MOTT COMMUNITY COLLEGE
IN-SERVICE

EMPLOYMENT LAWS
AND
DISCRIMINATION IN THE WORKPLACE

June 7, 2010

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I. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND THE ELLIOTT-LARSEN CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964 ("Title VII") and Michigan’s Elliott-Larsen Civil Rights Act ("ELCRA") prohibits discrimination based upon an individual’s race, color, religion, national origin, or sex. 42 USC 2000e; MCL 37.2101, et. seq. The ELCRA further prohibits activities that discriminate against an individual because of his/her age, height, weight, or marital status. MCL 37.2202.

Both ELCRA and its federal counterpart make it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. MCL 37.2701(a).

Title VII provides

(a) Employer practices

It shall be an unlawful employment practice for an employer--

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.


Similarly, the ELCRA states as follows:

(1) An employer shall not do any of the following:

(a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.

(b) Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity, or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, height, weight, or marital status.
(c) Segregate, classify, or otherwise discriminate against a person on the basis of sex with respect to a term, condition, or privilege of employment, including, but not limited to, a benefit plan or system.

(d) Treat an individual affected by pregnancy, childbirth, or a related medical condition differently for any employment-related purpose from another individual who is not so affected but similar in ability or inability to work, without regard to the source of any condition affecting the other individual’s ability or inability to work. For purposes of this subdivision, a medical condition related to pregnancy or childbirth does not include nontherapeutic abortion not intended to save the life of the mother.

M.C.L.A. 37.2202.

Thus, both Title VII and the ELCRA prohibit employers from discriminating against an individual belonging to a protected class in any aspect of employment including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

1. **Title VII (summary of important provisions):**

   - Employees and applicants for employment are covered under Title VII.
   - Employers engaged in interstate commerce who have 15 or more employees and possibly the employer’s agents, employment agencies, and labor organizations may be liable for a legal cause of action arising out of a Title VII cause of action. 42 USC 2000e.
   - Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin. 42 USC 2000e-2a. There are exemptions from the prohibition where the religion, sex, or national origin of an employee is a “bona fide occupational qualification. 42 USC 2000-2e. See Smith v City of Salem, 378 F3d 566 (6th Cir 2004).
   - An individual must file an administrative charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) before that person may file a civil suit.
   - A person bringing a civil action pursuant to Title VII may be entitled to injunctive relief (i.e. hiring, reinstatement, promotion, or other equitable relief); back and front pay; limited compensatory and punitive damages.
   - The prevailing party may recover a reasonable attorney fee as part of costs, within the court’s discretion.
   - A charge of discrimination must be filed with the EEOC within 300 days of the alleged discriminatory act. 42 USC 2000e-5(e).
   - A person filing a civil cause of action must do so within 90 days after receiving an EEOC right-to-sue letter. 42 USC 2000e(f).
2. **ELCRA (summary of important provisions):**

- Employees and applicants for employment are covered under the ELCRA.
- Employers with one or more employees may be liable for a legal cause of action arising out of a discrimination complaint. Supervisors, as the employer’s agents, are subject to individual liability. *Elezovic v Ford Motor Co.*, 472 Mich 408 (2005).
- The ELCRA prohibits discrimination on the basis of race, color, religion, national origin, age, sex, height, weight, or marital status. MCL 37.2202.
- A charge of discrimination pursuant to the ELCRA may be filed with the Michigan Department of Civil Rights (“MDCR”), but administrative remedies need not be exhausted before bringing a civil suit.
- A person alleging a violation of the ELCRA may bring a civil action for appropriate injunctive relief or damages or both. Attorney fees may also be awarded. MCL 37.2801.
- A charge of discrimination must be filed with the MDCR within 180 days of the alleged discriminatory act or within 180 days after the alleged discriminatory act was or should have been discovered.
- A civil action must be commenced within three years of the alleged discriminatory act or within three years after the alleged discriminatory act was or should have been discovered. MCL 600.5805(10).

A. **Theories of Recovery in Discrimination Actions**

There are two basic models or theories of discrimination law: disparate treatment or disparate impact. To establish liability under Michigan’s ELCRA or Title VII, a plaintiff must prove by a preponderance of the evidence that he or she either was a victim of intentional discrimination or was discriminated against through the discriminatory operation of policies or practices that do not on their face appear to be discriminatory.

1. **Disparate Treatment (Intentional Discrimination):**

A plaintiff establishes a claim of intentional discrimination under state or federal law by proving that membership in a statutorily protected classification was a “motivating” factor in the challenged employer action. *Cooley v Carmike Cinemas, Inc*, 25 F3d 1325 (6th Cir 1994).

In a disparate treatment case, the plaintiff must show that the employer intentionally acted to the plaintiff’s disadvantage due to his or her membership in a protected group. The disparate treatment prima facie case has the following four elements:

1. membership in a protected group;
2. qualification for the position;
3. adverse employment action; and
4. he/she was treated differently from similarly situated employees who were not within the protected class/replacement by a nongroup member.

2. Disparate Impact

In a disparate impact case, intent is not a required element; rather the employee is claiming that the employer used a facially neutral practice that had a disproportionately adverse effect on a group that is protected by law and of which the employee is a member. An unlawful employment practice is established under the disparate impact theory only where 1) a plaintiff demonstrates that the employer uses an employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin, and the employer fails to demonstrate that the challenged practice is job-related and consistent with business necessity; or 2) the plaintiff demonstrates that less restrictive employment practices are available and that the employer refuses to adopt them. 42 USC 2000e-2(k)(1)(A).

