

Questions for HR/OEO Representatives
To Guide Informational Session, March 13, 2024, 1pm-2pm

Representatives:

- Anabel Reyes, ADA Specialist, HR
- Erin Sullivan, Deputy ADA Coordinator, OEO

Question 1: Advice

Informal vs. Formal Accommodations: What advice would you give to employees who are trying to decide whether they should just informally ask for accommodations from their supervisor/department or pursue the formal accommodations process?

If an individual needs a simple, short-term accommodation (i.e., needs to work remotely one or two days, as a one-off situation because of an accident, or needs flexibility for a few days due to short use of a walking device, etc.) an informal discussion directly with their supervisor makes sense.

If an individual needs ongoing or more long-term accommodations, we highly recommend they use the University's centralized accommodation process. Campus staff and faculty should use the University's electronic Accommodation Request Form to request disability-related workplace accommodations: <https://www.hr.utah.edu/accommodations/ada.php>. Alternatively, they can contact Human Resources at hraccommodations@utah.edu or 801-213-1346.

The central accommodation process helps departments navigate requests in a consistent manner, protects medical information, limits the amount of people that become aware of their medical situation, and includes a more in-depth analysis under the ADA, if required.

Notably, even if an employee decides to informally request an accommodation directly with their supervisor, the supervisor may redirect the employee to the University's central accommodation process.

The University recognizes that the accommodation request process can feel complex and time consuming. But, as mentioned above, utilizing the University's centralized accommodation request process ensures consistency. Human Resources remains a neutral and objective liaison throughout the process to help ensure that accommodations are appropriately implemented and monitored.

Advice for Formal Accommodations Process: What advice do you have for employees, or what would you like us to know, about the formal accommodations process and how to make it work well for employees?

A description of the accommodation process after an employee submits an accommodation form to UHRM is included on UHRM's accommodation website: <https://www.hr.utah.edu/accommodations/ada.php>. Once UHRM receives an accommodation request form, the ADA Specialist reviews the request to determine if enough information has been provided to evaluate the request. If information is needed, UHRM will promptly contact the employee and request the needed documentation or information. Once UHRM has sufficient information and documentation to evaluate the accommodation request, the ADA Specialist meets with the employee's supervisor to discuss barriers the employee is experiencing and find out what accommodations the department may be able to reasonably provide to help remove those barriers. UHRM then documents the accommodations and provides a written response to the employee.

Some tips to help the accommodation process:

- Submit your request for accommodation as soon as possible when you find out you need accommodation at work or are struggling at work due to a disability or medical condition. The ADA does not provide retroactive protections.
- If employees don't know what to request, they can identify the specific barriers they are experiencing at work because of their condition, and think of potential solutions their department may provide to remove those barriers, then include that in their accommodation request form. If they need additional help before submitting their request form, they can contact the ADA Specialist to brainstorm potential accommodations. The Job Accommodation Network ("AskJan" www.askjan.org) is also a great resource.
- It is helpful to know that the ADA does not require employers to waive essential job functions or lower productivity requirements as an accommodation. If an individual is struggling to perform a specific job function, or meet an expectation at work due to a medical condition, it will be helpful for them to identify accommodations that will help them be able to perform the job function or meet the job requirement/expectation.
- When suggesting accommodations, be specific (i.e., if an employee needs flexibility in their schedule, they should describe what kind of flexibility they are asking for. Are they asking to have a 5 -minute grace period in their arrival time? Do they need this every day or 1-2 times per week?, etc.).
- Participate in good faith during the interactive process. While an employee may propose accommodations, Title I of the ADA stipulates that they do not choose what accommodations are granted. It is the employer that decides what accommodations are granted. Be willing to try reasonable accommodations proposed by the department. Be creative and open when working with the ADA Specialist and department to explore solutions that will accommodate both the employee and the department's operations.

Grad Student Employees? Can you also speak to recommendations for graduate students who are seeking accommodations in their employment roles: as RAs, TAs, employees on grants, etc.? Should they also apply to HR for formal accommodations, like other employees?

The same guidance explained above would apply to student employees if they need accommodations in their employment positions. If they need course-related accommodations, they should work closely with their CDA Advisor.

Question 2: HR/Departmental Decision-Making

What if agreed-upon accommodations aren't provided? What should an employee do if their supervisor agrees to accommodations but then does not follow through on providing them?

