
Chapter: Personnel

Modification No. 002

Subject: **Employment of Individuals with Disabilities**

- I. Montgomery College is committed to diversity and nondiscrimination and supports employment opportunities for qualified individuals with disabilities in accordance with the College's Affirmative Action Plan for Veterans and Individuals with Disabilities, Board policy on Equal Employment Opportunity and Non-Discrimination, and state laws and federal laws and regulations, including the Americans with Disabilities Act of 1990 as amended.
- II. The College will not discriminate against a qualified individual because of a disability with regard to application, hiring, advancement, discharge, compensation, training, or other terms, conditions, and privileges of employment. Benefits provided to qualified individuals with a disability are no different than the benefits provided to other employees. Likewise, this policy does not prohibit the College from holding employees with disabilities to the same standards of conduct and performance as other similarly situated employees without disabilities.
- III. The College, in accordance with applicable law, will provide, upon request, reasonable accommodations for the application process, employment, and continued employment, or reassignment of qualified individuals with disabilities, unless such accommodations would impose undue hardship on the College.
- IV. Education is a key element of this policy. The College will provide education and information, as appropriate, for employees to enhance understanding and increase awareness of the College's Employment of Individuals with Disabilities Policy. Any mandatory education requirements will be announced and posted on the College's website. The President is authorized to provide institutional leadership and guidance for developing education programs to promote awareness. Some goals to be achieved through education are: (a) ensuring that all individuals are aware of their rights; (b) notifying individuals of conduct that is proscribed; (c) informing employees and contractors about the proper way to recognize and address complaints involving a violation of this policy; (d) preventing issues that this Policy addresses; and (e) identifying the necessary steps for preventing its recurrence and addressing its effects.
- V. The President is authorized to establish procedures for processing requests for accommodations from qualified applicants and employees with disabilities in compliance with the applicable provisions of the Americans with Disabilities Act (ADA) as amended, as well as other procedures necessary to implement this policy.

Board Approval: September 24, 2001; February 25, 2013.

Chapter: Personnel

Modification No. 003

Subject: **Employment of Individuals with Disabilities**

I. Purpose and Scope

- A. To reaffirm policies of the College Board of Trustees regarding non-discrimination with respect to individuals with disabilities who are applicants or employees (faculty, staff, or students) of the College and to underscore the College's commitment to equal employment opportunity.
- B. To provide a procedure for processing requests for accommodations from applicants and employees with disabilities in compliance with the applicable provisions of Title I of the Americans with Disabilities Act (ADA).

VI. Responsibilities

A. Employees/Applicants

Employees/Applicants are responsible for initiating requests for disability-related accommodations by contacting their supervisor or the Deputy Chief Human Resources Officer (or designee) in the Office of Human Resources, either orally or in writing. Employees are responsible for confirming their request in writing by completing the "MC Request for an ADA Accommodation/Modification" form and providing necessary medical documentation.

B. Supervisors

Supervisors are responsible for promptly notifying the Deputy Chief Human Resources Officer of an employee accommodation request brought to their attention. Supervisors are also responsible for assisting the Deputy Chief Human Resources Officer throughout the process and for implementing approved reasonable accommodations.

C. Office of Human Resources

The Office of Human Resources is responsible for collegewide coordination and administration of this policy and these procedures. The Chief Human Resources Officer has delegated these responsibilities to the Deputy Chief Human Resources Officer.

III. Definitions

Americans With Disabilities Act of 1990 (ADA). Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other items, conditions, and privileges of employment.

Disability. The ADA has a three-part definition of disability. Under this definition, a person with a disability is a person who: (a) has a physical or mental impairment that

substantially limits one or more major life activities; (b) has a record of such impairment; or (c) is regarded as having such an impairment.

Substantial Limitation. Unable to perform a major life activity that the average person in the general population can perform, or significantly limited as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the average person in the general population. Temporary, non-chronic impairments (e.g. a broken limb) are generally not considered “substantially limiting”.

Major Life Activity. A function that the average person can perform with little or no difficulty, such as walking, seeing, hearing, breathing, learning, performing manual tasks, caring for oneself, and working.

Qualified Individual With a Disability. This phrase refers to an individual who satisfies the requisite skill, experience, education, or other job related requirements of an employment position that s/he holds or seeks, and who can perform the essential functions of the position with or without reasonable accommodations.