Further, to state a claim for disparate impact discrimination, a plaintiff must, by a preponderance of the evidence, show that the employer’s practices or facially neutral policies have an adverse effect on a statutorily protected group. *Griggs v Duke Power Co.*, 401 US 424 (1971); *Singal v GMC*, 179 Mich App 497 (1989).

B. Forms of Discrimination

1. Race/Color Discrimination

Race discrimination involves treating an applicant or employee unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color or because of a person’s connection with a race-based organization or group, or an organization or group that is generally associated with people of a certain color. Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color. See, *Santiago v Stryker Corp*, 10 F Supp 2d 93, 96 (DPR 1998) (holding dark-complexioned Puerto Rican citizen replaced by light-complexioned Puerto Rican citizen could establish a prima facie case of “color” discrimination)

An employment policy or practice that applies to everyone, regardless of race or color, can be illegal if it has a negative impact on the employment of people of a particular race or color and is not job-related and necessary to the operation of the business. For example, a “no-beard” employment policy that applies to all workers without regard to race may still be unlawful if it is not job-related and has a negative impact on the employment of African-American men (who have a predisposition to a skin condition that causes severe shaving bumps). *Fitzpatrick v City of Atlanta*, 2 F3d 1112, CA 11 (GA 1993). (African American firefighters who suffered from bacterial disorder that precluded them from shaving brought suit against fire department
challenging the rule that firefighters must all be clean-shaven; court held that the Employer established a “business necessity” for the rule because of safety concerns).

2. National Origin Discrimination

National origin discrimination involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). Like race/color discrimination, national origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.

Likewise, the law makes it illegal for an employer or other covered entity to use an employment policy or practice that applies to everyone, regardless of national origin, if it has a negative impact on people of a certain national origin and is not job-related or necessary to the operation of the business. For example, an employer can only require an employee to speak fluent English if fluency in English is necessary to perform the job effectively. An “English-only rule”, which requires employees to speak only English on the job, is only allowed if it is needed to ensure the safe or efficient operation of the employer’s business and is put in place for nondiscriminatory reasons. An employer may not base an employment decision on an employee’s foreign accent, unless the accent seriously interferes with the employee’s job performance. See, Carino v Univ of Okla Bd of Regents, 750 F2d 815, 819 (10th Cir 1984)(Reasons given by university for demoting dental laboratory employee from position of supervisor were pretextual where, although the employee was not hired primarily for his supervisory skills, demotion resulted from opinion held by dental college faculty members that he was unsuitable to continue as supervisor because of his foreign accent); Fragante v City and County of Honolulu, 888 F2d 591, 596 (9th Cir 1989)(City and county did not discriminate against Filipino on basis of national origin when they refused to employ Filipino in clerk positions because of Filipino's heavy accent; clerk positions involved constant public contact and required ability to speak clearly, and Filipino's heavy accent had deleterious effect on his ability to communicate orally).

The Immigration Reform and Control Act of 1986 (“IRCA”) makes it illegal for an employer to discriminate with respect to hiring, firing, or recruitment or referral for a fee, based upon an individual’s citizenship or immigration status. The law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation or government contract.1 Employers may not refuse to accept lawful documentation that establishes the employment eligibility of an employee, or demand additional documentation beyond what is legally required, when verifying employment eligibility, based on the employee’s national origin or citizenship status.

IRCA also prohibits retaliation against individuals for asserting their rights under the Act, or for filing a charge or assisting in an investigation or proceeding under IRCA. IRCA’s

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1 i.e. Executive Order 11935 states that only United States citizens and nationals may compete for positions within the competitive service. This restriction applies to all agencies with competitive service positions any place in the world.
nondiscrimination requirements are enforced by the Department of Justice’s Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division.

3. Religious Discrimination

A plaintiff in a religious discrimination case must demonstrate a *prima facie* case which raises the presumption that he was the victim of discrimination. *Id.* This presumption is rebutted by the defendant demonstrating that it offered a reasonable accommodation to the plaintiff or that it could not reasonably accommodate the plaintiff’s religious conflict without undue hardship. *Cooper v Oak Rubber Company*, 15 F 3d 1375, 1378 (6th Cir 1994); See also, 42 USC 2000e-2; MCL 37.2202.

To establish a *prima facie* case, the plaintiff must prove that: 1) he holds a sincere religious belief that conflicts with an employment requirement; 2) he has informed the employer about the conflicts; and 3) he was discharged or disciplined for failing to comply with the conflicting employment requirement.” *Smith v Pyro Mining Co.*, 827 F 2d 1081, 1085 (1987).

Under Title VII, an employer must reasonably accommodate an employee’s sincerely held religious beliefs unless the employer can demonstrate that such an accommodation would impose an undue hardship to its operation. 42 USC 2000e-2; MCL 37.2202.

a. What is a “religion” for purposes of religious discrimination under Title VII?

As a threshold question, the plaintiff must demonstrate that his beliefs constitute a “religion” under the relevant statute. Under Title VII, “religion” is defined broadly to include “aspects of religious observance and practice, as well as belief…” 42 USC 2000e(j). Federal courts have generally adopted the EEOC’s broad definition of religion:

In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States v Seeger*, 380 US 163 (1965) and *Welsh v United States*, 398 US 333 (1970). The Commission has consistently applied this standard in its decisions. The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase “religious practice” as used in these Guidelines includes both religious observances and practices, as stated in section 701(j), 42 USC 2000e(j). 29 DCR Ch XIV (7-1-00 Edition) sect. 1605.1.

