1. General

The University of New Mexico has a continuing commitment, responsibility, and desire to provide equal opportunities and reasonable accommodations to individuals with disabilities. Section 504 of the Rehabilitation Act of 1973, Title II of the Americans With Disabilities Act of 1990, and the Americans with Disabilities Act Amendments Act of 2008, collectively referred to in this policy as “ADA,” protect against disability-based discrimination, as does the New Mexico Human Rights Act.

Under the ADA, the University must provide reasonable accommodations to qualified individuals with a disability who are applicants for employment, active employees, and beneficiaries of University programs, services, and activities, as described in this policy.

2. Americans With Disabilities Act (ADA) Coordinator

Under the ADA, the University must designate at least one individual to coordinate ADA compliance on campus. The Director of the Office of Equal Opportunity (OEO) has been designated as the University’s ADA Coordinator. The ADA Coordinator:

- Ensures University compliance with the ADA
• Assists in facilitating accommodations for applicants, employees, and beneficiaries of University programs, services, and activities
• Reviews all disputes regarding requests for reasonable accommodation
• Tracks accommodation requests for inclusion in the University’s Affirmative Action Plan

3. Definitions

• “Essential functions” are the fundamental (as opposed to marginal) duties of the job the individual applies for or holds.
• “Individual with a disability” is a person who has a serious medical condition or a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
• “Interactive dialogue” is a dialogue between a supervisor and an employee about the need for a workplace accommodation.
• “Qualified individual with a disability” is defined as an individual who possesses the requisite skills, education, experience, knowledge, and other job requirements and who can, with or without a reasonable accommodation, perform the essential functions of the job.
• “Reasonable accommodation” is a reasonable modification or adjustment to the job application process or the work environment that enables a qualified individual with a disability to perform the essential functions of that job or allows access to the University’s programs, services, and activities.

4. Reasonable Accommodation

Reasonable accommodations are determined on a case-by-case basis and may include, but are not limited to, the following actions:

• Making facilities used by employees accessible to and usable by an individual with a disability.
• Modifying a job so that an individual with a disability can perform the essential functions of the job. This may involve eliminating nonessential elements (marginal duties) of the job, switching assignments with another employee, or changing procedures.
• Using part-time or modified work schedules.
• Acquiring or modifying equipment or devices, or providing auxiliary aids.
• Providing qualified readers or signed-language interpreters.
• Reassigning or referring an individual with a disability to a vacant position if all attempts at other reasonable accommodation have not worked. (Note: The University does not have to create a position for individuals with a disability or promote or move employees into positions for which they are not qualified.)
• Providing attendant services both in the office and while traveling on essential University business. (Note: The University does not have to provide personal equipment or services.)
Under the ADA, the University must make reasonable accommodations to accommodate qualified individuals with a disability unless the accommodations would create an “undue hardship.” An undue hardship is determined by considering the nature of the accommodation and cost in relation to the University’s total budget.

5. Requesting a Reasonable Accommodation

Employees may initiate reasonable accommodations requests formally through the Accommodation Request Form or informally by asking their supervisors. Accommodation is an interactive process between the University and the employee.

5.1. Confidentiality

Strict confidentiality requirements pertain to disability disclosures, accommodation requests, and related procedures. This information is only shared on a need-to-know basis. Faculty and staff with knowledge of a disability disclosure or accommodation made for an employee must maintain strict confidentiality, and only use disability information to implement the accommodation.

The Accommodation Request Form and accompanying information will be maintained by OEO in a separate file from the permanent employee personnel file that is located in the Division of Human Resources Service Center. Departments may maintain a copy of the Accommodation Request Form and the Accommodation Agreement, but not any documents with medical information.

Reported violations of these confidentiality protocols are subject to investigation and may result in disciplinary procedures.

5.2. Qualifying as an Individual with a Disability

In some cases, supervisors may provide accommodations on request, without employees receiving a formal designation as an individual with a disability. In other cases, the ADA Coordinator may be asked to determine if an individual qualifies as an individual with a disability. Not all illnesses, conditions, or impairments are considered a "disability" under this policy and applicable state and federal laws.

Under the ADA, to be qualified as an individual with a disability, the individual must have a condition that causes a “substantial limitation.” A substantial limitation is:

- An impairment or serious medical condition that prevents the performance of a major life activity that the average person in the general population can perform; or
- A significant restriction as to the condition, manner, or duration under which an individual can perform a particular major life activity, as compared to the average person in the general population.
Employees may be asked to provide documentation or verification regarding their disability, such as when: The employee sought assistance previously from the Accessibility Resource Center (ARC), if a student employee, or OEO such that information regarding the disability is already available; or.

- The disability is not visibly apparent.

If verification or additional documentation is determined to be necessary, it is expected that the employee will complete a Release of Information and/or Documentation and return it to the ADA Coordinator.

The ADA Coordinator will inform the employee and supervisor whether the employee qualifies as an individual with a disability.

5.3. Accommodation Requests

There are many options for employees to request a reasonable accommodation. Employees should use the option that is most comfortable to them. Employees who approach their supervisors with a request for accommodation due to a disability need not use the phrase "reasonable accommodation" or expressly invoke the ADA.

Employees may directly approach their supervisors and ask for an accommodation. In such cases, the supervisors should contact OEO for assistance and immediately engage in interactive dialogue with the employees seeking an accommodation. If supervisors provide an informal accommodation, they must submit written notification of the accommodation to the ADA Coordinator within five (5) workdays. This assists OEO in tracking the information for inclusion in the Affirmative Action Plan and in maintaining a record of the accommodation, in case the employee has a change of supervisor or department.