Essential Functions. This term means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include marginal or incidental job functions.

Direct Threat. The ADA permits an employer to require that an individual not pose a direct threat to the health and safety of the individual or others in the work place. A direct threat means a significant risk of substantial harm that cannot be eliminated or reduced to an acceptable level by a reasonable accommodation.

Reasonable Accommodation. This term means any modification or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include: acquiring or modifying equipment or devices; job restructuring; part-time or modified work schedules; reassignment to a vacant position; adjusting or modifying examinations, training materials or policies; providing readers and interpreters; and making the work place readily accessible to and usable by people with disabilities. Standards of conduct and performance are not lowered as an accommodation. The College makes the determination as to what constitutes a “reasonable accommodation.”

Undue Hardship. It is not necessary to provide a reasonable accommodation if doing so would cause an undue hardship to the College. This term refers to an accommodation that would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the College.

IV. Employment Guidelines for Applicants

- A. Applicants should notify the Office of Human Resources of the need for reasonable accommodations in the application and interview process two weeks prior to the interview date.
- B. Applicants will be provided reasonable accommodations to participate in the application and interview process, as determined by the Deputy Chief Human Resources Officer.

- C. Applicants may not be asked if s/he is disabled or about the nature or severity of the disability, nor may applicants be required to take a medical examination before making a job offer.
 - D. All applicants may be asked about ability to perform essential job functions, as long as the questions are not phrased in terms of a disability. All applicants may also be asked to describe or to demonstrate how, with or without a reasonable accommodation, he/she would perform essential job functions as identified in the Job Information Questionnaire (JIQ) and the job vacancy announcement.
 - E. After a job offer is made and prior to the commencement of employment duties, an applicant may be required by the Director of Personnel Management (or designee) to take a medical examination if everyone who will be working in the job category must also take the examination.
 - F. Once an applicant has been hired, the employee will not be required to take a medical examination or asked questions about disability unless the Deputy Chief Human Resources Officer (or designee) deems these requirements to be job related and necessary to the conduct of the College's business.
- V. Requests for an Accommodation by an Employee
- A. Many disabled employees do not require any accommodations. However, when a reasonable accommodation is needed for employees with disabilities in accordance with the Americans with Disabilities Act (ADA) and other applicable state and federal laws, the procedures set forth below shall be followed.
 - B. The College's obligation to provide reasonable accommodation applies only to known physical or mental limitations. The employee remains responsible for requesting, either orally or in writing, a reasonable accommodation from his/her supervisor or the Deputy Chief Human Resources Officer (or designee). To enable the College to keep accurate records regarding requests for accommodations, an individual requesting the accommodation must complete the "MC Request for an ADA Accommodation/Modification" form.
- VI. Medical Documentation
- At any time during the accommodation request process, the Chief Human Resources Officer (or designee) may ask the employee for medical documentation of his/her disability and of the need for the accommodation requested. If the documentation provided by the individual is not sufficient to make a determination of the appropriate reasonable accommodation, the Chief Human Resources Officer may require the individual, at the College's expense, to go to a health care provider of the College's choice in order to adequately document the need and identify appropriate accommodations. Any medical examination required under these circumstances will be limited to determining the existence of a disability and the functional limitations that require accommodation.
- VII. The Interactive Process
- The appropriate accommodation is identified through an interactive process involving the employee, the employee's supervisor, and the Deputy Chief Human Resources Officer (or designee). Following receipt of an "MC Request for an ADA

Accommodation/Modification” form, the employee’s supervisor, the Deputy Chief Human Resources Officer (or designee), or both, will meet with the individual to acknowledge the request and explain the processing of the request. The process should also include discussion with the individual as to how his or her alleged disability limits the performance of essential job functions. In addition to discussing the specific recommendations requested by the individual, the supervisor and the Deputy Chief Human Resources Officer should also discuss other possible accommodations with the individual and assess the effectiveness each accommodation would have in enabling the individual to perform the essential functions of the position. Throughout the process, the Deputy Chief Human Resources Officer may consult and request the resources of other College offices, including the Office of Equity and Diversity, the Director of Disability Support Services, the Facilities Office (with respect to facilities accommodations), and outside agencies (i.e. the Job Accommodation Network and the Department of Rehabilitative Services).