In other words, courts will generally find beliefs to be a religion if they “occupy the same place in the life of the [individual] as an orthodox belief in God holds in the life of one clearly qualified.” *Peterson v Wilmur Communications, Inc*, 205 F Supp 2d 1014, 1018 (2002), citing
United States v Seeger, 380 US 163, 184 (1965). In evaluating whether a belief is “religious” and “sincerely held,” “courts must give ‘great weight’ to the plaintiff's own characterization of his or her beliefs as religious.” Id. Moreover, “to be a religion under this test, a belief system need not have a concept of a God, supreme being, or afterlife...or derive from any outside source. Peterson 205 F Supp at 1018, citing Welsh v United States, 398 US 333, 339-40 (1970). Rather, “purely ‘moral and ethical beliefs’ can be religious ‘so long as they are held with the strength of religious convictions.’” Id.

In Peterson, Plaintiff was demoted from a supervisory position after a newspaper article regarding his involvement with the World Church of the Creator appeared in the Milwaukee Journal Sentinel. Creativity, (plaintiff’s name for his “religion”) did not espouse a belief in God, a supreme being, or afterlife. Rather, Creativity’s central tenet was the creation of a white supremacist utopia which could only be established through the degradation of all non-whites. Plaintiff’s employer sent him the following letter:

On Sunday, March 19, 2000, an article appeared in the Milwaukee Journal/Sentinel stating that you were a member of the World Church of the Creator, a White supremacist political organization. On Monday, March 20, 2000, the information in the newspaper article was known by everyone in our office.

Our office has three out of eight employees who are not White. As of March 20, 2000, you were their supervisor. As a supervisor, it is your responsibility to train, evaluate, and supervise telephone solicitors. Our employees cannot have confidence in the objectivity of your training, evaluation, or supervision when you must compare White to non-Whites.

Because the company, present employees, or future job applicants cannot be sure of your objectivity, you can no longer be a supervisor and you are hereby notified of your demotion to a telephone solicitor effective March 22, 2000.

The court granted Plaintiff’s motion for summary judgment stating that courts should not be in the business of assessing the truth or validity of a belief system, instead they should look to see only if the belief system occupies the same place in the life of an individual as an orthodox belief in God holds in others. The court noted that great weight should be given to the individual’s characterization of his or her beliefs as religious. Id. at 1018.

The court further explained that the EEOC definition of “religion” encompasses belief systems that espouse notions of morality from which to draw conclusions distinguishing right from wrong. Creativity taught that whatever advances white people and denigrates all others is good. The Court stated that “this precept, although simplistic and repugnant to the notions of equality that under gird the very non-discrimination statute at issue, is a means for determining right from wrong.” Id at 1023.

b. Religious Practices (more likely to be protected where the practice is required)

Unlike religious beliefs, which are protected so long as they are sincerely held by the individual, religious practices are more likely protected where the practice is required by the belief.
In Storey v Burns International Security Services, 390 F3d 760 (3rd cir 2004), the plaintiff claimed that he was discriminated against on the basis of his religion when his employer discharged him for displaying Confederate flag stickers on his lunch box and pick up truck. In rejecting the plaintiff’s claim, the court found that nothing in plaintiff’s complaint suggested that the employer’s requirement that he remove or cover up the stickers during work conflicted with a sincerely held belief endemic to his professed religion or that his professed religion required the display of confederate symbols. *Id.* at 765.

The Michigan Court of Appeals relied upon the reasoning in Storey to reach a similar conclusion under the ELCRA. In *Dauberman v Michigan Automotive Compressor, Inc.*, 2005 WL 1684432 (Mich App, an unpublished opinion), the Michigan Court of Appeals addressed the issue of whether the ELCRA protected religious practice as well as belief. In *Dauberman*, an employer transferred an employee after his supervisor requested that he stop excessively discussing religion. In reaching the conclusion that plaintiff’s religious discrimination claim failed, the court noted that “this is not a case involving a claim of a religiously mandated observance. Plaintiff’s own deposition testimony established that he was not required to share his religious belief in the workplace, particularly when it burdened a co-worker who did not want to hear what he had to say. A personal need to share religious beliefs is not the same as a religiously mandated observance.” *Id.*

c. **Reasonable Accommodation and Undue Hardship**

Once a plaintiff has established that his beliefs constitute a “religion” for Title VII purposes, and that such a belief conflicts with an employment requirement, the court will examine whether the employee has notified his employer of a need for a religious accommodation. Once notified, the employer has an obligation to *reasonably accommodate* the individual’s religious practices. 29 CFR 1605.2(c). As noted above, an employer may only refuse the accommodation if the employer can demonstrate that an undue hardship would result from the accommodation or each available alternative method of accommodation. *Id.* The accommodation, however, need not necessarily be the exact accommodation requested by the employee.

In *Ansonia Board of Education v Philbrook*, 479 US 60 (1986), the U.S. Supreme Court held that an employer's duty to accommodate an employee's religious observance under Title VII does not require the employer to accept the preferred accommodation of the employee. The Court held that an employer meets its Title VII obligations when it shows that it has offered a reasonable accommodation to the employee, regardless of whether the employee has suggested another accommodation. *Id.* at 68-69.

