

REASONABLE ACCOMMODATION (DISABILITIES)

A. Nondiscrimination

The Contra Costa Community College District (the District) prohibits all discrimination against applicants and employees based upon disability and retaliation for engaging in protected activity, and such conduct will not be tolerated.

It is the District's policy is to fully comply with the reasonable accommodation requirements of the Fair Employment and Housing act (FEHA), the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, the Uniform Services Employment & Reemployment Act (USERRA), the federal Genetic Information Non Discrimination Act (GINA), the California Genetic Information Non-Discrimination Act (CalGINA), the California Pregnancy Disability Leave Act (PDLA), and the California Education Code.

In compliance with state and federal law, the District provides reasonable accommodations in the following circumstances:

1. When an applicant with a protected disability, including temporary disabilities caused by pregnancy, childbirth, and related medical conditions, needs an accommodation in order to be considered for a job;
2. When an employee with a protected disability, including temporary disabilities caused by pregnancy, childbirth, and related medical conditions, needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace; and
3. When an employee with a protected disability needs an accommodation to enjoy equal benefits and privileges of employment.

B. Office of Human Resources

The District's Office of Human Resources shall be responsible for handling all requests for reasonable accommodation of protected disabilities. The Associate Vice Chancellor/Chief Human Resources Officer or designee shall be ultimately responsible for ensuring compliance with the laws and this policy.

If an administrative, managerial, or supervisory employee receives a request for reasonable accommodation directly from an employee or applicant, the administrator, manager, and/or supervisor should refer the employee to and also directly report the request to the Office of Human Resources.

Complaints of employment discrimination, including discrimination based on disability, shall be filed with the Human Resources Office as provided in Human Resources Procedure 1040.07.

C. Coverage and Definitions

A qualified individual with a protected disability or medical condition who is an applicant for employment or an employee is entitled to reasonable accommodation unless it would create an undue hardship.

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The definitions are as set forth under the applicable law as of the date of approval of this policy and are set forth here only for reference and if they have been legally changed, the District will follow the current laws and regulations. Where state and federal laws differ in their rights and requirements, the law which is most protective of employee rights applies.

1. A “qualified individual” is someone who:
 - satisfies the required skill, experience, education and other job-related requirements of the position being applied for or the position he/she currently occupies or another position within the District to which the employee may be re-assigned; and
 - can perform the essential functions of the position, with or without reasonable accommodation.
2. A “disability” is a physical or mental condition that limits a major life activity. A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult. Whether a condition limits a major life activity is determined without regard to mitigating measures, such as medication and assistive devices.

FEHA deems the following conditions to be disabilities: deafness, blindness, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, cerebral palsy, HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis, heart and circulatory disease, intellectual or cognitive disability (formerly referred to as “mental retardation”), organic brain syndrome, or specific learning disabilities, autism spectrum disorders, schizophrenia, clinical depression, and bipolar disorder, post-traumatic stress disorder, and obsessive compulsive disorder. If an applicant or employee has one of these conditions he/she is presumed to have a protected disability and does not need to demonstrate how the condition limits a major life function.

3. A “medical condition” is any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer, or a genetic characteristic.
4. “Disabled due to pregnancy” means an employee who is physically or mentally impaired due to pregnancy, childbirth, or related medical conditions.
5. “Essential job functions” means the fundamental job duties of the employment position the applicant or employee with a disability desires or holds. A job function may be considered essential for any of several reasons, including, but not limited to, the following:
 - a. Because the reason the position exists is to perform that function.
 - b. Because of the limited number of employees available among whom the performance of that job function can be distributed.
 - c. Because the function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.
6. “Reasonable accommodations” are modifications or adjustments that are:

- a. Effective in enabling an applicant with a disability to have an equal opportunity to be considered for a desired job, or
 - b. Effective in enabling an employee with a disability to perform the essential functions of the job the employee holds or desires, or
 - c. Effective in enabling an employee with a disability to enjoy equivalent benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.
7. "Undue hardship" means, with respect to the provision of an accommodation, an action requiring significant difficulty or expense incurred by an employer.

