



Institutional Equity and Compliance  
UNIVERSITY OF COLORADO BOULDER

# ADA Compliance

## Employee Accommodations Procedures 2022-2023

Effective: November 1, 2022

*The University of Colorado Boulder does not discriminate on the basis of race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation or political philosophy in admission and access to, and treatment and employment in, its educational programs and activities.*

*The information contained within the ADA Compliance Procedures is intended to provide general information to members of the CU Boulder community and is not intended to, nor does it, create an express or implied contract between the OIEC or CU Boulder and community members. The OIEC reserves the right to change or eliminate any of the language herein at its discretion and without notice. In addition, nothing in the Employee Accommodations Procedures is intended to conflict with applicable case-law or judicial interpretations of the laws referenced within; in the event of conflict, applicable case-law or judicial interpretations control.*

## **Table of Contents**

|  |           |
|--|-----------|
| <b>Overview and Mission of ADA Compliance.....</b>               | <b>3</b>  |
| <b>Purpose and Scope.....</b>                                    | <b>3</b>  |
| <b>Definitions.....</b>  | <b>5</b>  |
| <b>Employee Accommodations Process.....</b>                      | <b>7</b>  |
| <b>Appeals of Notice of Determination.....</b>                   | <b>9</b>  |
| <b>Employee Applicants Seeking Reasonable Accommodation.....</b> | <b>11</b> |
| <b>Complaint Options &amp; Reporting.....</b>                    | <b>11</b> |

## **A. Overview and Mission of ADA Compliance**

ADA Compliance is a unit within the Office of Institutional Equity and Compliance responsible for compliance with applicable civil rights laws and university policy related primarily to the Americans with Disabilities Act (ADA). ADA Compliance is charged with ensuring employees with disabilities receive access, support, and, when applicable, reasonable accommodations to ensure that qualified individuals with disabilities enjoy equal employment opportunities available to non-disabled persons. ADA Compliance is also responsible for ensuring pregnancy-related accommodations for employees.

ADA Compliance supports the ongoing development of an accessible university that embraces and celebrates diversity and inclusive excellence by providing disability-related information, services, and resources for employees and visitors. ADA Compliance is responsible for educating the campus community about disability laws and promoting equal access and opportunity for those with disabilities. ADA Compliance is charged with providing reasonable accommodations for all employees with disabilities at CU Boulder, including permanent faculty and staff, research faculty, temporary employees, and student employees.

Additionally, ADA Compliance collaborates with its campus partners to address the structural accessibility needs of the campus community (in partnership with Facilities Management and Housing Facilities Services) as well as the access needs of the public including ASL, captioning, and other accessible communication formats in partnership with various departments and vendors. ADA Compliance works in partnership with the Office of Disability Services, the CU Boulder office responsible for ensuring that students with disabilities receive reasonable accommodations and services to participate equally in any university programs and activities, including accommodating students in the academic context as well as accommodating the housing and dining needs of students with disabilities. For additional information regarding all disability-related resources on campus, please visit: <https://www.colorado.edu/campus-accessibility>.

## **B. Purpose and Scope**

The ADA Compliance Employment Accommodation Procedures are intended to comply with the related requirements of the following federal laws, their implementing regulations, and related federal agency guidance, as well as state law, including:

**[American with Disabilities Act \(“ADA”\)](#)**: The ADA is a federal law that in applicable part prohibits discrimination on the basis of disability in employment and state and local governments, like public universities. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.

- Title I of the ADA requires the university to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others, restricts questions that can be asked about an applicant's disability before a job offer is made, and requires that employers make reasonable accommodation and reasonable modification to the known physical or mental limitations of otherwise qualified individuals with disabilities, unless it results in undue hardship.
- Title II of the ADA requires the university to provide people with disabilities an equal opportunity to benefit from all of their programs, services, and activities, and provides that the university may be required to make reasonable accommodations and modifications to programs, services or activities that it provides unless the university demonstrates that the requested accommodation or modification would "fundamentally alter" such programs, services or activities. For information about Title II accommodations, please refer to the separate policy named Title II Accommodations Procedures.

**The Pregnancy Discrimination Act of 1978 ("PDA"):** PDA is a federal law that makes it illegal for employers to discriminate based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits (such as leave and health insurance) and any other term or condition of employment. The PDA is an amendment to Title VII of the Civil Rights Act of 1964.

**Colorado Anti-Discrimination Act ("CADA"):** CADA is a state law that in applicable part prohibits disability discrimination in employment and housing, and public accommodations. Pursuant to its recent amendment enacting the Pregnant Workers Fairness Act, employers must provide reasonable accommodations to applicants and employees for health conditions related to pregnancy or the physical recovery from childbirth if the applicant or employee requests the reasonable accommodations, unless the accommodation would impose an undue hardship on the employer's business.