Staff and faculty are encouraged to try and resolve disputes regarding their approved accommodations informally with their supervisor. If this option does not seem feasible or appropriate, the employee can always contact the University's ADA Specialist (Anabel Reyes, UHRM).

Additionally, employees can contact the University's Deputy ADA Coordinator (Erin Sullivan, OEO/AA) for advice and guidance. Failure to accommodate is a form of disability discrimination so the OEO/AA can help provide support and explain options including, but not limited to:

- ❑ Customized 1:1 OEO training for the individual who is not recognizing/implementing the accommodation
- ❑ Informal resolution through the OEO/AA
- ❑ Formal investigation through the OEO/AA

More information about the services offered by the OEO/AA as well as FAQs on workplace accommodations can be found here: <https://o eo.utah.edu/how-can-we-help/disability-access.php>.

The University's Faculty Ombuds Office might also be a good resource. They provide confidential, impartial, and informal conflict resolution and problem-solving services for University of Utah Faculty. They can't take any formal action but could be a good person to share concerns and problem solve with. For more information, go to: <https://officeforfaculty.utah.edu/ombuds-office/>.

There are also a number of non-University entities and resources the employee could connect with. These include, but are not limited to:

- ❑ U.S. Equal Employment Opportunity Commission (EEOC) - <https://www.eeoc.gov/employees-job-applicants>
- ❑ Utah Antidiscrimination and Labor Division (UALD) - <https://laborcommission.utah.gov/divisions/utah-antidiscrimination-and-labor-uald/>
- ❑ Disability Law Center (DLC) - <https://disabilitylawcenter.org/>

- Job Accommodation Network (JAN) - <https://askjan.org/>
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Question 3: Temporary Business Adjustments

In some cases, employees requesting accommodations are being provided with “temporary business adjustments” in place of more formal and long-term accommodations. As their name indicates, these adjustments are temporary, and often come with an expiration date and/or requirement to reapply after a given time. What are the criteria that dictate whether TBAs are selected/offered in place of longer-term accommodations?

We are updating our practices to eliminate the distinction between “temporary business adjustments” and “accommodations.” Depending on the duration of the accommodation, all staff/faculty ADA accommodations will be referred to as “accommodations” or “temporary accommodations.” As mentioned previously, every accommodation will be reviewed on a case-by-case basis, but consideration will be given to the medical documentation submitted, whether it indicates that the impairment caused by the medical condition is temporary and expected to change over time, or if the documentation indicates the impairment is permanent.

It is helpful to know, however, that the accommodation process is ongoing and interactive, even after an accommodation is granted, whether it has an end date or not.

The accommodation process does not only consider the nature and length of the impairment but also the department’s ability to accommodate. While a condition may be permanent, the department’s circumstances can change over time, and so can their ability to provide a specific accommodation. Any accommodation granted can be revisited over time if the employee’s condition changes or the department’s ability to accommodate changes. In that case, the employee or their supervisor can contact the ADA Specialist to request a re-evaluation and to consider alternative reasonable accommodations.

Question 4: Timelines and Deadlines

4a. Some employees, after requesting accommodations, have received very tight deadlines for providing medical documentation: for instance, a month, when making specialist appointments can take several months. Is there room to provide greater flexibility in these timelines to allow for delays in receiving medical access?

Under the ADA, there is no set timeframe for providing medical documentation to support a request for accommodation. However, employers (like the University) may have a reasonable accommodation policy or practice that includes a timeframe for

employees to respond. Allowing anywhere from ten to fifteen business days is generally considered reasonable. This generally mirrors the timelines under the Family and Medical Leave Act (FMLA).

Like in any process, communication is critical. If an employee does not provide the information in a timely manner, it is up to the University's discretion how to handle the situation, but we often inform the employee in writing that the information was not received, and that the University is unable to proceed with the accommodation process until the information is received and reviewed.

HR and OEO provide 14 days for requestors to submit medical documentation. The OEO also reminds requestors a week in advance about the approaching deadline. That said, it is important to note that HR and OEO are always willing to grant reasonable extensions so long as the requestor is communicating with us. Alternatively, requestors can always submit medical documentation with their accommodation request if they happen to have it; this speeds the interactive process up considerably.

If the deadline is not met (even after a reminder), HR issues a notice to the requestor that explains that sufficient medical information/completed paperwork was not received and, therefore, their case is being closed. HR explains to the requestor that they can always re-initiate the process at any time.

