ADA Accommodation Process Review

Fall 2021 Course Modality Considerations

Methodology

- Interviews with employees who oversee the accommodation process
  - Office of Human Resources Workforce Relations (n=1)
  - Employee Disability Resources/DDEEA (n=3)
  - Office of Compliance (n=1)
  - Divisional Disability Representatives (n = 13) covering all Schools and Colleges
  - Associate Deans (n=4)
  - School HR Director (n=1)
  - Vice Provost for Teaching and Learning
- Interview with University Committee chair (n=1)
- Data review
  - ADA requests from the Employee Disability Resources Office

Context

- Summer 2021 was unique and uniquely challenging. In early summer, there was a sense of optimism about COVID; later in the summer, with the rise of the Delta COVID variant, there was more uncertainty and increased concern about the spread of the disease—just as we were planning to return to in-person teaching.
- Many faculty members and instructors wanted to explore alternatives to an in-person return. Messaging on campus that attempted to educate people about the limits of the ADA process was interpreted (incorrectly) by some as a rejection of requests for flexibility.
- *Significant* work at the school/college level was devoted in late summer to faculty requests for flexibility and/or reasonable accommodations. The Divisional Disability Representatives (DDRs) in the schools and colleges managed both requests for accommodations under the Americans with Disabilities Act (ADA) and requests to change teaching modalities or provide other flexible work arrangements.
- The overall number of requests that were in scope of ADA (36) was low. (See Appendix B.) Staff in the schools and colleges estimate that they had three times as many requests for workplace flexibility as ADA requests.

Findings: ADA Reasonable Accommodation Review

- The ADA accommodation process was executed consistently across campus, with additional support provided in mid-summer to all Schools/Colleges by the Employee Disability Resources (EDR) office personnel.
- School/College Deans are responsible for decisions related to course modality. Course modality changes were an *extremely rare* outcome of an ADA accommodation request. More commonly, an instructor's course assignment was changed or other workplace flexibilities were created at the School/College level.
- There is not a process for collecting data on faculty/instructor requests for workplace flexibility. As Schools/Colleges are responsible for curriculum they can best determine options for workplace flexibility. A wide range of requests for alternative assignments (including modality change) that surfaced were handled at different levels within a School/College. There was not a standard definition for what constituted a workplace flexibility request. Formal ADA request data *was* captured (See Appendix).

Findings: ADA Reasonable Accommodation Review

- The nature of the ADA requests in Summer 2021 was unique and required rapid training and dissemination of information. For example, many requests focused on the presence of an unvaccinated child at home or that a family member was immunocompromised, which were complex scenarios that had to be reviewed by legal and other experts. The UW-Madison Office of Legal Affairs issued guidance that accommodations under the ADA were appropriate only in cases in which the *employee* had a medical need for accommodations; concerns about unvaccinated family members or family members with underlying medical conditions were deemed not in scope of the ADA.
- HR and DDR representatives are often the same person within a School/College. The expectation of in-person return (and thus the need to resolve requests prior to the start of Fall semester) created a very short timeline for the late-summer requests to be processed. This was exacerbated by the fact that both the Title and Total Compensation project and remote work agreements were implemented simultaneously with this work, with the same personnel needing to be involved in all of these efforts.
- The Employee Disability Resource (EDR) Office became more hands-on during this time, with the goal of providing consistency across campus. This led to an increased level of scrutiny of ADA requests and a subsequent increase in the time spent on each case, making requests take longer to process. The two employees in EDR (Barbara Lanser and Jen Streator) were described by the DDRs as being incredibly valuable and helpful.

Findings: Review in the Schools and Colleges

- A substantial operational effort at the school/college level was driven by the large number of workplace flexibility requests. Only a small number of those (estimated to be 25% of the total) qualified under the requirements of ADA. The ADA was not a particularly helpful instrument for most of the needs that faculty and instructional staff were bringing forward.
- Workplace flexibility requests are handled at the school/college level by the Deans, Associate Deans, and Department Chairs. Those individuals are closest to the work and are in the best position to identify solutions to faculty needs. Deans, Associate Deans and Department Chairs worked together, striving to be flexible in meeting faculty and instructional staff needs while still driving toward in-person classes.
- School/College Divisional Disability Representatives (DDRs) heard the message, *perceived to be from the Chancellor and Provost*, that fall semester teaching was to be in person. This was interpreted in an inflexible way. The DDRs reported receiving communication from the Office of Human Resources that in-person teaching was the expectation (and this was interpreted as the campus' "business need" in the ADA review process).
- Faculty perceptions did not always align with offers of flexibility at the School/College level. That is, while S/C leadership desired to be flexible, the reluctance to offer changes in course modality led to perceptions of inflexibility.
- There were very few instances of faculty obstruction or resignation over returning to in-person teaching. There was one case of a tenured faculty resignation and a few others described as elective early retirements.

