

Creating a Supportive Workplace and Navigating the New Norms in the World of Employee Accommodations

October 10, 2024

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Focus for today

- ADA Refresher
- Pregnant Workers Fairness Act (PWFA)
- EEOC PWFA Regulations Key Provisions
- Personnel Information Manual (PIM) No. 50
- Reasonable Accommodation Process
- Supervisor and Employee Responsibilities
- Scenarios
- Q&A

Americans with Disabilities Act (ADA)

- The Americans with Disabilities Act of 1990 (as amended in 2008 (ADAAA)) prohibits discrimination based on disability and requires employers to provide certain reasonable accommodations so that an employee with a disability can continue to perform the essential functions of their job.
- State and local government employers are covered by the ADA, regardless of size
- UNC Charlotte is a covered employer



Who Has Rights Under the ADA?

- Applies to all qualified applicants or employees who:
 - Have a disability
 - Have a record of having a disability (even if they do not currently have a disability)
 - Are regarded as having a disability
- A “qualified individual” is an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- “Disability” means a physical or mental impairment that substantially limits one or more major life activity or major bodily function. The impairment needs to be a physiological or mental disorder.



Who Has Rights Under the ADA?



Who is a *qualified* individual?

An employee or applicant who has been offered employment who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.



What is an *essential job* function?

Consideration shall be given to the employer's judgment as to what functions of a job are *essential*, and if an employer has prepared a written description before advertising or interviewing applicants for the job, the description shall be considered evidence of the essential functions of the job.



Major life activities

- Caring for oneself
- Performing manual tasks
- Seeing // hearing
- Eating // Sleeping
- Walking // Standing
- Lifting // Bending
- Speaking // Breathing
- Learning // Reading
- Concentrating // Thinking
- Communicating // Working

Major bodily functions

- Functions of the immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Neurological // brain
- Respiratory // circulatory
- Endocrine // reproductive functions



What to know about the Pregnant Workers Fairness Act (PWFA)



PWFA Overview

- Federal law that took effect in June 2023
- Requires employers to provide reasonable accommodations to employees for known conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a known limitation) unless doing so will cause an *undue hardship*
- Requires employers to engage in an interactive process
- Prohibits retaliation, coercion, threats or interference for requesting or using accommodation
- Does not replace federal, state, or local laws that are more protective of applicants and employees

Scope of the PWFA

- Qualified Employee
 - An employee or job applicant who can perform the essential functions of the position, except that an employee or applicant shall be considered qualified when:
 1. Their any inability to perform an essential function is for a *temporary period*;
 2. The essential function could be performed in the near future; and
 3. the inability to perform the essential function can be reasonably accommodated.
- “Known Limitation” definition
 - Applies to physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or their representative has communicated to the employer, whether or not the condition meets the definition of “disability” under the ADA.

Key Provisions of EEOC's Final Rule

- Final regulations take effect June 18, 2024
- The PWFA prohibits an employer from requiring a qualified employee or applicant to accept an accommodation other than one arrived at through the interactive process.
- If an employee rejects a reasonable accommodation that they need in order to be “qualified” under the PWFA (either because they need it to perform an essential function, to apply for the job, or to obtain a temporary suspension of an essential function), then that employee or applicant will not be considered qualified.
- The final rule identifies a limited number of simple modifications (predictable assessments) that will, in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship when requested by a pregnant employee.

Predictable Assessments

- With respect to the following modifications, the individualized assessment should be particularly simple and straightforward:
 - 1) allowing an employee to carry or keep water near and drink, as needed;
 - 2) allowing an employee to take additional restroom breaks, as needed;
 - 3) allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
 - 4) allowing an employee to take breaks to eat and drink, as needed.

Undue Hardship Factors (ADA & PWFA)

- A determination of undue hardship should be based on several factors, including:
 - the nature and cost of the accommodation needed;
 - the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
 - the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
 - the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer; and
 - the impact of the accommodation on the operation of the facility.
- Accommodations that cause undue hardship are too extensive or disruptive or fundamentally change the nature or operation of the business.