In striking a balance between what the employee desires and what the employer is required to provide, courts hold both parties responsible for engaging in an interactive process to resolve the conflicts. For example, in *EEOC v Auto Nation USA Corp.*, 2002 US App LEXIS 24144 (9th Cir, 2002), the plaintiff requested Sundays off to accommodate his belief that he should not work on the Sabbath. His employer suggested the plaintiff ask other employees to cover his shift or hire another person to reduce the number of shifts the plaintiff was required to work. Instead of further discussing alternative accommodations, the plaintiff resigned. As a result of the
employee’s failure to engage in meaningful discussion and interactive process to resolve the conflicts, the court held that the employer had not violated its duty to accommodate.

Similarly, the employer in *Tiano v Dillard Dept. Stores, Inc*, 139 F3d 679 (9th Cir 1998), did not violate an employee’s right to a religious accommodation when it denied a leave request to make a pilgrimage to Yugoslavia between October 17 and 26. The employer denied the leave on the basis of its no-leave policy during the month of October, as it was the busy season. Despite the policy and the denial of the leave request, plaintiff went on the pilgrimage and upon her return the employer informed her she had quit. The lower court found that the plaintiff had a religious reason for taking the trip; however, the Ninth Circuit reversed the holding and explained that while the calling may have been legitimate, the timing of the trip was a personal preference and not part of the calling. The court further noted that there were tours available to the plaintiff which did not conflict with her employment obligations. *Tiano v Dillard Dept. Stores, Inc*, 139 F 3d 679 (9th Cir 1998).

In the EEOC regulations, an employer may assert undue hardship to justify a refusal to accommodate an employee’s need to be absent from his scheduled duty hours if the employer can demonstrate that the accommodation would require “more than a *de minimis* cost.” 29 CFR 1605.2(e). Under the regulations, the EEOC will determine what constitutes “more than a *de minimis* cost” with “due regard given to the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation.” *Id.*

As noted in the regulations, the EEOC interprets “*de minimis* cost” consistent with the Supreme Court’s holding in *Trans World Airlines, Inc v Hardison*, 432 US 63, 84 (1977), where it found that to require an employer to bear additional cost in the regular payment of premium wages of substitutes would constitute an undue hardship. However, the EEOC “will presume that the *infrequent payment* of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing a reasonable accommodation.” *Id.* (emphasis added). Furthermore, the EEOC “will presume that generally, the payment of administrative costs necessary for providing the accommodation will not constitute more than a *de minimis* cost. Administrative costs, for example, include those costs involved in rearranging schedules and recording substitutions for payroll purposes.” *Id.*

As noted by a federal court in *Shpargel v Stage & Co*, 914 F Supp 1468, 1475 (ED Mich, 1996), “[u]ndue hardship is an easier standard than its name might suggest; any accommodation that results in more than *de minimis* costs to the defendant creates undue hardship.”

By way of example, the Sixth Circuit in *Cooper v Oak Rubber Co*, 15 F3d 1375 (6th Cir, 1994), affirmed a lower court’s finding that a manufacturer of industrial vinyl gloves would have suffered an undue hardship if required to shut down one of its six production machines, or to hire an additional employee, in order to accommodate a Seventh Day Adventist employee’s request not to work on Saturdays. The Court noted that “either alternative available to [the employer], the hiring of an additional worker or risking the loss of production, would have entailed more than a *de minimis* cost, relieving [the employer] of the obligation to accommodate.” *Id.* at 1380; *see also Virts v Consolidated Freightways*, 285 F 3d 508 (6th Cir 2002) (holding that an
employer could not have reasonably accommodated a plaintiff truck driver’s religious objection to participating in sleeper runs with female co-workers, and was not required to do so under Title VII where the accommodation would have resulted in a violation of the seniority provisions of the collective bargaining agreement).

Below is a brief summary of both reasonable and unreasonable accommodations in the workplace in religious discrimination cases:

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<tr>
<td>Voluntary substitutions and “shift swapping.” 29 CFR 1605.2(d)(1)(i).</td>
<td>A swap system requiring employees to find their own replacements was not a reasonable accommodation where employee’s beliefs prevented him from inducing another to work on the Sabbath. <em>Smith v Pyro Mining</em>, 827 F 2d 1081 (6th Cir 1987).</td>
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<td>Flexible scheduling (may be reasonable where it allows for flexible start and stop times, provides floating or optional holidays, provides flexible breaks, allows employee to work through lunch in exchange for an early departure, staggers work hours, or permits employees to make up lost work time). 29 CFR 1605.2(d)(1)(ii).</td>
<td>Distributing surveys asking other employees if they would be willing to swap shifts with employee seeking the accommodation is not a reasonable accommodation as a matter of law. <em>McGuire v General Motors Corp</em>, 956 F2d 607 (6th Cir 1992).</td>
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<td>An employee may be required to lose benefits enjoyed by other employees in exercising the flex.</td>
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<td>Changing job assignments/lateral transfers. 29 CFR 1605.2(d)(1)(iii).</td>
<td>It is unreasonable to make an employee use vacation days to avoid working on a Sabbath. <em>Cooper v Oak Rubber Co</em>, 15 F3d 1375 (6th cir 1994).</td>
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<td>Accepting third party statement from Christian Science practitioner in lieu of medical diagnosis is a reasonable accommodation to employer’s medical leave policy where employee’s religion prevented him from consulting with medical professionals. <em>Riselay v Secretary of HHS</em>, 1991 US App Lexis 6179 (6th Cir 1991).</td>
<td>It is unreasonable to accommodate only one of an employee’s multiple religious practices by allowing an employee time off to attend services on a Sabbath, but still requiring the employee to work on the Sabbath. <em>Cooper v Oak Rubber Co</em>, 15 F3d 1375 (6th Cir 1994).</td>
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<td>Allowing Catholic to wear anti-abortion button so long as it remained covered was reasonable accommodation because Title VII does not give employees the right to impose their religious views on others. <em>Wilson v US West</em></td>
<td>Refusing an accommodation on the basis that the collective bargaining agreement prohibits it is unreasonable where the employer fails to ask the union if it would allow the variance. <em>Boomsa v Greyhound Food Management, Inc</em>,</td>
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Request for variance of policy against facial hair was unreasonable where policy was adopted to comply with California’s OSHA, because risking liability under OSHA was an undue hardship on employer. Bhatia v Chevron USA, Inc, 734 F2d 1382 (9th Cir 1984).