4b. Some employees have also faced situations where a mistake made on a form by a provider has required that the employee withdraw their accommodations request. Is it possible to build in more flexibility and forgiveness in such issues, so that corrections can be made without requiring starting over?

The University does not require requestors to withdraw from the process if a mistake was made on the form. This goes back to the interactive process. Requestors can amend their request at any point during the process. Sometimes HR and OEO receive medical documentation that conflicts with what the employee has requested or conflicts with what the department can reasonably provide. Again, the University does not require employees to withdraw and re-initiate the process though. It just might take some additional communications with the requestor/doctor/supervisor to continue processing the request and providing a reasonable, effective accommodation.

Question 5: Privacy and Transparency

5a. Who sees the paperwork?

Only the ADA Specialist. Once the ADA Specialist reviews the medical documentation, they share the least amount of information necessary with the supervisor or leadership to help them understand the barrier that needs to be removed, so accommodations can be decided upon.

5b. What information about an employee's formal accommodations travel with the employee if they move within the university? That is, what information is communicated about the employee from HR to a new employing unit/supervisors?

From the accommodation process under the ADA, none. The accommodation granted is specific to the employee's current position. If they need accommodations in a new position, they need to notify UHRM to conduct an individualized accommodation assessment for the new role. This is because what may be reasonable for one department or position may not be reasonable for another.

Question 6: Flexibility

Once formal accommodations are secured, how flexible are they? How might they best be revisited and revised as needed?

As mentioned previously, the process is ongoing and interactive. If needs change for the employee or for the department, all they need to do is inform UHRM so we may re-evaluate.

Question 7: Lawyers

Some employees have had accommodations denied and have only subsequently received accommodations after hiring lawyers who advocate for their accommodations. Would you say this is common amongst employees applying for accommodations? Is hiring a lawyer encouraged?

This is not something the OEO or HR has seen or heard about. Retaining a consultant or hiring a lawyer to request reasonable accommodations under the ADA is not needed but people are free to do so if that is their preference. The University's ADA Accommodations Specialists have training and expertise to manage these issues effectively. They also know how best to navigate the process and connect with the necessary resources when appropriate.

Question 8: Campus Inaccessibility

Some of our members have noted that, even in cases where employees receive accommodations within their workspace, they may encounter inaccessibility throughout campus, for instance, having to travel too far across campus, or not being able to open doors to classrooms, meeting spaces, or restrooms. Their accessibility experience is dictated by where they have to travel, meet, or teach. Can employees with accommodations make accessibility requests for spaces they frequently or occasionally have to go?

Yes, employees can request any kind of reasonable accommodation through the University's centralized accommodation request process.

The request would be treated the same as it would be for a student who may need a classroom relocated. The Center for Disability and Access (CDA) often reassigns courses to another room or building if a student with a disability has impacts related to their ability to physically transport themselves with enough time during classes, or if the building or room the course is located in is physically inaccessible to them. The same types of accommodations might also be available to faculty, assuming they can be reasonably provided.

In addition, all students, staff, faculty, and visitors are encouraged to use the University's "report a barrier" link to notify the OEO of accessibility barriers so that we can help resolve those barriers. For more information about this feature, go to <https://accessibility.utah.edu/report-barrier.php>.