Recommendations: Communications

- Continue to recognize and thank faculty and instructional staff for returning to in-person work (while other campus roles could be done remotely) and for a successful fall semester.
- Improve campus messaging and education on the distinction between ADA reasonable accommodation versus workplace flexibility requests.
- Clarify campus-wide definitions of “in-person,” “hybrid,” “online,” and “remote” teaching modalities. Definitions of “remote” versus “online” teaching from the Vice Provost of Teaching and Learning provide helpful clarification. (See Appendix C.)

Recommendations: Preparing for Future Surges

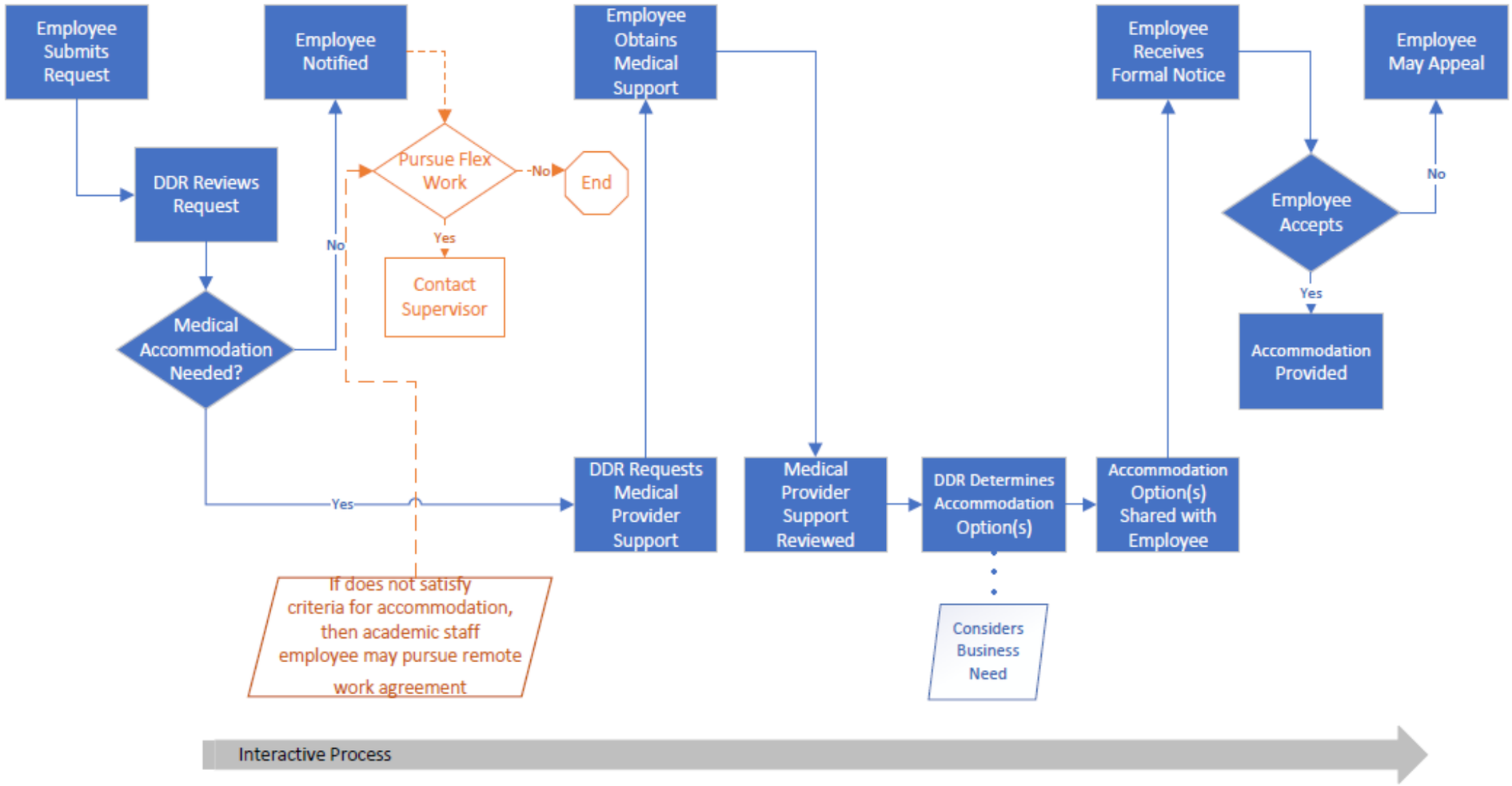
- As the pandemic continues to evolve, the campus should be prepared for future waves of requests (both for accommodations and for flexible work arrangements).
- Schools and colleges should build deadlines for modality change requests into the timetable for their review/approval processes (if not already incorporated). This is preferred over a campus-wide deadline.
- Schools and Colleges should have have mechanisms for identifying *who can teach what* at the course-specific level and be ready to execute course/instructor swaps to respond to requests for flexibility.
- Now that people are more educated about the options available to them, schools and colleges might expect a higher number of requests for workplace flexibility, accommodations under the ADA, or Family Medical Leave Act (FMLA) requests. Deans and division heads should proactively consider scenarios such as the omicron variant and how that may impact requests.