Employees may formally request an accommodation through the Accommodation Request Form. The completed Accommodation Request Form, along with any supporting medical or psychiatric records, should be submitted by an employee’s supervisor or directly by the employee to the ADA Coordinator at oeo@unm.edu or hand-delivered or mailed to OEO at MSC05 3150, 609 Buena Vista Drive NE. Requests for accommodations are reviewed and acknowledged by the ADA Coordinator or designee within five (5) workdays; circumstances may require the submission of additional information.

OEO’s Complete Accommodation Packet serves as a tool kit for employees and supervisors in the accommodation process.

5.4. Determining Reasonable Accommodation

Once a disability has been identified by the ADA Coordinator, the University will make reasonable accommodation for that employee upon request if such will enable the employee to perform the essential functions of the job unless an undue hardship to the department or University will result from the accommodation pursuant to the ADA. The factors and
information that will be used to determine if an accommodation is necessary and reasonable include, but are not limited to, whether:

- The task for which the accommodation is sought is necessary for performing the essential functions of the employee's position.
- The employee is otherwise qualified to perform the essential job functions and duties.
- The accommodation will allow the employee to effectively perform the essential functions of the employee’s position.
- There is another more cost-effective option that would allow the individual to perform the essential functions of the job.

Additionally, information received from external accommodation specialists, such as those associated with job accommodation networks and/or rehabilitation specialists, may be utilized.

5.5. Reasonable Accommodation Decisions

Accommodation is an interactive process between an employee and the University. Sometimes, however, an accommodation may be implemented that is not the one requested by the employee. The University determines the reasonable accommodation based upon the factors listed above in Section 5.4. The ADA Coordinator serves as a resource throughout the process to facilitate the dialogue and discuss accommodation possibilities. Once the ADA Coordinator and the supervisor agree on what type of accommodation will be offered to the employee, the supervisor will notify the employee of that determination. If the ADA Coordinator and the supervisor determine that no agreement can be reached with the employee, the ADA Coordinator and the supervisor are not required to continue negotiations with the employee. The determination of the ADA Coordinator is final.

Continued evaluation of the effectiveness of the approved accommodation will be conducted by the employee’s department and the ADA Coordinator. Modifications may be made upon the request of any party.

At the request of the employee’s unit, OEO can conduct consultation, education, or staff training to ensure successful transition and inclusion of the employee into the unit.

5.5.1. Declining or Denying Reasonable Accommodation

When the supervisor offers an accommodation, the employee must either accept or reject the offer in writing within two (2) weeks of the offer. If the employee rejects the accommodation, the employee must state why the proposed accommodation is not suitable. The supervisor must notify the University's ADA Coordinator of the rejected accommodation.

If an employee does not receive an agreed upon accommodation, the employee should contact the ADA Coordinator or file a claim with OEO. (See OEO’s Reasonable Accommodation Appeal Form.)
A request for accommodation may not be denied without the supervisor consulting with the ADA Coordinator.

6. Applicants for Employment

Applicants for employment can initiate a request for accommodation by contacting the Human Resource Services Office or Office of Faculty Affairs and Services, or by advising, verbally or in writing, the unit in which they will be interviewing, or the chair of the search committee, of the possible need for accommodation. Any such inquiry can be forwarded to the ADA Coordinator for assistance with implementing the accommodation.

Accommodations should be implemented as soon as possible to allow applicants to meet job posting deadlines. See Section 8 for information on funding reasonable accommodations.

7. Beneficiaries of Programs, Services, and Activities

Beneficiaries of programs, services, and activities can initiate a request for accommodation by contacting the department or organization hosting the event, program, or activity. Routine requests may be handled directly by the department or organization hosting the event. The coordinator of the event, service, or activity must notify the ADA Coordinator of non-routine or other requests. Denial of a request may only be done by the ADA Coordinator, after an analysis of the reasonableness of the non-routine accommodation and/or determination of an undue hardship (see Section 4) to the University, and not by the department or organization hosting the event. The ADA Coordinator will analyze the request and, to determine eligibility for the accommodation, confer with the individual to ascertain appropriate requirements for reasonable accommodation and make a determination regarding which accommodations are necessary.

8. Funding of Reasonable Accommodations

In many instances, reasonable accommodations can be arranged quickly and with minimal costs. Individual units are generally responsible for providing accommodations. If adaptive equipment is purchased for a qualified individual with a disability, the equipment remains the property of the University and may be used to accommodate other individuals in the future.

The University recognizes, however, that in some instances the accommodation costs may be exceptional and units may need additional financial assistance. If the unit does not have funds available, the unit should submit a request for funding to the next level of authority. This process continues up to the cognizant executive vice president. The executive vice president should contact the ADA Coordinator if additional funds are needed. The ADA Coordinator may refer additional funding issues to the University President.

9. Failure to Accommodate
Failure to accommodate can constitute discrimination in some instances. Anyone seeking to file a claim for failure to provide an accommodation for applicants, employees, and program beneficiaries should contact OEO.

10. References

UAP 2295 (“Service and Assistance Animals”)
UAP 2310 (“Academic Adjustments for Students with Disabilities”)
UAP 2720 (“Prohibited Discrimination and Equal Opportunity”)
UAP 5320 (“Universal Design”)