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Chapter: Personnel

Modification No. 003

Subject: **Employment of Individuals with Disabilities**

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- I. Montgomery College is committed to diversity and nondiscrimination and supports employment opportunities for qualified individuals with disabilities in accordance with the College's Affirmative Action Plan for Veterans and Individuals with Disabilities, Board policy on Equal Employment Opportunity and Non-Discrimination, and local, state, and federal laws, including the Americans with Disabilities Act as amended (ADA).
- II. The College is committed to complying with the ADA, as well as applicable state and local disability discrimination laws. The College will not discriminate against any qualified employee or applicant with regard to any terms or conditions of employment because of a disability, perceived disability, or record of a disability. Likewise, this policy does not prohibit the College from holding applicants and employees with disabilities to the same standards of conduct and performance as other similarly situated employees without disabilities.
- III. The College, in accordance with applicable law, will reasonably accommodate applicants and employees where the College is aware of a disability and the individual's need for a reasonable accommodation so long as the individual is a qualified individual with a disability and provided that the accommodation is not an undue hardship for the College.
- IV. Education is a key element of this policy. The College will provide education and information, as appropriate, for employees to enhance understanding and increase awareness of the College's Employment of Individuals with Disabilities Policy. Any mandatory education requirements will be announced and posted on the College's website. The President is authorized to provide institutional leadership and guidance for developing education programs to promote awareness. Some goals to be achieved through education are: (a) ensuring that all individuals are aware of their rights; (b) notifying individuals of proscribed conduct; (c) informing employees and contractors about the proper way to recognize and address complaints involving a violation of this policy; (d) preventing issues that this Policy addresses; and (e) identifying the necessary steps for preventing its recurrence and addressing its effects.
- V. The President is authorized to establish procedures for processing requests for accommodations from qualified applicants and employees with disabilities in compliance with the applicable provisions of the ADA, as well as other procedures necessary to implement this policy.

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Board Approval: September 24, 2001; February 25, 2013; November 13, 2017.

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I. Purpose and Scope

- A. The Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA) are federal laws that require employers with 15 or more employees to not discriminate against applicants and individuals with disabilities and, when needed, to provide reasonable accommodations to applicants and employees who are qualified for a job, with or without reasonable accommodations, so that they may perform the essential job duties of the position.
- B. The College shall comply with all federal, state, and local laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). The College shall not discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions and privileges of employment.

VI. Responsibilities

A. Employees/Applicants

- 1. A job applicant who has a disability and believes that a reasonable accommodation is necessary during the hiring process should contact the hiring manager for the position, the Director of ADA and Title IX Compliance, or the Chief Human Resources Officer, or designee, with a request for accommodation. An employee who has a disability and believes that a reasonable accommodation is necessary for the employee to perform the essential functions of that employee's position should contact the employee's immediate supervisor and the Chief Human Resources Officer, or designee, with a request for accommodation.
- 2. Employees may communicate a request for reasonable accommodation verbally or in writing, however, the College encourages employees to submit a written request on the appropriate form with supporting medical documentation.

B. Supervisors

Any supervisor who is made aware of an employee or job applicants need and/or desire for a reasonable accommodation shall promptly notify the Chief Human Resources Officer, or designee, of the accommodation request. Supervisors are also responsible for assisting the Chief Human Resources Officer, or designee, throughout the accommodation process, including in identifying potential reasonable accommodations, implementing accommodations, and modifying accommodations.

C. Office of Human Resources and Strategic Talent Management

The Office of Human Resources and Strategic Talent Management is responsible for coordinating and administering the College's Employment of Individuals with Disabilities Policy and Procedure and the Chief Human Resources Officer is the primary contact regarding this policy and procedure.

III. Definitions

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

Substantial Limitation. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment, and an impairment that is episodic or in remission may also meet the definition of disability if it would substantially limit a major life activity when active. Some examples of these types of impairments may include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder and schizophrenia. An impairment, such as cancer that is in remission but that may possibly return in a substantially limiting form, is also considered a disability.

Major Life Activity. This term includes walking, seeing, hearing, eating, sleeping, standing, lifting, bending, reading, concentrating, communicating, breathing, learning, performing manual tasks, caring for oneself, and working.

Qualified Individual With a Disability. An individual who can perform the essential functions of the position such individual holds or desires with or without reasonable accommodations.

Essential Functions. The fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include marginal or incidental job functions.

