Section	3	Human Resources Policies	10/20/99 -Originated
Subject	3.2	Equal Employment & Affirmative Action	03/07/13 -Reviewed w/ changes -Reviewed w/o changes
Policy	**3.2.2**	**Americans with Disabilities Act Policy**	04/08/13 -Effective Human Resources -Author

Americans with Disabilities Act Policy

Definitions

ADA - Americans with Disabilities Act of 1990.

ADAAA – ADA Amendments Act of 2008

Auxiliary Aids and Services: Examples include qualified interpreter, qualified reader, note-taker, taped text, transcription service, modification of equipment, relay service, Telephone Text Devices (TDD's) which are telecommunication devices for deaf or hearing impaired, large print, Braille or written, telephone amplifier, listening system, open and closed captioning, audio recording, computer terminal, speech synthesizer, communication board. Note: The type of service needed will vary from case to case.

Direct Threat - A direct threat is a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. For example, an employee with a communicable disease ***may*** constitute a direct threat. UTMB has the burden of establishing whether a direct threat exists. Approval of the ADA Coordinator must be obtained in order to use "direct threat" as the basis for an employment or program action.

Disability: A physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment.

Essential Function: Fundamental job duties of the employment position that an individual holds or desires. The term essential function does not include marginal functions of the position

Facility: Building or site owned, leased, used, or controlled by UTMB.

Major Life Activity: A major life activity is an activity of central importance to daily life. Walking, sitting, standing, lifting, reaching, seeing, hearing, speaking, breathing, learning, and working are examples of major life activities along with major bodily functions inclusive of but not limited to hemic, lymphatic, musculoskeletal, special sense organs and skin, genitourinary and cardiovascular functions as identified by the ADAAA.

Qualified Individual - Individual with a disability who, with or without a reasonable accommodation, can perform the essential job functions of the employment position the individual holds or desires. A qualified individual

Definitions, continued

cannot be someone currently engaging in the illegal use of drugs, but ***can*** be someone who no longer illegally uses drugs and who has been successfully rehabilitated or is currently in the process of supervised rehabilitation.

Reasonable Accommodation **-** Change or modification that enables a qualified individual with a disability to enjoy equal opportunity and/or access. Reasonable accommodation is required for persons with known physical or mental limitations arising from disabilities. UTMB is not required to provide "best" or "most desired" accommodation; the University can meet this obligation as long as its proposed accommodations are sufficient to satisfy the employment, learning or accessibility needs of the employee or student. Whether a proposed accommodation is reasonable will be determined by the ADA Coordinator. Accommodations that constitute an undue hardship are not reasonable. Leave may be considered as a reasonable accommodation in consideration of the Americans with Disability Act.

Record of Impairment **-** An individual with history of a physical or mental impairment that substantially limits one or more major life activities. This includes persons who have had a disabling impairment but have recovered in whole or in part and are not now substantially limited. Also included are persons who are not, and may have never actually been, impaired but nonetheless have been misclassified as having a disability.

Regarded as Disabled **-** The individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both "transitory and minor."

Substantially Limits **-** The ADAA provides that a disability should be construed "broadly" in favor of expansive coverage. An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.

Undue Hardship **-** Accommodation that would be unduly costly, substantial, or disruptive, or that would fundamentally alter the nature or operation of a university department, program, service, or activity.
The ADA Coordinator will engage in the interactive process to determine if undue hardship exists.

Policy

The University of Texas Medical Branch provides equal employment opportunities, with reasonable accommodations when appropriate, to qualified applicants and employees with disabilities. UTMB also provides

Policy, continued

to employees, students, and members of the general public who have disabilities equal access, with reasonable accommodations when appropriate, to the services, programs, and activities of UTMB.

UTMB complies, with applicable federal and state laws and regulations, strives to maintain an environment which does not discriminate against applicants or employees on the basis of race, color, national origin, sex, age, religion, disability, sexual orientation, genetic information, or veteran status.

ADA Compliance Officer

The responsibility for ensuring compliance with the ADA rests with the Director of Employee Health and Wellness. Final decisions about ADA requirements and accommodations will be made by the ADA Compliance Officer. All files will be maintained for three years.

Recruitment and Hiring

UTMB will not discriminate against qualified individuals with disabilities in terms of employment including application procedures, hire, tenure, promotion/advancement, termination, training, compensation and benefits.

