

**TENTATIVE AGREEMENT  
WMU-AAUP; July 1, 2021; Version 3**

ARTICLE 28

**REASONABLE ACCOMMODATION FOR DISABILITY**

28. §1 **DEFINITION.** The Americans with Disabilities Act (ADA) extends civil rights protection in hiring, promotion, and other terms of employment by barring discrimination against an individual because of a disability, perceived disability, a record of a disability, or a relationship to someone with a disability. Companion state legislation is defined in the Michigan Handicappers Civil Rights Act, and the provisions in both pieces of legislation pertain to Western.

28. §1.1 An employee with a disability, which is defined as a physical or mental impairment which substantially limits one or more of the major life activities, is protected by the ADA if ~~he/she is~~ **they are** otherwise qualified for the position at issue and ~~is/are~~ able to perform the essential functions of that position with or without accommodation. With certain exceptions defined by law, such an employee is entitled to reasonable accommodation of any disability.

28. §1.2 ~~As defined by~~ ~~On the basis of~~ the ADA, an identified disability is a physical or mental impairment which substantially limits one or more of the major life activities. The act provides for reasonable accommodation or change in work environment, without imposing undue hardship on the institution or threatening the safety of co-workers, but which will allow an otherwise qualified individual to perform the essential functions of the position. The individual must be qualified to perform the essential or fundamental functions, as opposed to marginal duties, associated with the position and to be able to perform such functions with or without a reasonable accommodation.

28. §2 **PROCEDURE.** The University will ~~maintain~~ ~~establish both a policy and~~ ~~and a~~ ~~process~~ for reviewing requests and awarding appropriate accommodations to bargaining unit members ~~with an identified disability~~ under this law (**see the University's Reasonable Accommodation Policy**). **The Reasonable Accommodation Policy and any related procedures apply to all bargaining unit members, unless, and only to the extent that, the language is contradicted by the language of this article.** These ~~University's~~ procedures include a **recommended accommodation request form and** periods of review, which are intended to establish a timely, **interactive,** process; ~~but~~ ~~g~~ **Given** the nature of the requests and complexity of medical matters, both parties agree to extend the time limits based upon a reasonable request by the other party.

28. §2.1 The University will ~~identify an ADA officer and~~ appoint a review committee of five (5) persons which shall include representatives from the offices of: 1) the General Counsel; 2) the Health Center; 3) the Provost; 4) Human Resources; and 5) the relevant college or other administrative officer.

28. §2.2 The committee members need not be standing members and may vary with the nature of the disability and/or requested accommodation.

28. §2.3 The ADA officer **Coordinator** will receive all requests for accommodation by bargaining unit members under this act. **The Coordinator** ~~and~~ will provide or make arrangements for an accommodation or schedule and hold a review meeting to review ~~that~~ **the bargaining unit member's** request within ten (10) **University** business days of the receipt of the request.

28. §3 MEDICAL OPINION. If any difference of opinion between the review committee and the bargaining unit member is based upon the nature or interpretation of a medical opinion, Western shall ask for a review by a second health professional as appropriate to the disability. **In such situations, the bargaining unit member must consent to disclose the results of such opinion to the University.** If the second opinion disagrees with the first, a third shall be identified by mutual agreement of the Chapter and the opinion solicited shall be final and binding upon both parties. **The bargaining unit member must consent to disclosure of the results of such opinion to the University.** Any ~~s~~Such opinions shall not be solicited from an employee or an independent contractor with an established relationship to the University. Such requests and reviews must be completed in a timely manner to meet, as closely as is reasonable, the schedule of the review process. The **health** professional decisions may not be grieved at any time under the grievance process described in this Agreement. **Medical details disclosed under this provision shall be treated confidentially to the extent possible and only disclosed to personnel as necessary for executing the provisions of this Article.**

~~28. §4 REQUEST. A request for accommodation under the ADA law shall include:~~

~~28. §4.1 an identification and/or description of the disability supported by a health professional's statement or other proof of disability;~~

~~28. §4.2 an assertion of the manner in which the disability interferes with the functions of the position;~~

~~28. §4.3 a description of the preferred accommodation; and~~

~~28. §4.4 the request shall be identified as a request for an accommodation under the ADA law, must be made within 182 days after the need for accommodation becomes known, shall be presented to the ADA officer as a complete and written document which includes the components in 28. §4.1, 4.2 and 4.3 cited above, and shall be signed by the bargaining unit member.~~

28. §45 APPEAL. If the bargaining unit member is dissatisfied with the **ADA Coordinator's response** ~~accommodation, he/she they~~ may request an appeal ~~to conference~~ with the **ADA** review committee within fifteen (15) **University** business days after the initial decision. ~~by that review committee, and~~ The ADA officer **Coordinator** shall **use best efforts to** schedule a review committee meeting within seven (7) business days of the request. After the **committee's decision** ~~appeal conference with the committee~~, the ADA officer **Coordinator** shall prepare the final decision ~~rendered by the committee~~ and so notify the bargaining unit member within five business days. The decision by the review committee following the appeal shall be considered final and shall not be grieved through the grievance process recognized in this Agreement.

28. §56 TERMINATION FOR DISABILITY. A faculty member may be terminated by Western whenever ~~he/she is~~ **they are** unable for a period of two consecutive academic years, by reason of a health disability, to perform satisfactorily, with or without reasonable accommodation, the essential functions of the position for which they were employed or the essential functions of a vacant position for which they are qualified and eligible pursuant to the terms of the collective bargaining agreement. During this two-year period, Western will consider reassignment and retraining before making a decision to terminate the employee.

28. §56.1 Before a faculty member can be so terminated, ~~he/she~~ **they** must be notified of the action proposed, supplied with a general summary of the evidence of the disability, and offered an opportunity to consult with the administrative officer who proposed to terminate for such a reason. A copy of such notification and general summary shall be sent to the Chapter at that time.

28. §56.2 If, after such consultation, the disability is disputed by the faculty member, ~~he/she~~ **they** shall be given an opportunity to respond fully with all relevant evidence concerning the issue of disability. The faculty member shall have the option of assistance by another faculty member and/or by legal counsel.

28. §56.3 Following consultation and response, and consideration of any first health care provider opinions supplied by the bargaining unit member, if a dispute exists as to whether the bargaining unit member is disabled, Western may require, at the expense of Western, that the bargaining unit member obtain the opinion of a second health care provider, designated or approved by Western.

28. §56.4 In any case where the second opinion so obtained differs from the first opinion originally offered by the bargaining unit member in support of ~~his/her~~ **their** position that ~~he/she is~~ **they are** not disabled, then Western may require, at the expense of Western, that the bargaining unit member obtain the opinion of a third health care provider jointly approved by Western and the Chapter. The opinion of the third health care provider shall state whether or not the bargaining unit member is disabled under the standard outlined above, and the opinion shall be final and binding on Western, the Chapter, and the bargaining unit member, and shall not be subject to the grievance procedure.

**Tentative Agreement**

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Date: July 2, 2021

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