PIM Number 50 - Reasonable Accommodation

- The purpose of the policy is to “assist qualified UNC Charlotte employees and/or applicants with disabilities in requesting reasonable accommodations related to position responsibilities. This procedure applies to all qualified applicants and university employees with disabilities and who have a known limitation related to pregnancy, childbirth, or related medical condition.
- This includes SHRA and EHRA employees who are in assignments considered part-time, full-time, probationary, career status, adjunct, or temporary (which includes student employees).”
- Employees and/or applicants are protected from retaliation for requesting an accommodation or disclosing a disability.
- Policy available at: <https://hr.charlotte.edu/pims/reasonable-accommodation>

Scenario #1

- Pam is six months pregnant and works at University City College as an Executive Assistant and Meeting Coordinator in the Office of University Research. Among other things, Pam’s job description includes scheduling meetings with internal and external research partners, attend meetings across campus, and meeting set up and take down. Recently, Pam has started arriving late to work causing her to miss multiple important meetings. Pam’s supervisor Tom decided to issue her a written reprimand for being tardy. The next day, Pam brought in a note from her doctor indicating that she needs to have a flexible work schedule due to her pregnancy and her being more tired than usual.
 - What should Tom do in response to the doctor’s note?
 - Does Pam have a qualifying “disability”?
 - What should happen with the written warning?

Reasonable Accommodation at Work!



Reasonable Accommodations under the ADA and PWFA

- **What is a reasonable accommodation?**
- Any change or adjustment to the job, the work environment or the way work is customarily done which permits a qualified applicant or employee with a disability to perform the essential functions
- **Examples of Accommodations:**
 - Job restructuring
 - Time off (does not require indefinite leave and; not required if it imposes undue hardship on dept)
 - Change in schedule
 - Equipment
 - Adjustment of workplace policy (allow food or water at workstation, allow service animal)
 - Adjusting methods of supervision (communicating assignments in different ways, providing additional training, more guidance)
 - May require allowing working at home
 - Leave of absence (as a last resort)

Requesting a Reasonable Accommodation

- **Put on Notice:** Regardless of the method of notification, the process of assisting an employee in applying for an ADA accommodation should begin immediately upon learning of their disability.
- **Consultation:** Notifying the ADA Consultant is the first step in initiating the accommodation process. Individuals should communicate their needs to the ADA Consultant through a phone call, email, or pre-scheduled in-person meeting.
- **Documentation:** To request a reasonable accommodation, an employee or applicant should complete and submit the university's **Initial ADA Accommodation Packet** to the ADA Consultant in the Human Resources Department.
- **Medical Information:** Depending on the nature of the disability or limitation, the ADA Consultant will ask the requestor for a Job Accommodation Medical Certification Form (JAMCF) to be completed by the medical provider.

Requesting Accommodation

Current Employee or Applicants Offered Job

- Submit an Accommodation Request Form to Employee Relations at ada-hr@charlotte.edu
- The form must identify the functional limitations with respect to your disability or known limitation and specify the requested accommodation(s)
- The existing form may be used for both disability and pregnancy-related reasonable accommodation requests (updated forms are forthcoming)

Accommodation Request Form

UNCC will provide, upon request, reasonable accommodation to qualified employees or applicants for employment with disabilities in accordance with PIM 50.

Employee Information:

Name:		UNC Charlotte ID:	
Job Title/Position:		Work Extension/ Email:	
College/Division:		Department:	
Work Schedule (Days/Hours):		Work Location:	
Supervisor:			

Accommodation Request Information: *(Please attach additional sheets as necessary)*

1. Describe the limitation(s) due to your disability that impacts the performance of your job or accessing university benefits.

2. How does the limitation(s) described above affect your ability to perform essential job functions or access a university benefit?

3: What specific accommodation(s) are you requesting and how will this accommodation assist you? *(Please include alternatives.)*

4. If you are not sure what accommodation is needed, do you have any suggestions on options we can explore? Yes No
If yes, please explain.

5. Is your accommodation request time sensitive? Yes No If, yes, please explain.

6. Have you had any accommodations in the past for this same limitation? Yes No If yes, what were they and how effective were they?

7. Have you discussed your request with your supervisor? Yes No

Please provide any additional information that might be useful in processing your accommodation request:

8. Have you attached any supplemental information to this form? Yes No

Signature	Date

Return this form to your supervisor or the Employee Relations Unit of the Human Resources Department (King 113).