Question 9: Guidance

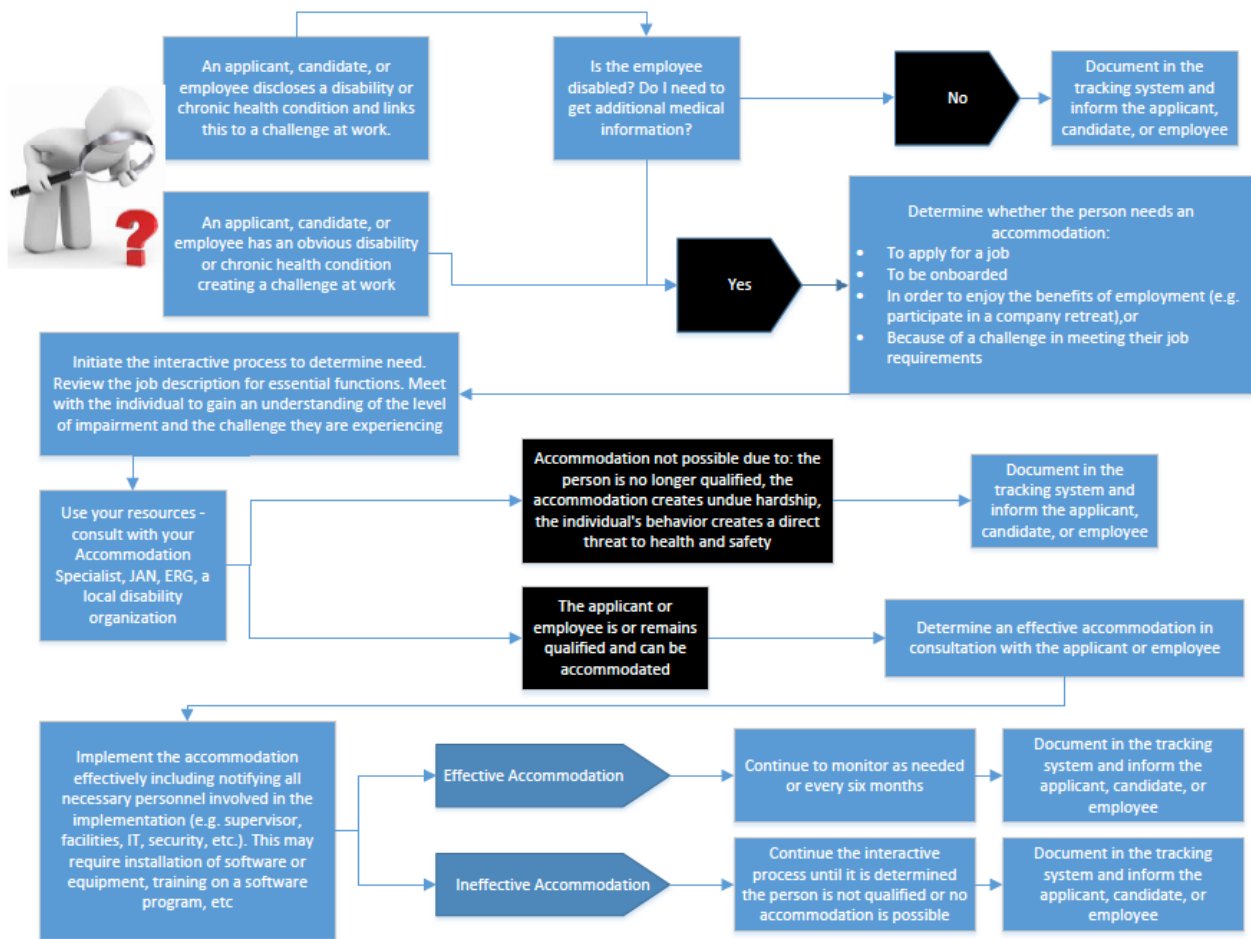
9a. Several members have noted it would be helpful to have a kind of guidebook that lays out common informal and formal accommodations and explains the process that will unfold after accommodations are requested, with the various possible outcomes. Is this a guidebook that might be created or contributed to by OEO and/or HR? (Our members have noted the value of askjan.org as a resource.)

The UHRM accommodation website has been recently updated precisely to provide this kind of guidance to staff and faculty. It explains the accommodation process, answers frequently asked information, and includes an FAQ section. For more information, please go to: <https://www.hr.utah.edu/accommodations/qanda.php>.

As previously mentioned, the OEO/AA also has some FAQs on its website that may be helpful: <https://o eo.utah.edu/how-can-we-help/disability-access.php>.

We agree that AskJAN is a great resource! JAN's Searchable Online Accommodation Resource (SOAR) system is designed to let users explore various accommodation options for people with disabilities in work and educational settings. These accommodation ideas are not all inclusive. If you do not find answers to your questions, you can also contact JAN directly. Their staff of experienced consultants are available to discuss specific accommodation needs in a confidential manner.

AskJAN has a helpful flowchart that outlines the general steps involved in the ADA's interactive process: <https://askjan.org/topics/upload/Flowchart.pdf>.



Employees can always contact the OEO/AA for support and advice as well.

9b. What do you think of the possibility of having employee advocates who help guide employees through the accommodations process, perhaps housed in an office such as Office for Faculty, Office of the Ombuds, etc.?

If this approach was implemented, it would be critical for the advocate(s) to have the training, expertise, and familiarity with state law, federal law, and University policy as they relate to reasonable accommodations and the ADA's interactive process. Again, staff from HR and the OEO are skilled in this area and are available to support faculty and staff in this way.