D. Interactive Process

In order to determine whether and how an applicant or employee can be reasonably accommodated, including reasonable accommodation of restrictions imposed by pregnancy or childbirth, the District and applicant or employee shall engage in a good faith, interactive process to exchange information and reach a decision.

Notice/Initiation of Interactive Process

The District shall initiate an interactive process when:

- An applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodations by asking his/her immediate supervisor, other supervisory employee to whom he/she reports, or the Office of Human Resources;
- The District becomes aware of the need for an accommodation through a third party or by observation;
- An employee submits a medical note specifying work-related restrictions; or
- The District becomes aware of the possible need for an accommodation because the employee with a disability has exhausted available leaves, including but not limited to worker's compensation leave, and yet the employee or the employee's health care provider indicates that further accommodation is still necessary for recuperative leave or other accommodation for the employee to perform the essential functions of the job.

The interactive process is an ongoing obligation to meet and discuss the effectiveness of proposed accommodations and whether such accommodations are still reasonable in light of changed circumstances. Those could include changes to the employee's condition, work restrictions, position, physical and mental work environment, and legal requirements relating to the District's operations. They could also request to reconvene where an accommodation was agreed to on a trial basis and it is not effective.

The District, applicant, or employee may ask to reconvene the interactive process. The applicant or employee shall be responsible for promptly notifying the Office of Human Resources if an accommodation is not effective or the employee's medical condition and work restrictions have changed. The District may

also initiate reconvening the interactive process where it sees the accommodations as no longer being effective.

The District shall not require an employee returning from a medical leave to have a "100% healed" or "no restrictions" medical release.

The interactive process shall be required even where there is no available reasonable accommodation.

Interactive Process Meeting

The District and applicant or employee shall engage in a good faith, interactive process. The format of the process may vary based on the circumstances. It can be a formal, in-person meeting, a video or telephone meeting, an exchange of information through other means of communication, or whatever format the District and applicant or employee agree upon that serves their needs. It must allow for the District and applicant or employee to share information, ask questions where necessary, and explain why something is or is not a reasonable accommodation.

- The Associate Vice Chancellor/Chief Human Resources Officer or designee, location management representative and applicant or employee shall participate in the meeting even if they have representatives, except in extraordinary circumstances. The employee may have a representative or support person at the meeting. Others who might participate or be available as resources, include the employee's supervisor or supervisor of the position for which the applicant is applying, risk management personnel, other District safety personnel, and any other person who has relevant information about the position, the requested or accommodations, or the applicant's or employee's condition.
- The District and applicant or employee may use a facilitator in the meetings and process where they believe that a facilitator can assist them in the process.
- The District and applicant or employee shall provide necessary and relevant information, including medical information.
- The District and applicant or employee shall commence the interactive process in a timely manner after the applicant or employee makes his or her request. In order to expedite the process, the District and applicant or employee may request or exchange information before an actual meeting has occurred.
- During the interactive process, the District and applicant or employee will analyze the particular job involved, including the essential functions, physical demands, qualifications standards, object manipulation, mental and psychological demands, communications, sensory demands, environmental conditions, operational conditions, and work setting.
- The District and employee will discuss and analyze the employee's job functions to establish the essential and non-essential job tasks and identify barriers to job performance by consulting with the employee to learn about the exact limitations and what types of accommodations would be most effective. This includes a discussion of the accommodations proposed by the employee/physician, as well as other possible accommodations, along with their associated costs and burdens. At the end of this process

the District will make a determination whether the accommodation requested by the applicant or employee, or an alternative accommodation, is reasonable.

