EEO office, please call the office at (270) 745-5121, visit or write. For contact information, please see the "Contact" tab to the left.

If you call or visit the EEO office, a staff person will assist you in writing a brief outline of the facts. The staff person will assess the nature of your complaint and either submit your complaint to the Director or refer you to the appropriate department. If your complaint falls within the EEO office's purview, an investigator will contact you to set up a time for further discussion. If appropriate, the investigator will assist you in completing a discrimination/harassment complaint form, and once signed, an investigation will follow. If it is not appropriate, the investigator will refer you to the appropriate department.

If you write to the EEO office, please be sure to include what happened and when; names of all parties involved, including witnesses (if any); supporting documentation; your belief as to why the act in question occurred; and your contact information. You know your complaint better than anyone else. Give the EEO office staff person all of the details and answer all questions as fully as you can. Names, dates, places, and details of what happened should be as accurate as possible. Supporting documents can help to support allegations. If witnesses were present, it's important to give full names, what they will know, and how the EEO office can contact them.

## **The Investigation**

For grievances, the EEO office investigator will seek a response from the person(s) the complaint is against, known as the respondent(s). The investigator will interview relevant persons who may have pertinent knowledge. Supporting documentation and statistical data may be collected and analyzed. The EEO office staff may ask that you clarify some aspects of your complaint. If you learn or remember any additional information, you should notify the EEO office investigator immediately. Once the relevant evidence is gathered, the investigator will determine whether the alleged acts violate a WKU non-discrimination policy.

## **The Decision**

The EEO office has the authority to decide whether or not the complaint is justified. The EEO office may find:

- Sufficient evidence to support a violation of a WKU nondiscrimination policy, whereby appropriate action to address the matter at hand will be taken;
- Insufficient evidence to support a violation of a WKU nondiscrimination policy (or inconclusive), whereby the case will be closed; or
- Insufficient evidence to support a violation of a WKU nondiscrimination policy (or inconclusive), but sufficient evidence to conclude inappropriate acts occurred, whereby a recommendation to the decision-maker will be made.

If you filed a grievance, the investigator will notify you, and other appropriate parties, of the finding. If you filed a charge with an agency outside of WKU, the investigator will not be able to notify you of the finding(s); your inquiries must be made to the agency where you filed your charge.

## **C. Recordkeeping**

All employee and employment records must be kept for a period of two years, as required by the ADA. These records shall be maintained separately from the employee's personnel file in a confidential manner.

## **Frequently Asked Questions**

- **Who can file a grievance?**  
Employees, faculty, staff, students, and anyone who believes they have been discriminated against by someone within the WKU community.
- **How long does it take to conduct an investigation?**  
It depends on several factors, such as the complexity of the case, the amount of documentation that must be gathered and analyzed, the number of persons to be interviewed, the investigator's caseload, etc.

- **Is there a time limit to file a grievance with the EEO office?**  
No. An individual may file with the EEO office any time. However, waiting has its disadvantages—the evidence may stale, witnesses' recollections may fade, witnesses may leave WKU, etc. It is recommended that one contact the EEO office in a timely manner in order to ensure that an adequate investigation can occur.
- **Is my case confidential?**  
Cases are confidential to the extent possible. The EEO office takes great care in protecting interviewees' statements from both the complainant(s) and respondent(s). However, in certain situations, (i.e. where disciplinary action must be taken against a respondent), it is possible certain disclosures will be made.
- **Can I take any action against someone for filing a grievance that turns out to have no merit or participating in EEO office's process?**  
No, it may be seen as retaliation. A person has a right under WKU's nondiscrimination policies to utilize the EEO office's grievance process and is protected from doing so. In addition, anyone who participates in EEO office proceedings, encourages one to utilize his or her right, or opposes discrimination is covered as well.
- **What is retaliation?**  
Retaliation occurs when an employer takes an adverse action against a covered individual because he or she engaged in a protected activity.
- **What is WKU's policy on retaliation?**  
WKU's Equal Opportunity and Affirmative Action policy states in part, "In compliance with federal law, Western Kentucky University does not retaliate against individuals for filing or encouraging one to file a complaint of unlawful discrimination, participating in an investigation of unlawful discrimination, or opposing unlawful discrimination. In addition, the University does not retaliate against individuals for filing or encouraging one to file a complaint of discrimination, participating in an investigation of discrimination, or opposing discrimination based on grounds protected by federal or state law. 'Retaliation' includes any adverse employment action or act of revenge against an individual for filing or encouraging one to file a complaint of discrimination, participating in an investigation of discrimination, or opposing discrimination."

#### **IV. Non-Retaliation**

No person who has requested a workplace accommodation shall be subject to intimidation, threats, coercion, or discrimination for requesting such accommodation. Complaints of such retaliation or interference may be filed and processed under the college's Non-Discrimination Policy.