**Fair Housing Amendments Act of 1988("FHA"):** The FHA is a federal law that specifies that people with disabilities must be granted reasonable accommodations and reasonable modifications in order to afford them equal enjoyment of their dwelling, which includes university provided housing.

**Section 504 of the Rehabilitation Act of 1973 ("Section 504"):** Section 504 is a federal law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education. Section 504 provides that qualified individuals with a disability shall not, solely by reason of their disability be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

This document also constitutes CU Boulder's "grievance process" pursuant to federal regulations.

CU Boulder policy prohibits discrimination and harassment based on protected-class identity, including disability. Unfair treatment or intimidating behavior aimed at any member of the campus community based on an aspect of identity protected by CU Boulder policy is reportable to the university. ADA Compliance may refer complaints of disability discrimination or other protected class discrimination/retaliation to the case resolutions unit of the [Office of Institutional Equity and Compliance](#) for investigation, when appropriate. Individuals who experience discrimination or harassment because of a disability should contact the Office of Institutional Equity and Compliance directly at (303) 492-2127 or [cureport@colorado.edu](mailto:cureport@colorado.edu).

## C. Definitions

**Accessibility** means that a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally inclusive manner, with substantially equivalent ease of use.

**Architectural Barriers** are physical features that may limit or prevent people with disabilities from accessing offered programs or services in facilities. They can include, for example, parking spaces that are too narrow to accommodate people who use wheelchairs; round doorknobs or door hardware that is difficult to grasp; aisles that are too narrow for a person using a wheelchair, electric scooter, or a walker; a high counter or narrow checkout aisles at a cash register, and fixed tables in eating areas that are too low to accommodate a person using a wheelchair or that have fixed seats that prevent a person using a wheelchair from pulling under the table.

**Disability** is defined under the ADA as any of the following: (1) a physical or mental impairment that substantially limits one or more major life activities of an individual; (2) a record of this kind of impairment; or (3) being regarded as having such an impairment.

**Equal Access** is the equal opportunity of a qualified person with a disability to participate in or benefit from employment or educational aid, benefits, or services.

**Essential Functions** are job functions determined by the university to be considered essential or core to performing the job. In contrast, a marginal function is one that is considered incidental to the job function. An employee may be given a reasonable accommodation to perform an essential function, but an essential function should not be removed from an employee's position in order to accommodate a disability.

**Event Accommodation** is an adjustment, auxiliary aid, or service that provides a qualified individual with a disability equal access to an event, lecture, meeting, and/or facility. Event accommodations can include, but are not limited to,

interpreters, captions, written materials in alternate format, listening devices, and physically accessible locations.

**Fundamental Alteration** is a change that is so significant that it alters the essential nature of the program services, facilities, privileges, or advantages offered.

**Interactive Process** is a practice in which an individual seeking accommodation and the relevant university representatives identify the precise limitations caused by the disability, how the limitations impact the individual in the workplace, and how best to respond to the need for accommodation. This is the mutual communication process between the individual and the university that is triggered by the individual giving notice of the individual's medical condition and the individual's interest in or need for an accommodation or modification. The interactive process requires both parties to directly communicate, exchange essential information, and provide good-faith consideration of possible accommodations to identify an accommodation or modification that allows members of the public, including students and employees of the university, equal access to the campus and its services, programs, employment opportunities, and events. For privacy considerations during the interactive process, see Section D.iii below.

**Major Life Activities** include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, major bodily functions, and working.

**Qualified Employee** is an employee (including a student employee) who has the skills, experience, education and other job-related requirements necessary for the position and who is able to perform the essential functions of the job with or without a reasonable accommodation.

**Reasonable Accommodation for Employees** is a term used in the employment context, to refer to the modification or adjustment to a job, the work environment, or the way things are usually done during the hiring process. These modifications enable a qualified individual with a disability to have an equal opportunity to obtain a job and also successfully perform their job tasks to the same extent as people without disabilities. A reasonable accommodation relates to three aspects of employment: 1) ensuring equal opportunity in the application process; 2) enabling a qualified individual with a disability to perform the essential functions of a job; and 3) making it possible for an employee with a disability to enjoy equal benefits and privileges of employment.

**Reasonable Modification** is a change in policies, practices, or procedures to avoid discrimination on the basis of disability, that do not fundamentally alter the nature of the service, program, or activity.

**Substantial Limitation** is the inability to perform a major life activity or a significant restriction as to the condition, manner, or duration under which a person can perform a particular major life activity as compared to the average person in the general population.