- Where the request is from a job applicant, the District and applicant shall review the application and hiring process to determine where the hiring process is affected by the applicant's restrictions and whether those restrictions can be reasonably accommodated in a way that does not constitute an undue hardship.
- The District, applicant, or employee may be responsible for obtaining information from third parties as part of the process. Where there is a delay, the person responsible for obtaining that information shall communicate, as soon as practical, in writing to the others the delay and the anticipated new date the information will be available.
- While the District and applicant or employee will make a good faith effort to reach agreement on a reasonable accommodation during the meeting, it is not required. Where no agreement is reached, the District and the applicant or employee shall agree on a reasonable timeline for making that determination. The District shall include that timeline in the writing confirming what transpired at the meeting.
- Each interactive process meeting shall be summarized in writing, which shall include identification of the participants, all matters discussed and information exchanged, any agreements on reasonable accommodations, future steps, and any future meetings. This summary shall be given to the Associate Vice Chancellor/Chief Human Resources Officer, applicant or employee, and employee representative, if any, and shall be stored as confidential medical information.
- The parties shall agree on forms of communication will be used, such as District electronic mail (e-mail), text message, U.S. Mail, overnight mail, and personal delivery.
- When an employee's restrictions or condition is permanent or continues beyond one academic year, the District and employee shall meet at least once each year, preferably prior to the commencement of Fall Term to ensure that the reasonable accommodation remains effective for all concerned and changes are not necessary.

Medical Information

Where the applicant's or employee's disability and/or need for reasonable accommodation are not obvious, the District may require an applicant or employee to obtain and provide reasonable medical documentation from a health care provider that sets forth the following information:

- The name and credentials of the health care provider, which establish that the individual falls within the definition of "health care provider" under state and federal law and regulations.
- That the employee or applicant has a physical or mental condition that limits a major life activity or a protected medical condition, and a description of why the employee or applicant needs a reasonable accommodation to have an equal opportunity: to participate in the application process and to be considered for the job, or to perform the employee's job duties, or to enjoy equal benefits and privileges of employment compared to non-disabled employees. The District ordinarily will not ask about the underlying diagnosis or

medical cause of the disability. The applicant or employee shall bear the expense of providing this medical information.

- If an applicant or employee provides insufficient documentation in response to the District's initial request, the District shall explain why the documentation is insufficient and allow the applicant or employee an opportunity to provide supplemental information in a timely manner from the employee's health care provider. Thereafter, if there is still insufficient documentation, the District may require an employee to go to an appropriate health care provider of the District's choice at District expense.

Documentation is insufficient if it does not specify the existence of a protected disability and explain the need for reasonable accommodation. Where relevant, such an explanation should include a description of the applicant's or employee's functional limitation(s) to perform the essential job functions.

Documentation also might be insufficient where the health care provider does not have the expertise to confirm the applicant's or employee's disability or need for reasonable accommodation, or other objective factors indicate that the information provided is not credible or is fraudulent.

- If an applicant or employee provides insufficient documentation, as described above, an employer or other covered entity still must provide reasonable accommodation but only to the extent the reasonable accommodation is supported by the medical documentation provided to date. If the medical documentation provided to date does not support any reasonable accommodation, no reasonable accommodation need be required. If supplemental medical documentation supports a further or additional reasonable accommodation, then such further or additional reasonable accommodation shall be provided.
- Pregnancy-Related Disability: Where the disability is caused by pregnancy, childbirth, or related medical conditions, the District may not require the applicant or employee to see a District-selected physician. In such cases, the District must accept the applicant's or employee's physician's notes but may ask for additional information or clarification.
- Worker's Compensation Illnesses or Injuries: The District is obligated to reasonably accommodate all known protected disabilities, including those that are work-related and subject to worker's compensation. The Risk Management Office shall promptly notify the Office of Human Resources of requests for leave or modified work related to a worker's compensation claim so that Human Resources may take over any obligation to reasonably accommodate, while keeping Risk Management involved in the process.
- The Associate Vice Chancellor/Chief Human Resources Officer or designee shall follow each interactive process meeting with a written summary of any decisions made and future actions. In order to facilitate such a summary, the District may use a dedicated note-taker at the meetings.

Except for verification of use of leave, requests for medical information should come from the Office of Human Resources or where it relates to a worker's compensation claim, the Risk Management Office. Supervisors may request verification of illness leave as provided by law and contract.

