REASONABLE ACCOMMODATION

Reasonable Job Accommodation

- When an applicant or employee has a disability, the employer must explore all possibilities of reasonable accommodation through the interactive process prior to rejecting the person for a job or making any employment-related decision
- An accommodation is reasonable if it does not impose an undue hardship on the employer’s business

What is Reasonable Accommodation?

- It is any 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 an individual with a disability to perform the essential functions of the position

Reasonable Accommodation May Include

- Making existing facilities accessible or usable
- Job restructuring, exchanging job duties
- Modifying work schedule
- Acquiring or modifying equipment or devices
- Re-assigning to a vacant position
- Re-designing procedures

Reasonable Accommodation does not require:

- Transfer employee to an occupied position
- Create a new position
- Promotion of the employee
- Hiring someone else to do the essential job duties
TRANSITIONAL RETURN TO WORK

What is Transitional Return to Work?

- This is when an employee returns to work with medical restrictions/limitations.
- Up to 90 days in writing
- Beginning and ending date
- Periodic Medical Review
- Periodic Work Performance Review
- This is not a permanent job accommodation
- Modified only for this agreement
- Document Management Decision

When an employee returns to work with Temporary Medical Restrictions you should:

- Discuss the restrictions with employee
- Discuss possible temporary accommodations
- Promote the interactive process
PERMANENT & STATIONARY

A Medical Plateau

What does Permanent & stationary mean?

- Injured/Disabled Worker’s condition is stable and the condition will not get appreciably better or worse
- The injured/disabled worker is released to:
  - Return to work with no restrictions
  - Return to work with restrictions
  - Precluded from returning to Usual & Customary occupation

Permanent Modified/Alternate Work

Under Workers’ Compensation

- Can we accommodate Return To Work with permanent medical restrictions on a permanent basis?
- Within 5 business days discuss with the employee his/her medical restrictions and possible accommodation in an interactive process

Modified Work

- An adequate modification of current position that is within medical restrictions.
- The position will last for 12 months
- At the same rate of pay

Alternate Work

- Employee qualifies for the job
- It is a regular position lasting 12 months
- Pays 85% of salary minimum
- Reasonable commuting distance

If permanent modified work or alternate job can be found, the employee has 30 days to accept and a RU 94 must be filed

It is not a doctor’s decision to decide whether or not your employee works. It is a management decision in conjunction with Human Resources, Vocational Rehabilitation Services and Occupational Health Facilities.
DISABILITY DISCRIMINATION

The following two reasons are not legally acceptable excuses for discrimination:

- There is a possibility of future harm to the employee or to others
- That employing individuals with a disability will cause an employer’s insurance rates to rise
MEDICAL SEPARATION

Injury/Disability precludes the employee from returning to his/her Usual and Customary occupation as stated by his/her treating physician of record.

Ideal Conditions for Medical Separation:
- Permanent and Stationary
- Workers’ Compensation Qualified Injured Worker Status
- Workers’ Compensation Off of Pay Status (26 weeks ESL)
- Reviewed by a Vocational Rehabilitation Counselor
- Workers’ Compensation Employer signs off on “No Modified/Alternate Work”
- Informed of COBRA, Disability Retirement, Trial Employment, Special Selection, Special Re-employment or Special Appointment Procedures
IMPACT OF DECISIONS
Workers’ Compensation

- Decisions made that create or increase the legal liability for the University will result in costs being charged to the department

- Workers’ Compensation Labor Code 132a Disability discrimination (wrongful, unlawful terminations)
  - Employees may be entitled to reinstatement, with full back wages and interest and up to a 50% increase in Workers’ Compensation Benefits to a maximum of $10,000

- Under Fair Employment & Housing Act (FEHA), AB 2222 & AB 1856:
  - FEHA covers disability discrimination and fines up to $150,000, plus back pay, reinstatement, promotions and changes in employment policies or practices, etc.
  - The courts have ruled that WC does not provide a sole remedy in matters of discrimination and for not providing reasonable accommodations.
  - Under AB 1856 individual co-workers who are found guilty of harassment on the basis of disability may be held personally liable, and through a civil lawsuit, unlimited damages may be awarded.

- Anyone who knowingly files or assists in the filing of a false Workers’ Compensation claim may be fined up to $50,000 and sent to prison for up to 5 years