**Undue Hardship** is an action requiring significant difficulty, expense, or disruption when considered in light of factors such as the university's size, financial resources, nature and structure of its operation, and the impact of the accommodation on operations and the ability on other employees to performing their job.

## **D. Employee Accommodations Process**

The university provides reasonable accommodations to qualified job applicants and employees (including but not limited to teaching and research faculty, classified and university staff, student employees, and temporary employees) with a disability in order to enable the employee to perform the essential functions of their position. Examples of reasonable accommodations may include, but are not limited to: making existing facilities used by employees readily accessible to and usable by persons with disabilities; modifying work schedules; acquiring or modifying equipment, devices, or workstations; adjusting or making exceptions to workplace policies; providing assistive technology, emergency access plans, remote work options, or additional unpaid leave; coordinating ability for employees to have access to written job instructions and alternative training methods; and, as the accommodation of last resort, possible reassignment to a vacant position for which the person is qualified.

Pursuant to the Pregnant Workers Fairness Act, the university provides reasonable accommodations to employees or job applicants for health conditions related to pregnancy or the physical recovery from childbirth. Examples of accommodations may include, but are not limited to: more frequent or longer break periods; more frequent restroom, food or water breaks; acquisition or modification of equipment or seating; limitations on lifting; temporary transfer to a less strenuous or hazardous position if available, with return to the current position after pregnancy; job restructuring; light duty, if available; or assistance with manual labor; or modified work schedules.

An employee seeking a reasonable accommodation should contact ADA Compliance by email at [adacoordinator@colorado.edu](mailto:adacoordinator@colorado.edu) or by phone at (303) 492-9725. If an employee makes a request to the employee's supervisor, the supervisor should refer the employee to ADA Compliance, and the supervisor should also contact ADA Compliance directly to communicate the request. When possible, employees should submit accommodation requests in writing, and should be as specific as possible regarding the accommodation they are seeking. Under the ADA, it is the employee's request for an accommodation that triggers an employer's duty to engage in the interactive process. A request for an accommodation initiates the interactive process.

## **i. Interactive Process for Disability Accommodation**

ADA Compliance will engage in the interactive process to discuss and identify (1) whether the employee is an individual with a disability pursuant to applicable law and if so, (2) the need for workplace accommodations and (3) whether the employee can be reasonably accommodated in their position. The interactive process requires good faith participation from both the employee and the university.

During the interactive process, ADA Compliance may request adequate documentation of a medical condition from the treating medical provider of the employee to determine whether the employee has a disability, the specific workplace limitations resulting from the disability, and the extent of these limitations. The medical inquiry will be limited to information necessary to determine disability and appropriate reasonable accommodation(s). Under the ADA, having a medical condition alone is not enough to make an employee eligible for an accommodation; an employee must have a condition that qualifies as a disability under applicable law. After receipt of initial medical documentation, ADA Compliance may in certain situations request follow-up information from the employee's medical provider.

ADA Compliance, in collaboration with the employee's supervisor and Human Resources, will determine the feasibility and reasonableness of any potential accommodation, considering factors such as what workplace barrier is impeding the employee's ability to perform the essential functions of their position, how the requested accommodation will enable the employee to perform their essential functions, the nature and cost of the accommodation, the accommodation's impact on the operation of the facility, and the accommodation's impact on the ability of other employees to perform their duties in a safe and efficient manner. The university is not required to provide an accommodation that will eliminate an essential function of the position or lower production standards, nor must it provide personal use items or amenities (a personal use item is one that is needed in accomplishing daily activities both on and off the job - thus, an employer is not required to provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job). In addition, the university is not required to provide the employee's preferred accommodation and may instead identify reasonable alternatives for accommodations which are effective in removing workplace barriers that impede the individual with a disability.

After engaging in this interactive process, ADA Compliance shall make a determination as to whether the employee has a disability under the ADA and can be reasonably accommodated in their position. Once a decision has been made, ADA Compliance will communicate essential information about the determination via email to the employee, supervisor, and any other individuals



with a legitimate need to know in order to implement the accommodation as soon as possible. A more detailed Notice of Determination (“NOD”) including background, analysis, and determination, as well as information about how to appeal the decision, will be issued to the same individuals by ADA Compliance as soon as possible after the interactive process has concluded. For additional information about privacy of information, see Section D.iii below.

## **ii. Pregnancy Accommodations**

In the event the accommodation sought is a pregnancy accommodation, the above process applies with the exception that an employee requiring a continuation of pregnancy accommodations after childbirth must submit a request along with supporting medical documentation to verify the continued need for and duration of the requested accommodation.