Confidentiality of Medical Information

All records relating to requests for reasonable accommodation shall be kept in a separate, locked cabinet with other medical records. Electronic records shall also be protected and access limited. Access shall be controlled and medical information shall only in limited circumstances with supervisors, managers, first aid and safety personnel, and government officials investigating compliance with law.

E. Reasonable Accommodation

The District has an affirmative duty to make reasonable accommodation(s) for the known disability of any individual applicant or employee unless the District can demonstrate, after engaging in the interactive process, that the accommodation would impose an undue hardship.

"Reasonable accommodations" are modifications or adjustments that allow an applicant or employee with a protected disability equal opportunity to be considered for a job, to perform the essential functions of a job, or to enjoy equivalent privileges and benefits of employment.

Initiation of a Request for Reasonable Accommodation:

A request for reasonable accommodation may be initiated by an applicant, employee, or the District. Requests for reasonable accommodation must be made to the employee's supervisor or the Office of Human Resources.

Applicants and employees with protected disabilities need not formally request a reasonable accommodation by using those terms or making the initial request in writing. It is sufficient if they let their supervisor or the Office of Human Resources know that they need an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the laws or this policy or use the phrase "reasonable accommodation."

The District may initiate the process where it has observed performance or other issues and is aware that the employee has a disability. It may also initiate the process where the disability is obvious, such as an employee whose uses a wheelchair, and it believes there may be barriers to the employee performing the essential functions of his or her position.

Examples of Reasonable Accommodation. Reasonable accommodation may include, but are not limited to, such measures as:

- Making existing facilities used by applicants and employees readily accessible to and usable by individuals with disabilities. This may include, but is not limited to, providing accessible break rooms, restrooms, training rooms, or reserved parking places; acquiring or modifying furniture, equipment or devices; or making other similar adjustments in the work environment;
- Allowing applicants or employees to bring assistive animals to the work site;
- Transferring an employee to a more accessible worksite;

- Providing assistive aids and services such as qualified readers or interpreters to an applicant or employee;
- Job Restructuring. This may include, but is not limited to, reallocation or redistribution of non-essential job functions in a job with multiple responsibilities;
- Providing a part-time or modified work schedule;
- Permitting an alteration of when and/or how an essential function is performed;
- Providing an adjustment or modification of examinations, training materials or policies;
- Modifying an employer policy;
- Modifying supervisory methods (e.g., dividing complex tasks into smaller parts);
- Providing additional training;
- Permitting an employee to work from home;
- Granting a paid or unpaid leave for treatment and recovery (provided that the leave is likely to be effective in allowing the employee to return to work at the end of the leave, with or without further reasonable accommodation, and does not create an undue hardship for the District; indefinite leave of absence is not a reasonable accommodation);
- Providing a reassignment to a vacant position if the employee cannot be reasonably accommodated in his/her current position, consistent with law; and
- Other similar accommodations.

The District is required to consider any and all reasonable accommodations of which it is aware or that are brought to its attention by the applicant or employee, except ones that create an undue hardship. The District shall consider the preference of the applicant or employee to be accommodated, but has the right to select and implement an accommodation that is effective for both the employee and the District.

F. Reasons for Denying an Employee's Requested Accommodation

Reasons for which an employee's request for accommodation may be denied after engaging in the interactive process include, but are not limited to:

- The requested accommodation would create an undue hardship;
- Direct Threat to Health and Safety. Where there is no reasonable accommodation that would allow the applicant or employee to perform the essential functions of the position in question in a manner that would not pose a direct threat to his or her health or safety or the health and safety of others because the job imposes an imminent and substantial degree of risk to the applicant, employee, or others;

- Bona Fide Occupational Qualification (BFOQ). Where a practice on its face excludes an entire group of individuals on a basis of disability, the District must be able to explain how the practice is justified because all or substantially all of the excluded individuals are unable to safely and efficiently perform the job in question and because the essence of the business operation would otherwise be undermined.
- Business Necessity. If there exists an overriding legitimate business purpose for a job requirement such that the job requirement necessary to the safe and efficient operations, and the job requirement in question is effective for its purpose. However, there should be consideration as part of the interactive process as to whether there exists an alternative practice that would accomplish the business purpose equally well with a lesser impact on an employee or applicant with a disability. In such cases, the alternative practices should be considered as a reasonable accommodation.