d.  **Reasonable Accommodation and the Elliott-Larsen Civil Rights Act**

While no court has found that the ELCRA requires reasonable religious accommodations in the workplace, employers should nonetheless be cognizant that an action for religious discrimination can lie where the employer fails to act affirmatively to prevent the discriminatory effects of an employment practice or policy. *Parks, Parks v General Motors Corporation, Fisher Body Division*, 412 Mich 610, 622 (1982) (concurring opinion). Moreover, even if the ELCRA does not specifically require reasonable religious accommodations, an employee could bring a cause of action under Title VII for the employer’s failure to provide one. Thus, employers should provide reasonable religious accommodations when doing so would not be unduly burdensome to thwart potential legal causes of action.

4.  **Marital Status**

An employer is prohibited by the ELCRA from discriminating against an employee based on the employee’s marital status. Although the statute does not define marital status, the legislature’s intent in including marital status as a protected class is to prohibit discrimination based on whether one is married.

Discrimination based on marital status does not include consideration of the identity, occupation, or place of employment of one’s spouse. Thus, for example, a company policy against nepotism which takes into consideration the person to whom one is married does not constitute discrimination based on marital status. *Whirlpool Corp. v Civil Rights Com’n*, 425 Mich. 527 (1986); *Miller v C.A. Muer Corp.*, 420 Mich. 355 (1984); *Noecker v Department of Corrections*, 203 Mich. App. 43 (1993); *Fonseca v Michigan State University*, 214 Mich. App. 28 (1995).

The Michigan Supreme Court in *Miller v CA Muer Corporation*, 420 Mich 326 (1984), addressed the issue of whether an employer’s antinepotism policy violated the ELCRA. The plaintiff worked as a security guard for the Muer Corporation and began dating another security guard. The two employees later married. After the employer learned of the marriage, it requested that one of them transfer to another department as required by hospital policy. The employer had a policy that prohibited relatives from working together in the same department.

Plaintiff refused the transfer request and brought an action against the employer claiming that the policy unlawfully discriminated against them because of their marital status. In finding the plaintiff had no cause of action, the court noted that the ELCRA prohibition of employment discrimination on the basis of “marital status” was not meant to protect a right to be employed in
the same department as one’s spouse. The court reasoned that antinepotism policies are legal and justified when done with the purpose of preventing:

- potential emotional interference with job performance;
- collusion in grievance disputes;
- favoritism;
- morale problems resulting from the appearance of favoritism; and
- conflicts of interest that may arise if an employee is required to supervise a family member.

In *Fonseca v Michigan State University*, 214 Mich App 28 (1995), university regulations required the chairman of the sociology department (Plaintiff’s husband) to pass upon each applicant’s credentials for admission into the doctoral program. As a result, the university refused to grant Plaintiff’s admission to the sociology doctoral program. The Michigan Court of Appeals relied upon the reasoning and rationale from *Miller*, and found that the law does not oblige an employer to ignore to whom the applicant is married or related. “The law permits anti-nepotism employment policies that an employer deems necessary to ensure fairness to other candidates and fidelity to the employer.” *Id.* at 32. Accordingly, because the university’s motivation arose from its legitimate concerns over a conflict of interest, the court found no discrimination based upon sex or marital status.

Michigan courts have also found that an employer’s failure to tailor an employee’s work schedule to accommodate the employee’s family or marital obligations is not, in itself, discrimination based on marital status. Actions such as schedule alteration may be designed to force an employee to resign, but unless those actions are motivated by the employee’s marital status, discrimination on that basis is not established. *Noecker v Department of Corrections*, 203 Mich. App. 43 (1993).

5. **Height/Weight**

ELCRA prohibits employment decisions or the setting of employment conditions based on height or weight. This provision has been the subject of only a handful of reported cases.

The employee in a case alleging unlawful discrimination initially has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. To do this, the employee must show (1) that he is a member of a statutorily protected class; (2) that he was qualified for the job; (3) that he was discharged from the job; and (4) that he was replaced by someone outside the protected group. *Featherly, et al v Teldon Industries, Inc*, 194 Mich App 352, 358 (1992).

If height or weight is a reasonable and necessary job qualification, ELCRA permits employers to utilize such requirement if it can demonstrate that height or weight is a bona fide occupational qualification. See M.C.L. § 37.2208. An employer may establish height or weight as a bona fide occupational qualification by either applying to the Civil Rights Commission for an exemption or establishing the necessity of the requirement during litigation. M.C.L. § 37.2208. See, *Micu v City of Warren*, 382 NW2d 823 (1986) (holding that height restriction of 5’8” for fire fighters without evidence that it was a bona fide occupational qualification).
C. **Discriminatory Harassment**

It is also unlawful to harass a person because of that person’s race, color, national origin, religion, sex, height, weight or marital status. Harassment can include, for example, racial slurs, offensive or derogatory remarks about a person’s race or color, or the display of racially-offensive symbols. Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, discrimination/harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). See, *Allen v Michigan Dep’t of Corr*, 165 F3d 405, 411 (6th Cir 1999)(plaintiff established a prima facie case of racial harassment where he was subjected to derogatory insults by supervisors and co-workers on more than one occasion); *Aman v Cort Furniture Rental Corp.*, 85 F3d 1074 (3d Cir 1996)(where co-employees made inherently racist remarks over a five-year period, including referring to former employees as “all of you,” “poor people” or “another one” and telling black employees not to steal anything, former employees were subjected to false accusations of favoritism from their black supervisor). The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client, vendor or customer.

