

## SIMMONS COLLEGE

### **Procedure/Protocol for handling and responding to an employee's request for a reasonable accommodation pursuant to the Americans with Disability Act or Mass. General Law Chapter 151B**

There may be times when an employee experiences difficulty performing the essential functions of his/her job because of a disability. When the Office of Human Resources receives a request from an employee asking for assistance or accommodation(s), such a request will likely need to be considered in the context of the Americans with Disabilities Act, (the federal disability law) or under Massachusetts state law in those instances where our state law is more liberal than the ADA.

According to the Americans with Disabilities Act ("ADA"), employers with more than 15 employees are required to make reasonable accommodation to the known limitations of a qualified applicant or employee who has a disability unless to do so would cause an undue hardship to the employer. An "undue hardship" is a very high bar and requires *significant* difficulty or expense based on the College's resources and the operation of the department in question.

A Simmons employee with a "disability" would be anyone with a physical or mental impairment substantially limiting one or more major life activities (i.e., the actions the average person takes as part of day-to-day living, like walking, seeing, hearing, speaking, working, etc.); someone who has a record of such impairment; or someone who is regarded as having such an impairment. In terms of employment, the law defines a "qualified individual with a disability" as a person with a disability who is qualified to perform the essential functions of the job with or without reasonable accommodation. A "reasonable accommodation" typically is a modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position or to enjoy equal benefits and privileges of employment as are enjoyed by the College's other similarly situated employees without disabilities. Reasonable accommodations may include but are not limited to: job restructuring, part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications 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 persons with disabilities.

The goals of this protocol are:

- To ensure that a request for assistance or an accommodation due to a disability receives appropriate and prompt attention.
- To ensure that a request is considered in the appropriate context; is this the kind of disability that requires analysis under the Family Medical Leave Act or only the ADA.

- To ensure that the College responds to a request in a timely manner.
- To ensure that employees have a mechanism to appeal decisions with which they may disagree regarding requests for accommodation(s) or assistance.
- To ensure that the entire process, from request to determination, is handled with dignity, respect, confidentiality, and in accordance with all parties' rights and responsibilities.

**Request:**

1. An employee who indicates to his or her supervisor or to Human Resources that he or she believes that he or she has a disability and wishes to receive assistance or reasonable accommodation should be asked to submit, to Human Resources, a written request for consideration. The request should be made on the Employee Request Form ("ERF"). The request will provide Human Resources with a brief overview of the limitations caused by the disability and the assistance or accommodation(s) requested.

Any medical documentation regarding the disability already in possession of the employee should be submitted with the request. The employee must submit medical documentation in support of the request and Human Resources may request additional medical certification if the initial documentation is insufficient.

2. Human Resources will date-stamp the request and any supporting documents. A "Request for Accommodation" file bearing the employee's name should be created, and that file will be kept separately from the employee's personnel file and will be treated with confidentiality.
3. Human Resources will acknowledge the receipt of a request, in writing to the employee, in a timely manner.
4. Human Resources should schedule a meeting with the employee to discuss the request with the goal of gaining an agreement on the specifics of the request. Human Resources should explain the process and next steps. The next steps will likely include giving the employee a cover letter and form to be given to and completed by his or her health care provider responding to questions regarding the nature of the employee's condition and any resulting limitations for the employee.

### **Review/Consideration of Request:**

1. Human Resources will carefully review all medical documentation and determine applicability of ADA and/or FMLA.
2. Human Resources will notify the employee, in writing, if further information is required, either from the employee or the employee's health care provider.
3. If the information provided by the employee's health care provider indicates that the employee has a "disability," then Human Resources will typically work in partnership with the employee and the employee's manager to analyze the essential functions of the employee's job, ascertain the manner in which the employee's job-related limitations could be overcome with a reasonable accommodation and identify the accommodation that is most appropriate for the employee and the College. To the extent that the employee's request for an accommodation is not reasonable, Human Resources will work with the employee to arrive at a reasonable alternative. Human Resources may also work in collaboration with the ADA Compliance Officer, Academic Support Center, in considering the request. Depending upon the nature of the accommodation(s) requested, Facilities or other applicable departments may be consulted, strictly on a need-to-know, confidential basis.
4. Human Resources in consultation with the office of the General Counsel is responsible for determining the reasonableness of any cost associated with the accommodation. The costs of reasonable accommodations may be funded by a budget held by the Office of the General Counsel.

### **Request Determination:**

#### ***Approved:***

1. The employee will be notified, in writing, that his/her request for assistance or accommodation has been approved. Notification will include all specifics of the accommodation including the effective date of accommodation, implementation plan, and any further actions required of the employee. The notification will also include any provisions regarding future re-certification of the disability and the need for accommodation.
2. Human Resources will copy (on a confidential basis) the employee's manager, and the Dean/VP on the approval notification provided to the employee.

3. Human Resources will work in collaboration with applicable departments and resources to secure necessary equipment. Typically, the employee's manager will play a significant and critical role in ensuring the implementation of the approved accommodation.
4. The Employee's manager is expected to review with the employee the manner in which the accommodation will affect the employee's day-to-day responsibilities, if any.
5. The employee will be required to keep management and Human Resources aware of any issues pertaining to the accommodation or future accommodations. Any further requests for assistance or accommodation should be put in writing and the applicable steps above will be conducted. Some types of disability are not static and therefore additional documentation may be required as a condition of continuance of accommodation(s). The frequency of documentation update requests will vary based upon the specific disability.

***Denied:***

1. The employee will be notified, in writing, that his/her request for assistance or accommodation has been denied. Notification will include the specific reason(s) for denial and instructions on how to file an appeal.
2. Human Resources will copy the employee's manager, General Counsel, and the Dean/VP on the denial notification provided to the employee.
3. Human Resources will work in collaboration with the employee and the employee's manager to address the performance expectations of the employee going forward.

**Appeal Process:**

1. Human Resources will provide instructions on how to file an appeal to all employees whose request for an accommodation is denied.
2. See separate "Appeal Process" documentation for entire process/protocol.

**Periodic Review of disability/accommodation:**

1. Human Resources will typically require those employees receiving an accommodation to provide medical documentation certifying that the disability and need for accommodation(s) still exists. This review typically will occur on an annual basis.
2. Human Resources will repeat the applicable steps above in determining the need for continued accommodation. The employee will be notified of the determination in writing. Human Resources will work in collaboration with the employee and the employee's manager to determine next steps should the outcome of the review suggest that an accommodation is no longer required or if there are modifications and/or new accommodations requested and required.

**Records Maintenance:**

1. Human Resources will maintain all Accommodation Request files in a secure and confidential location. Files on terminated employees will be maintained onsite for three (3) years after the date of termination.