G. Reasonable Accommodation Procedures – Applicants for Employment

Applicants for employment with protected disabilities may request reasonable accommodation in the hiring process.

1. Applicants seeking reasonable accommodation should address their requests to the Associate Vice Chancellor/Chief Human Resources Officer or designee. Requests should be made as far in advance of the need as possible so that arrangements can be made. Applicants should complete the Reasonable Accommodation Request form.
2. The District may require medical verification of the protected disability and/or restrictions necessitating the reasonable accommodation where the disability and/or restrictions are not obvious. The verification shall be limited to this narrow purpose and the applicant shall not be required to reveal the specific medical condition. The applicant shall be given a Disability Certification Form for their physician to complete.
3. If information provided by the applicant needs clarification, then the District shall identify the issues that need clarification, specify what further information is needed, and allow the applicant or employee a reasonable time to produce the supplemental information.
4. The Associate Vice Chancellor/Chief Human Resources Officer or designee shall engage in the interactive process with the applicant and representatives. Because of the short timelines that may be involved, the interactive process may occur without an in-person meeting if the parties are able to exchange information and otherwise reach agreement on an effective reasonable accommodation.
5. During the interactive process the parties will determine whether the applicant has a protected disability, which parts of the hiring process pose a barrier to the applicant due to the disability, and whether the applicant's restrictions can be reasonably accommodated without posing an undue hardship. The parties will then review possible reasonable accommodations to determine whether they allow the applicant to compete equally but still provide the District sufficient information to determine whether the applicant can perform the essential functions of the position when it makes the hiring decision.⁵
6. When needed to assess a requested accommodation or to advance the interactive process, the District may consult experts.

7. In consultation with the applicant, the District shall identify potential accommodations and assess the effectiveness each would have in enabling the applicant to have an equal opportunity to participate in the application process and to be considered for the job.
8. The District shall consider the preference of the applicant, but has the right to implement an accommodation that is effective in allowing the applicant to have an equal opportunity to participate in the application process and to be considered for the job.
9. The Associate Vice Chancellor/Chief Human Resources Officer or designee shall confirm any decision in writing.

The District must provide a reasonable accommodation to a qualified applicant with a disability that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a job (unless the District can show undue hardship). Thus, individuals with disabilities who meet initial requirements to be considered for a job should not be excluded from the application process because the District speculates, based on a request for reasonable accommodation for the application process, that it will be unable to provide the individual with reasonable accommodation to perform the job if hired.

As a general rule, the District may not, as part of the hiring process, ask questions about a disability. However, where the disability is obvious, or the applicant voluntarily disclosed information, the District may ask whether they need. The District may also ask the applicant to demonstrate how they would perform specific tasks that are essential functions of the position.

H. Reasonable Accommodation Procedures – Employees

1. Employees seeking reasonable accommodation should address their requests to their immediate supervisor or the Associate Vice Chancellor/Chief Human Resources Officer or designee. Requests should be made as far in advance of the need as possible so that arrangements can be made. Employees should complete the Reasonable Accommodation Request form.
2. Where the initial request is made to the employee's supervisor, that supervisor will direct the employee to the Office of Human Resources and must also contact the Associate Vice Chancellor/Chief Human Resources Officer or designee directly and inform them of the request. In such cases, the Associate Vice Chancellor/Chief Human Resources Officer or designee shall contact the employee directly about initiating the interactive process, if the employee has not already initiated contact.
3. The District may require medical verification of the protected disability and/or restrictions necessitating the reasonable accommodation where the disability and/or restrictions are not obvious. The verification shall be limited to this narrow purpose and the employee shall not be required to reveal the specific medical condition. The applicant shall be given a Disability Certification Form for their physician to complete.
4. The Associate Vice Chancellor/Chief Human Resources Officer or designee shall engage in the interactive process with the applicant to determine whether the employee's restrictions can be reasonably accommodated without causing an undue hardship. All parties shall cooperate to ensure that the process is initiated promptly and is completed in

a reasonable amount of time. All parties should understand that there may be delays while possible accommodations are researched or information is acquired.