Direct Threat. A significant risk to the health, safety, or well-being of individuals with disabilities or others that cannot be eliminated or reduced to an acceptable level by a reasonable accommodation.

Reasonable Accommodation. This term means any modification or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. For example, reasonable accommodation may include: acquiring or modifying equipment or devices; job restructuring; part-time or modified work schedules; reassignment to a vacant position; adjusting or modifying examinations, training materials or policies; providing readers and interpreters; and making the work place readily accessible to and usable by people with disabilities. Standards of conduct and performance are not lowered as an accommodation. The College makes the determination as to what constitutes a "reasonable accommodation."

Undue Hardship. It is not necessary to provide a reasonable accommodation if doing so would cause an undue hardship to the College. This term refers to an accommodation that would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the College.

**IV. Employment Guidelines for Applicants**

- A. Applicants should notify HRSTM of the need for reasonable accommodations in the application and interview process. Applicants should provide such notice two weeks prior to the interview date.
- B. Applicants will be provided reasonable accommodations to participate in the application and interview process, as determined by the Chief Human Resources Officer.
- C. An applicant shall not be asked if the applicant is disabled, asked about the nature or severity of a disability, or be required to take a medical examination before the College makes a job offer.
- D. An applicant may be asked about the applicant's ability to perform essential job functions, as long as the questions are not phrased in terms of a disability. An applicant may also be asked to describe or demonstrate how the applicant would perform essential job functions as identified in the position description and the job vacancy announcement.
- E. After a job offer is made and prior to the commencement of employment duties, an applicant may be required by the Chief Human Resources Officer, or designee, to take a medical examination if all applicants for the job to whom a conditional offer of employment has been made are also required to obtain a medical examination pursuant to College Policy and Procedure 31105-Medical Examinations.
- F. Once an applicant has been hired, the employee will not be required to take a medical examination or asked questions about disability unless the Chief Human Resources Officer, or designee, concludes that a medical examination is being required based on objective evidence that the employee's ability to perform essential job functions is impaired or that an employee poses a direct threat to the employee or others. In all cases, the medical examination must be job-related and consistent with the business necessity as determined by the Chief Human Resources Officer, or designee.

**V. Requests for an Accommodation by an Employee**

- A. The College's obligation to provide reasonable accommodation applies only to known physical or mental limitations. The employee is responsible for requesting, either orally or in writing, a reasonable accommodation from the employee's supervisor or the Chief Human Resources Officer (or designee). An employee who requests a reasonable accommodation should provide appropriate documentation as required by law.
- B. At any time during the accommodation request process, the Chief Human Resources Officer (or designee) may ask the employee for medical documentation of the employee's disability and of the need for a reasonable accommodation requested. If the employee provides documentation that is insufficient to permit the College to make a determination as to the appropriate reasonable accommodation, the Chief Human Resources Officer may require the employee, at the College's expense, to have a medical examination performed by a health care provider of the College's choice in order to adequately document the employee's need for an accommodation and to identify potential

accommodations. Any medical examination required under these circumstances will be limited to determining the existence of a disability, the functional limitations that require accommodation, and identification of potential accommodations.

- C. The appropriate accommodation is identified through an interactive process involving the employee, the employee's supervisor, and the Chief Human Resources Officer (or designee). Following receipt of a request for reasonable accommodation, the employee's supervisor and the Chief Human Resources Officer (or designee), shall meet with the individual to acknowledge the request, explain the processing of the request, and discuss how the employee's disability impacts performance of the employee's job. In addition, the employee, the Chief Human Resources Officer, and supervisor should discuss the employee's accommodation request(s), other potential reasonable accommodations, and should assess the effectiveness of the accommodations discussed. Throughout the process, the Chief Human Resources Officer (or designee) may consult and request the resources of other College offices, including the Director of ADA and Title IX Compliance, the Facilities Office, and outside agencies (i.e. the Job Accommodation Network and the Department of Rehabilitative Services).
- D. Reasonable accommodation requests are considered and analyzed on a case-by-case basis. The College is not required to provide the "best possible" accommodation, the employee's requested or preferred accommodation, or to reallocate essential job functions. The College is entitled to provide the reasonable accommodation of its choice so long as the accommodation permits the employee to perform the essential functions of the employee's job in question.
- E. Where the disability, the need for accommodation, and the type of accommodation which should be provided is clear, and the accommodation would involve no, or insignificant, expense, the supervisor may agree to and implement the accommodation. Supervisors who agree to and implement an accommodation in such a manner must promptly notify the Chief Human Resources Officer, or designee, in writing of the supervisor's action with respect to the requested accommodation.
- F. If the supervisor has questions about or is reluctant to provide the requested accommodation, the supervisor shall refer the request to the Chief Human Resources Officer, or designee. A supervisor may not deny a requested accommodation without first consulting with the Chief Human Resources Officer, or designee.
- G. After discussing the request with the employee and the employee's supervisor through the interactive process set forth above, the Chief Human Resources Officer shall determine:
  - 1. If the employee is protected by the ADA, including, but not limited to whether the impairment substantially limits a major life activity. In determining whether an impairment is substantially limiting, the Chief Human Resources Officer, or designee, shall consider: (a) the nature and severity of the impairment; (b) the duration or expected duration of the impairment; and (c) the permanent or long-term impact or expected impact from the impairment.