Recommendations: Review Staffing Models

- Review the DDR staffing model and the responsibilities of the DDRs (most are not trained ADA specialists and have ADA accommodation review responsibilities as part of general HR duties).
- Some DDRs very rarely have a single “case”; when this happens, they need intensive support from the EDR office. Others experienced more cases than they could handle (in summer).
- The two specialists in the EDR office cannot provide adequate support to the many non-specialists across the schools and colleges during intensive periods such as the one witnessed in summer 2021. This results in a bottleneck in the process of determining accommodations. (See process map in Appendix A.) In addition to considering the “business need(s)” as noted in the process map, the DDR consults with the EDR office (sometimes multiple times) to confirm whether a particular accommodation is “reasonable.”

Appendices

Appendix A. ADA Accommodation Process Chart



Appendix B. ADA Accommodation Requests

A	B	C	D	E	F	G	H	I	J
Division	Total	In progress	Approved as Requested	Modality changes	Modified Approval	Denied	Paused	Withdrawn	Appeal filed
Business School	1	0						1	
Education	4	0	1	0	1			2	
L&S	25	2	7	6*	9	1		6	2
Law	3	0		1**	2			1	1
Nelson Institute	1	0			1				
Nursing	1	0	1	0					
Pharmacy	1				1				
TOTAL	36								

as of 9/22/2021

** 1 until 10/6; ** 3 weeks only*

Report provided by Employee Disability Resource Office

Column E. If yes in Column D, did modality change?: The number reflects when modality was changed from in-person to on-line. In some requests the division was able to assign the instructor to a course that was already scheduled online. In such cases it represents an approved accommodation even though the original assigned course did not change modality.

Column F. Modified request examples: Approved N-95 mask to permit in-person instruction; move class to larger classroom; approve schedule change; permit remote instruction for a few weeks while instructor received 3rd shot of COVID-19 vaccine, then transitioned to in-person.

Column I. Withdrawn request examples: X withdrew after speaking with doctor; X teaching duties removed from position; TA course cancelled due to low enrollment; TA receiving booster shot & withdrew request; TA took RA position that allowed remote work; X started as accommodation but was not a disability issue so request was changed to workplace flexibility.

Appendix C. Course Modality Definitions

- UW-Madison uses three course modalities: in-person, hybrid, and online. The designation of "remote" modality was temporarily used during the pandemic to refer to courses that were designed to be taught in person but were temporarily moved online.
- We are primarily a residential educational institution, providing in-person instruction as our primary activity. We turn to other instructional modalities when those modalities are necessary for reasons of pedagogy and/or student access.
- Modality is not decided by individual instructors. It is a department level decision that requires school/college approval. Campus monitors the overall distribution of course modalities.

[DRAFT, Vice Provost for Teaching and Learning]