

Background Information

Every year, CU Boulder researchers participate in National Science Foundation (NSF) research missions to Antarctica. Due to the extreme weather conditions, limited on-site medical care, and difficulty of flight evacuations in case of emergency, NSF requires researchers to undergo a rigorous physical qualifications process. NSF currently contracts with the University of Texas Medical Branch to serve as the medical contractor tasked with assessing researchers' physical qualifications against the requirements to deploy. Research grants that have Antarctic field deployment associated with them generally include budget to pay for medical and dental exams and diagnostic tests. However, any restorative procedures (e.g., dental work) are not covered under these funds.

If a CU Boulder researcher has been deemed not physically qualified (NPQ) to deploy to Antarctica, NSF has a process in federal regulations by which a researcher can request NSF to waive the physical requirements to deploy. NSF provides this NPQ waiver process to allow applicants and their employers to ask NSF to reconsider its determination that an applicant is NPQ for deployment. The documentation consists of an applicant statement and release of liability and an employer endorsement and release of liability.

The reconsideration process takes several weeks, and the medical contractor may require the applicant to undergo additional medical examinations or testing, the costs of which are not reimbursable by NSF and must be borne by the employer or applicant. If NSF rules favorably on the request, the criteria for which the applicant was found NPQ will be waived, and the applicant will be authorized to deploy. It is also possible that NSF will approve the application but put limitations or restrictions on the applicant's activities. NSF's decision is final on all of these issues.

As part of the NPQ waiver process, the NSF requires employers to sign a release of liabilities document. The legal effect of the employer release is that the university would release NSF, DoD, and any of their employees, agents, or contractors from "any and all claims for property damage, personal illness or injury, or death resulting directly or indirectly from waiver of the medical clearance criteria and authorization to deploy." It is not an Indemnity Obligation, however.

CU Boulder process for employer endorsement of NPQ waiver

1. If a CU Boulder researcher has been deemed NPQ for deployment and requests the university to endorse the employer's waiver, the researcher must submit the following documentation to the university. Documentation should be submitted to the ADA Compliance Office at adacoordinator@colorado.edu.
 - a. All documentation from the researcher's health care provider that the researcher originally submitted to the medical contractor as part of the physical qualification process.
 - b. All documentation from the medical contractor related to the NPQ determination.
 - c. Any follow up records of testing, evaluation, letters of recommendation, or other documentation from the researcher's health care provider that address the medical condition or reasons for which the researcher was deemed NPQ.
 - d. A HIPAA authorization and release to allow the researcher's health care provider to release the researcher's medical records to the university.

2. The ADA Compliance Office shall review the documentation to determine whether it is sufficient to conclude that the researcher is fit for deployment. Documentation is sufficient if it:
 - a. Describes the nature, severity, and duration of the researcher's medical condition, the activity or activities that the condition limits, and the extent to which the condition limits the researcher's ability to perform the activity or activities; and
 - b. Provides sufficient and specific assurance that, notwithstanding the condition or limitations, the researcher is fit to deploy.
3. If the documentation is insufficient, the ADA Compliance Office shall explain to the researcher why the documentation is insufficient and give the researcher an opportunity to provide the missing information in a timely manner. With the researcher's consent, the ADA Compliance Office may also consult with the researcher's health care professional. Documentation might be insufficient if:
 - a. The health care professional does not have the expertise to give an opinion about the researcher's medical condition and the limitations imposed by it;
 - b. The information does not specify the functional limitations due to the condition; or
 - c. Other factors indicate that the information provided is not credible or is fraudulent.
4. If the university continues to receive insufficient documentation from the researcher but the researcher still seeks the employer's endorsement to deploy, the university may require a second opinion by a health care professional that the university selects. The university shall pay the costs associated with the examination. The examination shall be limited to determining the researcher's fitness to deploy based on the specific reason or condition for which the researcher was deemed NPQ. If any restorative work is needed to render the researcher fit to deploy, such costs shall be the responsibility of the researcher.
5. If the university receives sufficient documentation to conclude that the researcher is fit to deploy, the ADA Compliance Office, in consultation with university counsel, shall provide a recommendation to the Vice Chancellor for Research and Innovation.
 - a. The recommendation shall include the reason for the recommendation.
 - b. The recommendation shall not disclose the researcher's medical condition or protected health information.
6. Upon receipt of the recommendation, the Vice Chancellor for Research and Innovation may consult with the ADA Compliance Office with any follow up questions or clarifications and with university counsel for legal advice.
7. The Vice Chancellor for Research and Innovation's decision whether to endorse the employer's waiver is final.