Job Accommodation Medical Certification Form

- Employees or applicants should provide written information from their medical provider explaining:
 - Reason the individual may require the particular accommodation being requested
 - How the accommodation will enable them to perform the essential functions of the job (disability) or aid in the performance of other non-essential functions (pregnancy)
- The Job Accommodation Medical Certification Form should be submitted to the ADA consultant in Employee Relations.
- *Note: All medical information received from the employee, applicant, or medical provider is kept in a confidential and separate medical file.*



Job Accommodation Medical Certification Form

This form must be completed and signed by the treating health care provider when an employee needs a workplace accommodation due to a qualifying disability under the Americans with Disabilities Act (ADA). The completed form should be sent within **15 calendar days** by mail to Employee Relations, UNC Charlotte Office of Human Resources, 9201 University City Blvd, Charlotte, NC 28223-0001 or by fax to (704) 687-5255.

Employee: Before providing this document to your provider please ensure you attach a copy of your Job Description. Job Descriptions can be obtained from your supervisor or Employee Relations.

SECTION 1: COMPLETED BY EMPLOYEE

Full Name:		UNC Charlotte ID:	
Position/Title:			
Department:			
Supervisor or Dean:			

SECTION 2A: COMPLETED BY HEALTH CARE PROVIDER

Medical Provider: For a reasonable accommodation under the ADA, an employee must have a disability or impairment that substantially limits one or more major life activities or a record of such impairment. The following questions may help to determine whether the employee has a disability and what accommodations may be appropriate.

Does the employee have a physical or mental impairment? ____ YES ____ NO
The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.

If YES, what is the impairment?

What is the date of onset of the impairment? ____ / ____ / ____

Is the impairment permanent or temporary? ____ PERM ____ TEMP

If temporary, how long will the impairment last? ____ Days / Weeks / Months

What major life activity and/or bodily functions are affected? Check all that apply:

- | | | |
|--|---|---------------------------------------|
| <input type="checkbox"/> Bending | <input type="checkbox"/> Hearing | <input type="checkbox"/> Reproductive |
| <input type="checkbox"/> Bladder | <input type="checkbox"/> Hemic | <input type="checkbox"/> Respiratory |
| <input type="checkbox"/> Bowel | <input type="checkbox"/> Immune | <input type="checkbox"/> Seeing |
| <input type="checkbox"/> Brain | <input type="checkbox"/> Interacting w/others | <input type="checkbox"/> Sitting |
| <input type="checkbox"/> Cardiovascular | <input type="checkbox"/> Learning | <input type="checkbox"/> Sleeping |
| <input type="checkbox"/> Caring for Self | <input type="checkbox"/> Lifting | <input type="checkbox"/> Standing |
| <input type="checkbox"/> Circulatory | <input type="checkbox"/> Lymphatic | <input type="checkbox"/> Thinking |
| <input type="checkbox"/> Concentration | <input type="checkbox"/> Musculoskeletal | <input type="checkbox"/> Walking |
| <input type="checkbox"/> Digestive | <input type="checkbox"/> Neurological | <input type="checkbox"/> Working |
| <input type="checkbox"/> Driving | <input type="checkbox"/> Operation of organ | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Eating | <input type="checkbox"/> Reaching | |
| <input type="checkbox"/> Genitourinary | <input type="checkbox"/> Reading | |



Job Accommodation Medical Certification Form

SECTION 2B: COMPLETED BY HEALTH CARE PROVIDER BASED ON THE JOB DESCRIPTION

What limitations are interfering with the employee's ability to perform the job functions or access an employment benefit?

Which job function(s) or benefit(s) of employment is the employee having difficulty performing or accessing because of the limitation(s)?

How does the employee's limitation(s) interfere with his/her ability to perform the essential job functions or access a benefit of employment?

After reviewing the employee's job description, please describe your recommendations for restrictions, modifications, or adjustments to the employee's job duties or work environment and explain how each will improve job performance.

What is the date through which the employee will need this accommodation? ____ / ____ / ____

If unable to provide a date, when will the employee be medically re-evaluated? ____ / ____ / ____

Additional comments/concerns:

SECTION 3: HEALTH CARE PROVIDER CERTIFICATION

Provider Name (Print):			
Name of Practice and Address:			
Phone Number:			
Provider's Signature:		Date:	

An Overview of the Interactive Process

- The interactive process is at the heart of the reasonable accommodation process and is critical to enabling individuals with disabilities and known limitations to stay employed and fully integrate into the workplace.
- Collaborative communication between the ADA Consultant, department leadership, and the employee or applicant to identify and implement reasonable accommodations.
- The ADA Consultant will meet with the employee or applicant to discuss possible and effective reasonable accommodations.
- The ADA Consultant will work closely with supervisors to determine if the requested accommodation is acceptable or if a different but effective accommodation should be offered.