Claims for racial, national origin, and religious harassment predate the recognition of claims alleging hostile work environment sexual harassment. However, because hostile work environment sexual harassment law has developed more rapidly, courts typically follow it in connection with claims of harassment on the basis of another protected classification.

The Equal Employment Opportunity Commission (the “EEOC”) has stated that it will impose the same standards on all forms of harassment. These include the employer’s duty to take positive action where necessary to eliminate unlawful practices and remedy their effects. *EEOC Compliance Manual, section 615.7(b)*. Just as in sexual harassment hostile work environment cases, the plaintiff must establish that the employer knew or should have known about the alleged harassment and failed to take prompt remedial action.

Michigan courts and the Sixth Circuit have also taken this approach in the racial and religious harassment contexts, at least with regard to vicarious liability inquiries involving hostile work environments created by supervisors. See *Allen v Michigan Dep’t of Corr*, 165 F3d 405, 411 (6th Cir 1999).

Thus, similar to a sexual harassment claim, to establish a claim of other forms of harassment a plaintiff must establish that:

1. the plaintiff was a member of a protected class;
2. the plaintiff was subjected to unwelcome harassment;
3. the harassment complained of was based on Title VII protected activity;
4. the harassment had the effect of unreasonably interfering with the plaintiff’s work performance and creating an intimidating, hostile, or offensive work environment; and
5. respondeat superior liability existed, whereby the plaintiff must show that the employer tolerated and condoned the harassment.

_Davis v Monsanto Chemical Co._, 858 F2d 345, CA6 (Mich 1988).

In addition, in cases involving harassment by coworkers, the plaintiff must show that the employer _knew_ of the harassment and unreasonably _failed_ to take _prompt_ and _appropriate remedial action_. The employer may be deemed to have constructive notice if the harassment is sufficiently pervasive.

II. **AGE DISCRIMINATION**

A. **The Age Discrimination in Employment Act**

The Age Discrimination in Employment Act ("ADEA") is a federal law that protects people who are 40 or older from discrimination because of age. 29 USC §623(a). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The ADEA’s broad ban against age discrimination also specifically prohibits statements or specifications in job notices or advertisements of age preference and limitations. An age limit may only be specified in the rare circumstance where age has been proven to be a bona fide occupational qualification. The ADEA also outlaws the denial of pay or fringe benefits when the only justification is age. Nor may an employer classify employees into groups on the basis of age in a way that unfairly deprives workers of employment opportunities, such as relegating all older workers to a particular level of employment within a company and then decline to promote them.

To be covered by the ADEA, an employer must (1) be engaged in an industry affecting commerce; (2) have 20 or more employees; and (3) have an employment relationship with the claimed employee. 29 USC §630(b). To determine if an individual is an “employee” under the ADEA depends on the conduct of the worker. 29 USC §630(f). For example, independent contractors are not employees within the meaning of the ADEA and are not entitled to its protections. There must be an employer/employee relationship for the ADEA to apply. In addition the employee must be at least 40 years old. There is no age cap on the law, so all workers 40 years or older are protected.

For the past two decades, in cases where the employee presented evidence at trial that age was a “substantial factor” motivating the employer to take an adverse employment action (i.e., demotion, termination, etc.) against him or her, courts have instructed the jury to find for the employee unless the employer can show that it would have made the same decision even if its discriminatory motive had played no role in the employment decision at issue. In other words, the employer had to prove it would have still terminated, demoted, etc. the employee despite his or her age. In a recent United States Supreme Court case, _Gross v FBL Financial Services, Inc._, 129 S Ct 2343 (2009), the Court made it more difficult for an employee to prevail in an age discrimination case against his or her employer. Now, under the ADEA, a plaintiff must show that if not for his age, the adverse employment action would not have occurred.
As a result of the *Gross* decision, it will now be more difficult for an employee or former employee to prove that his or her employer violated the ADEA. It is no longer enough to present evidence that the employee’s age was a substantial or motivating factor in the employment decision; the employee now must prove that his or her age was the reason he or she was demoted, terminated, etc.

**B. Age Discrimination Under Elliott-Larsen Civil Rights Act**

A cause of action for age discrimination may be commenced under Michigan’s Elliott-Larsen Civil Rights Act (“ELCRA”) where an employer fails or refuses to hire a job applicant, engages in disparate treatment of an employee, or discharges an employee because of age. In the context of a failure to hire, a cause of action arises when a person is told by a company representative that he or she is not going to be hired due to age. However, the fact that an employer hires a greater number of young people than old people does not, by itself, support a claim of age discrimination.

A plaintiff may attempt to prove age discrimination using different methods. In the context of an employee’s discharge, the essential elements necessary to an age discrimination claim include a finding:

- (1) that the plaintiff had skills, experience, background, or qualifications comparable to other employees who were not discharged; and
- (2) that age was a determining factor in the discharge.