## **iii. Privacy and Confidentiality**

Disability-related information is treated as private information, meaning that information will be shared only with a limited number of individuals who “need to know” in order to assist in the review of the accommodation request, the determination, and the implementation of accommodation(s) where applicable.

Certain persons may need to be aware of requested accommodations, an individual’s limitations leading to the need for an accommodation, and/or the outcome of accommodation decisions. These persons can include, but are not limited to, a supervisor or manager, human resources personnel, first aid and safety personnel, and those assisting with implementing accommodations.

General disability-related information is distinguished from confidential medical information obtained from individuals and/or their medical providers regarding specific diagnoses or conditions. ADA Compliance employees who are involved in gathering and maintaining confidential medical information for purposes of evaluating and determining accommodations receive specific training and guidance about safeguarding this confidential medical information in accordance with applicable laws. Confidential medical information is not shared by ADA Compliance personnel with supervisors, managers, human resources personnel, or other campus personnel without express permission of the individual or as otherwise permitted or required by law.

## **E. Appeals of a Notice of Determination**

Should an employee be denied an employment accommodation or receive an accommodation that they consider ineffective in a NOD issued by ADA Compliance, the employee may submit an appeal of the decision to the Director of ADA Compliance/ADA Coordinator within the timeframe set forth below. An employee’s right to appeal becomes available upon issuance of the NOD by ADA Compliance. Only active employees of the university are entitled to utilize

the appellate procedures set forth below. The scope of appellate review is limited to determining whether an accommodation decision was reasonable under the circumstances. While an employee can appeal an NOD offering the accommodation of reassignment, an employee may not appeal a decision issued at the conclusion of the reassignment process.

#### **i. Appeal Process**

**An active employee who wishes to appeal an NOD must submit a written statement to the Director of ADA Compliance/ADA Coordinator within ten (10) business days of the date of issuance of the NOD. Failure to submit a timely appeal will result in loss of appeal rights.**

Appeals may be submitted by email to: [adacoordinator@colorado.edu](mailto:adacoordinator@colorado.edu), by U.S. mail, or in person to Office of Institutional Equity and Compliance, Administrative and Research Center 2nd floor, University of Colorado Boulder, 557 UCB, Boulder, CO 80309.

The employee's statement should indicate the specific basis for the appeal (see below) and supporting arguments. The employee should be aware that an appellate review involves a review of the NOD based information that was made available to ADA Compliance during the interactive process. Should an employee have new or updated information they would like ADA Compliance to consider, the employee may request to re-engage in the interactive process with a new request for accommodations.

#### **ii. Basis for Appeal**

If requested accommodation was denied in whole or in part, identify:

- a. any procedural errors by ADA Compliance that materially impacted the interactive process and/or the determination to deny the requested accommodation(s); or
- b. any information made available during the interactive process that was not adequately considered by ADA Compliance; or
- c. any factual or analytical errors in the NOD which materially impacted the denial of accommodation(s).

Failure to specify the basis for appeal as described above will result in dismissal of the appeal.

#### **iii. Notice of Decision on Appeal**

The Director of ADA Compliance/ADA Coordinator will provide a Notice of Decision on Appeal to the employee within twenty (20) business days following submission of the appeal. This 20-day time limit may be extended at the discretion of the Director of ADA Compliance/ADA Coordinator, upon written notice to the appealing employee.

In making the decision, the Director of ADA Compliance/ADA Coordinator will consider materials obtained during the interactive process, the NOD, and the employee's appeal statement. The decision of the Director of ADA Compliance/ADA Coordinator may result in:

- a. upholding the NOD in its entirety;
- b. sending information back for reconsideration (by the same or different employees within ADA Compliance) and reengagement in the interactive process; or
- c. reversing or amending the NOD in part or in whole.

The decision of the Director of ADA Compliance/ADA Coordinator is final and not subject to further appeals.

## **F. Employee Applicants Seeking Reasonable Accommodation**

The university will not deny any qualified employee applicant with a disability employment, nor will it subject any employee applicant to discrimination in admissions or recruitment activities on the basis of a disability. All examination scores will be treated equally, regardless of any accommodation that may have been provided during testing.

An employee applicant to a position at the university who has a disability is entitled to reasonable accommodation(s) to enable the applicant to fully participate in the application process. An employee applicant to a position at the university may contact the Human Resources recruiter for the position to which they are applying to request an accommodation, or they may contact ADA Compliance directly. Requests for accommodation during the application process are discussed in the Title II Accommodation Procedures. Please see our [universal design applicant interview procedures](#).

### **Contact Information:**

Director of ADA Compliance and ADA Coordinator: Caitlin M. O'Donnell

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