An Overview of the Interactive Process

- Each request for an accommodation will be reviewed on a case-by-case basis
- The ADA Consultant will advise the employee of the decision regarding the reasonable accommodation request
- Decision on a request for an accommodation will then be in writing and provided to the employee
- If the employee's specific accommodations cannot be provided, alternative accommodations will be offered by the University
- Where more than one effective accommodation is available, the final decision as to which accommodation will be provided will be made by the University



Supervisor Responsibilities

- Be aware and supportive of employees who may need a reasonable accommodation due to disability, pregnancy or related condition
- Engage in the interactive process
- Abide by the approved reasonable accommodation
- If the employee is on fulltime leave, ensure the employee's time is entered in Kronos using the correct code
- If employee runs out of their own accruals complete a LWOP form
- It is important that time in Kronos is updated daily or in advance if an employee is on LWOP to avoid over payment
- Confirm with the Benefits Office that employee has been cleared to return to work if they were out for a serious medical condition

Employee Responsibilities

- Submit accommodation request to your supervisor and the ADA Consultant verbally or in writing
- Work with your medical provider to return forms and medical documentation as promptly as possible to avoid delay
- Do not give forms and medical documentation to your supervisor, provide only to Employee Relations staff
- Reach out the ADA Consultant if you need to adjust your reasonable accommodation
- Before returning to work you may need to provide a fitness for duty

Recertification

- The ADA Consultant will monitor the effectiveness of accommodations provided on a regular basis and may request additional medical information to support continuing and/or modifying accommodations, when necessary.
- If so, the employee will be asked to submit updated medical documentation to support the reasonable accommodation.
- The recertification information may be more limited in scope.
- Employees and managers are encouraged to work with the existing accommodation while the recertification process is ongoing.
- If there needs to be a change to the approved accommodation during the recertification period, consult that ADA Consultant.

Scenario #2

- Lyn is an x-ray technician at a local hospital. She has worked there for 3 years and suffers from epilepsy, which can be unpredictable. Lyn is also 8 months pregnant and has noticed that she is having more seizure flares than normal, forcing her to leave work early or call off. Lyn has exhausted all of her FMLA. She has requested time off prior to birth as well as up to 12 weeks postpartum due to her epilepsy.
 1. Does Lyn qualify for an accommodation under PWFA or ADA?
 2. If Lyn has already been out for three months, can her leave be extended?



Scenario #3 (maybe, time permitting)

- George, a University employee, was injured in a car accident on his way to work. George was taken to hospital and has to have emergency hip surgery due to injuries sustained in the accident. According to the doctor, George will need approximately 5 to 6 months of post-surgery rehabilitation therapy to learn to walk again once he is discharged from the hospital. He will also need continuous follow-up medical visits and therapy for another 6 months. The doctor anticipates he will need to be out of work for at least 6 months on a continuous basis and then will likely return with restrictions. George's spouse contacts his supervisor at the University to advise of George's accident and need for medical leave.



Take-Aways

- ✓ Review the applicable policy when leave is required
- ✓ If unsure, contact the ADA Consultant or Employee Relations Unit
- ✓ Work with your medical provider to submit all required information timely to avoid delay in the approval of request
- ✓ Engage in the interactive process
- ✓ Be patient as the process takes time (interim accommodations are sometimes possible)
- ✓ Provide a fitness-for-duty prior to returning to work from medical leave



UNIVERSITY OF NORTH CAROLINA
CHARLOTTE

Where to Get Help!

- Contact Employee Relations
 - Samantha Floyd, University ADA Consultant*
 - Office: 704.687.1023
 - Fax: 704.687.5255
 - Email: ada-hr@charlotte.edu
- Online Resources
 - Reasonable Accommodation Request Forms
(<https://hr.charlotte.edu/2024/07/10/ada-accommodations-request/>)
 - PIM 50 – Reasonable Accommodation
(<https://hr.charlotte.edu/pims/reasonable-accommodation>)



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Questions?