Thus, under an age discrimination claim pursuant to ELCRA, a plaintiff need not prove that age was the sole factor in the decision to terminate him or her. Rather, age must be one of the reasons that made a difference in determining whether to discharge the person. A prima facie case is established by a showing that:

- (1) The plaintiff was a member of the protected class;
- (2) The plaintiff was discharged;
- (3) The plaintiff was qualified for the position; and
- (4) The plaintiff was discharged under circumstances that give rise to an inference of unlawful discrimination.

See *DeBrow v Century 21 Great Lakes, Inc.*, 463 Mich 534 (2001)(holding that a statement by employee’s supervisor telling employee that he was “getting too old for this shit” was direct evidence of unlawful age discrimination).

In Michigan, a claim for age discrimination still requires a showing that the employee’s age was a determining factor in the employer’s decision. This is a more employee-friendly standard than the standard applied in a claim under the ADEA. Therefore, it is possible for an employee to bring an age discrimination claim under the federal law, ADEA, and under the Michigan law, the ELCRA, and lose on the federal claim, but prevail on the state claim.
The employee must prove the above elements by a preponderance of the evidence. The employee must also present sufficient evidence on the ultimate question of whether age was a determining factor in the decision to discharge the plaintiff.

In the context of disparate treatment, the fact-finder may consider whether the transfer of the plaintiff’s work to another job classification evidences age discrimination where the members of the two job classifications perform similar duties but the average age of persons with the job classification to which the plaintiff’s work was transferred is significantly less than the average age of persons with the job classification from which the work was transferred.

Additionally, ELCRA provides no basis to limit its protections to older workers. Unlike the ADEA, which limits its protection to anyone who is 40 or over, the ELCRA does not provide a similar restriction. In Zanni v Medaphis Physician Services Corporation, 240 Mich App 472, 612 NW2d 845 (2009), the Michigan Court of Appeals held that the section of ELCRA under which an employer shall not discriminate on the basis of age also protects workers who are discriminated against on the basis of their youth.

In Zanni, the defendant hired the plaintiff in 1985, later promoted her to the position of account executive, and then terminated her employment in 1996, allegedly because she had lost two accounts and had violated her employee plan. A less qualified, older female replaced the plaintiff on or about the same day her employment was terminated. Before plaintiff was terminated, her supervisor told her that her “voice sounded too young on the phone and that clients wanted an older account executive.” Plaintiff filed suit and alleged that older account representatives who previously lost two or more accounts did not have their employment terminated for their actions and that she was treated differently from older employees because of her age rather than the quality of her work, in violation of ELCRA. Plaintiff was 31 years old when she filed the complaint. The defendant moved for summary judgment, and the trial court granted the motion.

On appeal, the Michigan Court of Appeals found that ELCRA prohibits discrimination on the basis of age, with age being defined as “chronological age except as otherwise provided by law.” The Court noted that unlike the ADEA, which limits age to those employers who are 40 or older, the ELCRA does not provide a similar restriction. Therefore, ELCRA, unlike the ADEA, permits a claim for “reverse age discrimination.”

### III. DISABILITY DISCRIMINATION

#### A. Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973

On September 25, 2008, President Bush signed the Americans with Disabilities Act Amendments Act of 2008 (“ADAAA”) into law, and its provisions were effective on January 1, 2009. The original ADA was intended to “provide a clean and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” The purpose for amending the Americans with Disabilities Act was to correct several Supreme Court decisions
involving employment that significantly limited the Act’s coverage, and to clarify Congress’ intent to reinstate a broad scope of protection available and to broadly construe the definition of “disability.” In general, the ADAAA states as follows:

“...no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

Major changes implemented by the ADAAA included an expansion of the definitions found within the ADAAA. Section 504 adopts the definition of disability from the ADAAA. Therefore, the ADAAA amendment of 2008 applies to discrimination for purposes of both ADAAA and Section 504. Specifically, Section 12102 of Title 42, Section 3 of the ADAAA, states:

As used in this Act:

(1) Disability.—The term ‘disability means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major Life Activities.—

(A) In General.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major Bodily Functions.—For purposes of paragraph (1), a major life activity includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as Having Such An Impairment.—For purposes of paragraph (1)(C):

(A) An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or
perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of Construction Regarding the Definition of Disability.—The definition of ‘disability’ in paragraph (1) shall be construed in accordance with the following:

(A) The definition of a disability in the Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

(B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary sunglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—
(I) the term ‘ordinary eyeglasses or contact lenses’ means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term ‘low-vision devises’ means devices that magnify, enhance, or otherwise augment a visual image.

1. “Substantially Limits”

The ADAAA establishes that this term is to be construed broadly. The ADAAA also lowers the standard for determining whether an impairment constitutes a disability, and reaffirms the intent of Congress that the definition of disability is to be interpreted broadly and inclusively. Under the new law, there is specific language which clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. For example, a student with a seizure disorder that is in remission would meet this requirement.

2. “Major Life Activities”

Formerly, “major life activities” meant functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Under the amendment, “eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating” were added. Congress clarified that an impairment substantially limiting one major life activity does not need to limit others to be considered a disability. Thus, for example, an employee will be considered to have a disability if his/her impairment substantially limits reading even if it does not substantially limit learning. Congress also specifically rejected the assumption that an individual who performed well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.