VIII. Analyzing and Deciding Requests for Accommodations

- A. Requests for accommodations must be decided on a case-by-case basis because the nature and extent of a disabling condition and requirements of the job will vary. The principal test in selecting a particular type of accommodation is that of effectiveness, i.e. whether the accommodation will enable the person with a disability to perform the essential functions of the job. It need not be the best accommodation or the accommodation the individual with a disability would prefer, although consideration should be given to the preference of the individual involved.
- B. Where the disability, the need for accommodation, and the type of accommodation which should be provided is clear, and the accommodation would involve no, or insignificant, expense, the supervisor may agree to and implement the accommodation. Supervisors who agree to and implement an accommodation in such a manner must promptly notify the Director of Personnel Management (or designee) in writing of his/her action with respect to the requested accommodation.
- C. If the supervisor has questions about or is reluctant to provide the requested accommodation, he/she should refer the request to the Director of Personnel Management for additional review. Supervisors may not deny a requested accommodation without further review by the Director of Personnel Management (or designee).
- D. After discussing the request with the employee and the employee’s supervisor through the interactive process set forth above, the Director of Personnel Management shall determine:
 - 1. If the individual with a disability is protected by the ADA, including, but not limited to whether the impairment substantially limits a major life activity. In determining whether an impairment is substantially limiting, the Director of Personnel Management shall consider: (a) the nature and severity of the impairment; (b) the duration or expected duration of the impairment; and (c) the permanent or long-term impact or expected impact from the impairment.
 - 2. If the individual is a qualified individual with a disability by determining if he or she can, with or without a reasonable accommodation, perform the

essential functions of the job, a partial list of factors is essential: (a) the supervisor's judgment on which functions are essential; (b) written job descriptions prepared for the job; (c) the amount of time spent performing the function; (d) the consequences of not requiring the incumbent to perform the function; (e) work experiences of past incumbents in the job; and (f) current work experience of incumbents in similar jobs.

3. If the individual would pose a direct threat to his/her own health and safety or to the health or safety of others, the main factors to consider are: (a) the duration of the risk; (b) the nature and severity of the potential harm; (c) the likelihood that the potential harm would occur; and (d) the imminence of the potential harm.
4. Whether the requested accommodation would be effective to enable the employee to perform the essential functions of the job. As indicated above, the accommodation preferred by the individual should be considered, but the ultimate decision as to what type of accommodation will be provided, if any, is made by the College.
5. Whether the requested accommodation would result in an undue hardship for the College. Among the factors to be considered in determining whether an accommodation constitutes an undue hardship are: (a) the cost of the accommodation; (b) the overall nature of the operation of the department or units involved in providing the accommodation, such as financial resources, the number of people employed and the effect on expenses and resources; and (c) the impact of the accommodation on the operation of the departments or units, including its impact on other employees' ability to perform their duties and the department's ability to conduct business.

IX. Notification of Determination

- A. If the Deputy Chief Human Resources Officer determines that no accommodation will be provided, h/she will inform the employee and the supervisor of the decision, in writing, within 15 working days of receipt of the "MC Request for an ADA Accommodation/Modification" form, giving the reasons for reaching this conclusion.
- B. If the Deputy Chief Human Resources Officer determines that a reasonable accommodation is appropriate, he/she will notify the employee and the supervisor, in writing, within 15 working days of receiving a "MC Request for an ADA Accommodation/Modification" form, of the nature of the accommodation to be made and any follow-up actions to be taken. The employee will also be informed that acceptance of the accommodation is voluntary. The Deputy Chief Human Resources Officer will also identify funds or other resources necessary to provide the accommodation.
- C. The supervisor is responsible for implementing the accommodation determined by the Director of Personnel Management.

X. Confidentiality

All medical documentation and the "MC Request for Reasonable

Accommodation/Modification” form will be maintained in a separate file (not the official personnel file) in the Office of Human Resources and shall be treated as confidential, except as necessary to administer the reasonable accommodation process. Accordingly, such documentation and information should only be shared with individuals involved in the reasonable accommodation process.

XI. Appeal

If an employee does not agree with the determination and/or the accommodation proposed by the Director of Personnel Management, h/she may file a complaint with the Office of Equity and Diversity in accordance with the College policy and procedures regarding “Equal Employment Opportunity and Non-Discrimination.”

Administrative Approval: September 24, 2001; August 17, 2010; September 3, 2010.