Before Recruitment: Hiring officials must submit the job description vacancy notice and advertisement to Human Resources (HR) - Recruitment Services <u>to be sure essential job functions are identified prior to recruitment.</u>

Before Making Job Offer: The university will not use standards, tests, or criteria that screen out or tend to screen out an applicant with a disability unless:

1. the criteria are job-related and required by business necessity; or
2. it is determined that an applicant will pose a direct threat to the health or safety of the applicant or others.

Hiring officials and committees will not ask applicants about illness, disability, impairment, mental or physical condition, disease, hospitalization, prior absenteeism due to illness, medication, or claims for workers' compensation before making a job offer. Hiring officials, in consultation with the ADA Coordinator, may describe the essential job functions of the position and inquire if the interviewee is able to perform the job with or without reasonable accommodation. A hiring official or committee may request the applicant to describe or demonstrate how he or she will perform the essential functions of the position, and the type of reasonable accommodations desired.

Recruiting and Hiring, continued

After Making a Conditional Job Offer: A hiring official may require a medical examination and make medical inquiries of the selected candidate for the position but may not refuse to hire an individual with a disability unless the individual cannot perform the essential functions of the job with or without reasonable accommodation. The ADA Coordinator must be consulted before refusing to hire a person based on the individual's disability or limitations.

During Employment

A manager may require a job-related medical examination or ask medically-related questions of employees if:

1. the employee with a disability is treated identically to employees without disabilities; and
2. the medical examination or inquiry is job-related and consistent with business necessity (for example, related to an injury sustained by an employee who desires to return to work following a medical leave).

Before denying or granting a request for accommodations, supervisors or administrators must contact the ADA Coordinator

Records: Records and results will be maintained confidentially and separately from official personnel records.

Program Access: It is the university's goal to provide equal opportunities and access in settings as integrated as possible to all beneficiaries of university services, programs, or activities, including individuals with disabilities provided that the accommodation does not result in undue hardship.

Drug and Alcohol Abuse

Individuals currently using drugs illegally are not considered qualified persons with a disability under the ADA. Additionally, the ADA does not cover individuals who currently abuse alcohol and are unable to meet the same performance and conduct standards applicable to all employees. The ADA does not prevent an employer from taking action to address, prohibit, or prevent alcohol or drug abuse in the workplace.

The ADA does protect individuals who have overcome drug or alcohol addiction, including those who are in or have completed rehabilitation. UTMB may seek reasonable assurance that an applicant or employee is not abusing alcohol or illegal drugs. The appropriate unit's administrative official must consult with the ADA Coordinator, Legal Affairs Office as well as the Employee Assistance program before requesting such assurance from an applicant or employee.

Structural Changes and Renovation

Facilities designed, constructed, or altered after June 26, 1992, must be accessible and usable by persons with disabilities, and must conform to the accessibility standards of the Americans With Disabilities Act Accessibility Guidelines (ADAAG). Alterations to existing buildings will comply with ADAAG except where compliance compliance would threaten or destroy the historical significance of the building or facility, or existing physical or site constraints makes compliance technically infeasible. For example, compliance is technically infeasible if existing structural conditions would require removing or altering a load-bearing wall or column that is an essential part of the structural frame. However, UTMB will endeavor to provide alternative means to make its buildings and facilities accessible

Auxiliary Aids and Services

UTMB may provide auxiliary aids and services to individuals with disabilities to enable them to communicate effectively while at UTMB or attempting to receive the benefits of UTMB's services, programs and activities, provided to do so is reasonable and will not result in undue burden or cause a fundamental alteration to a service, activity or program.

If more than one type of accommodation is available, UTMB has the right to choose which accommodation it will provide. If a limitation cannot be accommodated reasonably in the manner requested by an individual with disabilities, UTMB may attempt to find another type of effective accommodation.

Filing a Claim of Discrimination

Any employee who wishes to file a complaint alleging discrimination on the basis of disability in the work environment and/or retaliated against due to a job accommodation should report the concern to Human Resources Employee Relations.

Any student who wishes to file a complaint alleging discrimination on the basis of disability within the academic environment and/or retaliation for an academic accommodation should utilize the process outlined in IHOP Policy 7.1.1, Students with Disabilities.

References

Institutional Handbook of Operating Procedures Policies:
2.12.2, *Nondiscrimination*
3.8.5, *Temporary Job Modification*
9.3.1, *Resources Available for Patients with Disabilities*
42 U.S.C. §§ 12101 *et seq.*
7.1.1 Students with Disabilities
Students with Disabilities: An Institutional Policy