5. If information provided by the employee needs clarification, then the District shall identify the issues that need clarification, specify what further information is needed, and allow the employee a reasonable time to produce the supplemental information.
6. When needed to assess a requested accommodation or to advance the interactive process, the District shall analyze the particular job involved and the essential functions of the job.
7. When needed to assess a requested accommodation or to advance the interactive process, the District may consult experts.
8. As part of the interactive process, in consultation with the employee to be accommodated, the District shall identify potential accommodations and assess the effectiveness each would have in enabling the employee to perform the essential function of the position held or desired or to enjoy equivalent benefits and privileges of employment compared to non-disabled employees.
9. The District shall consider the preference of the employee to be accommodated, but has the right to implement an accommodation that is effective in allowing the employee to perform the essential functions of the job.
10. If reassignment to an alternate position is considered as an accommodation, the District may ask the employee to provide information about his/her educational qualifications and work experience that may help the employer find a suitable alternative position for the employee. Reassignment shall only be considered if the employee cannot be reasonably accommodated in his/her current position.
11. Where there is some doubt as to whether a particular reasonable accommodation will be effective for both the employee and the District, the parties may use it for a trial period without it constituting an agreement for a permanent reasonable accommodation. Both parties will act in good faith when testing an accommodation to give it a fair chance of success.
12. If the employee cannot perform the essential functions of his/her position while the parties are engaged in the interactive process, he/she may remain on leave.
13. The Associate Vice Chancellor/Chief Human Resources Officer or designee shall confirm any decision in writing. If an accommodation is approved, the written confirmation ordinarily should include a specific description of the accommodation, a statement whether the accommodation is approved on a temporary or indefinite basis and if temporary the duration, and a statement whether and when the interactive process will reconvene to assess new information or changed circumstances such as for example an update on the employee's restrictions or other changes in the employee's medical status. If a requested accommodation is not approved, the confirmation ordinarily should include an explanation as to why the accommodation was not approved, for example, why the District determined that the requested accommodation was not reasonable under the circumstances, or would pose an undue hardship.

I. Confidentiality of Reasonable Accommodation Process Information

Because it necessarily includes medical information, information about the interactive process or reasonable accommodation for any applicant or employee shall be kept strictly confidential. Documents relating to the process, including medical notes, shall be kept in a separate locked cabinet and shall be shared only as strictly necessary to implement an accommodation. Electronic records shall also be kept confidential and secured.

The District may not disclose that an employee is receiving a reasonable accommodation except to those who have a legitimate business need to know, for example an employee's direct supervisor, because this usually amounts to a disclosure that the individual has a disability. State and federal law specifically prohibit the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.

J. Complaint Concerning Reasonable Accommodation or Disability Discrimination

There is no specific appeal process for an applicant or employee who believes that he/she has been denied reasonable accommodation.

Fair Employment and Housing Act and Americans with Disabilities Act

Applicants and employees may file complaints with the state and federal agencies that administer the disability reasonable accommodation laws.

California Department of Fair Employment and Housing (DFEH)
Enforces the Fair Employment and Housing Act (FEHA)
www.dfeh.ca.gov

Equal Employment Opportunity Commission (EEOC)
Enforces the Americans with Disabilities Act (ADA)
www.eeoc.gov

Title 5 Complaints of Discrimination

An applicant or employee who is dissatisfied with the District's decision may file a Complaint of Unlawful Discrimination with the Associate Vice Chancellor/Chief Human Resources Officer as provided by Board Policy 2002 and Human Resources Procedure 1040.07. Copies of the complaint forms are available at the District Office of Human Resources at 500 Court Street, Martinez, CA 94553.