2. If the employee is a qualified individual with a disability by determining if employee can, with or without a reasonable accommodation, perform the essential functions of the job in question. Whether a job function is essential is determined by considering the following illustrative list of factors: (a) the supervisor's judgment on which functions are essential; (b) written job descriptions prepared for the job; (c) the amount of time spent performing the function; (d) the consequences of not requiring the incumbent to perform the function; (e) work experiences of past incumbents in the job; and (f) current work experience of incumbents in similar jobs.
3. To determine if the employee would pose a direct threat to the employee's health and safety or to the health or safety of others, the College should consider the following non-exclusive factors: (a) the duration of the risk; (b) the nature and severity of the potential harm; (c) the likelihood that the potential harm would occur; and (d) the imminence of the potential harm.
4. Whether the requested accommodation would be effective to enable the employee to perform the essential functions of the job. The employee's preferred accommodation should be considered, but the ultimate decision as to what type of accommodation will be provided, if any, is the College's decision.
5. Whether the requested accommodation would result in an undue hardship for the College. Among the factors to be considered in determining whether an accommodation constitutes an undue hardship are: (a) the cost of the accommodation; (b) the overall nature of the operation of the department or units involved in providing the accommodation, such as financial resources, the number of people employed and the effect on expenses and resources; and (c) the impact of the accommodation on the operation of the departments or units, including its impact on other employees' ability to perform their duties and the department's ability to conduct business.

VI. Notification of Determination

- A. If the Chief Human Resources Officer determines that no accommodation will be provided, the Chief Human Resources Officer, or designee, shall inform the employee and the supervisor of the decision, in writing, within 15 working days of receipt of the employee's request for accommodation, and shall set forth the reasons for that determination.
- B. If the Chief Human Resources Officer, or designee, determines that a reasonable accommodation is appropriate, the Chief Human Resources Officer, or designee, will notify the employee, the supervisor, and the Chief Human Resources Officer in writing, within 15 working days of receiving the employee's request for accommodation. The notice shall include the nature of the accommodation to be provided and any follow-up actions to be taken. The employee will also be informed that acceptance of the accommodation is voluntary. The Chief Human Resources Officer, or designee, will also identify, in appropriate circumstances, the source of funds or other resources necessary to provide and/or implement the accommodation.

- C. The supervisor is responsible for implementing the accommodation and shall, in coordination with the Chief Human Resources Officer, or designee, monitor the accommodation's effectiveness.

VII. Confidentiality

All medical documentation and reasonable accommodation requests, including those made using the "MC Request for Reasonable Accommodation/Modification" form will be maintained in a file separate from an employee's or applicant's official personnel file. This separate file shall be kept in HRSTM and shall be treated as confidential, except as necessary to administer the reasonable accommodation process. Accordingly, such documentation and information should only be shared with individuals involved in the reasonable accommodation process.

VIII. Non-disclosure of Genetic Information

- A. The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by law.
- B. To comply with this law, employees should not provide any genetic information when responding to a request for medical information made in connection with a request for an accommodation, including any leave of absence.
- C. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

IX. Appeal

If an employee does not agree with the determination and/or the accommodation proposed by the Chief Human Resources Officer, or designee, the employee may file a complaint in accordance with the College policy and procedures regarding "Equal Employment Opportunity and Non-Discrimination."

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Administrative Approval: September 24, 2001; August 17, 2010; September 3, 2010; November 21, 2017.