3. Mitigating Measures

New language now requires the “substantially limits” determination to be made without regard to any ameliorative effects of mitigating measures. For example, schools cannot consider the effect of medication on a student with asthma. Mitigating measures include but are not limited to medication, medical supplies, equipment, or appliances, low-vision devices (not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies. Other mitigating measures include assistive technology, reasonable accommodations, auxiliary aids or services; or learned behavioral or adaptive neurological modifications. It should be expected that when such mitigating measures are ignored, some individuals previously found not to be disabled will now be protected under the ADAAA and likely under Section 504. Thus, while a student’s or employee’s medication may alleviate many symptoms of a particular disability, this factor may not affect the assessment of whether the student or employee has a disability. It may be considered, however, in determining what the student or employee needs in terms of an accommodation.
4. Discrimination Under the ADAAA and Section 504

Disability discrimination occurs when an employer or other entity covered by the ADAAA or Section 504 treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability. Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment). The ADAAA has a broad sweep and effectively forbids discrimination on the basis of disability by just about everyone, whether or not federal financial assistance is at issue. This statute applies to a much greater number of individuals than Section 504 does. However, the eligibility requirements and obligations imposed by Section 504 and the ADAAA are virtually identical when applied in a school setting.

Section 504 of the Rehabilitation Act of 1973 (Section 504) and the ADAAA require postsecondary institutions to be accessible to all people with disabilities who otherwise meet admission requirements. Section 504 prohibits all entities that receive federal funding, including public schools, from discriminating on the basis of disability. In public schools this applies in two manners (1) in the education of students and (2) in an employment relationship.

To establish a prima facie case for discrimination under the ADAAA, an Employee must show that he or she is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodations by the Employer. The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship"). A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. A reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired. Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business. An employer may not refuse to provide an accommodation just because it involves some cost. An employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

B. Persons with Disabilities Civil Rights Act

The Michigan Persons with Disabilities Civil Rights Act ("PWDCRA") provides the following:

(1) Except as otherwise required by federal law, an employer shall not:

(a) Fail or refuse to hire, recruit, or promote an individual because of a disability or genetic information that is unrelated to the individual’s ability to perform the duties of a particular job or position.
(b) Discharge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability or genetic information that is unrelated to the individual’s ability to perform the duties of a particular job or position.
(c) Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive an individual of employment opportunities or otherwise adversely affects the status of an employee because of a disability or genetic information that is unrelated to the individual’s ability to perform the duties of a particular job or position.
(d) Fail or refuse to hire, recruit, or promote an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job.
(e) Discharge or take other discriminatory action against an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job.
(f) Fail or refuse to hire, recruit, or promote an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.
(g) Discharge or take other discriminatory action against an individual when adaptive devices or aids may be utilized thereby enabling that individual to perform the specific requirements of the job.
(h) Require an individual to submit to a genetic test or to provide genetic information as a condition of employment or promotion.

M.C.L.A. 37.1202
Like the ADA, the PWDCRA generally protects only against discrimination based on physical or mental disabilities that substantially limit a major life activity of the disabled individual, but that, with or without accommodation, do not prevent the disabled individual from performing the duties of a particular job. Peden v City of Detroit, 470 Mich. 195 (2004). Disability is defined in PWDCRA to mean

“A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic . . . substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion.”

MCL 37.1103

To prevail in a claim under PWDCRA, an employee must show three elements to establish a prima facie case of discrimination under PWDCRA: (1) that she is disabled as defined by the statute, (2) the disability is unrelated to plaintiff’s ability to perform the duties of a particular job, and (3) plaintiff has been discriminated against in one of the ways set forth in the statute.
In evaluating a hostile work environment claim under Michigan’s PWDCRA, courts must examine frequency of discriminatory conduct, its severity, whether it is physically threatening or humiliating or a mere offensive utterance, and whether it unreasonably interferes with an employee’s work performance; simple teasing, offhand comments, and isolated incidents, unless extremely serious, do not rise to that level. *Mazur v Wal-Mart Stores, Inc.*, 250 Fed.Appx. 120, 2007 WL 2859721, (C.A.6 (Mich.)2007). In order to establish a hostile work environment, courts ask whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff’s employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment.

To establish a claim under PWDCRA on grounds that an employer failed to accommodate disability, an employee must show that the needed accommodations were reasonable, that the accommodations would not impose undue hardship upon the employer, and that the employee would have been capable of performing the job with the suggested accommodations. *Donahoo v Master Data Center*, 282 F.Supp.2d 540 (E.D. Mich. 2003).

C. Medical Documentation and Examination

The ADAAA provides the employer with the general right to require an employee to submit to a medical exam in certain circumstances for the purpose of determining his or her ability to perform the job. 29 CFR 1630.14(c).

In *Darnell v Thermafiber, Inc*, 417 F3d 657 (2005), the United States Court of Appeals for the 7th Circuit stated that the employer reasonably relied upon the medical opinion of one physician to assess an applicant’s ability to perform the job functions because the Court concluded that the employer’s reliance on the physician’s medical report was supported by reasonable medical evidence.

Similar to the federal regulations regarding medical examinations, the PWDCRA prohibits an employer from discharging or taking other discriminatory action against an individual on the basis of physical or mental examinations that are not directly related to the requirements of the specific job. MCL 37.1202(e).

Although the PWDCRA prevents an employer from discharging or taking other discriminatory action against an individual on the basis of medical examinations, the language of the statute does not remove an employer’s general right to require an employee to submit to a medical exam in certain circumstances for the purpose of determining his or her ability to perform the job.

IV. PREGNANCY DISCRIMINATION

The Pregnancy Discrimination Act (“PDA”), 42 USC 2000e(k), and the ELCRA, MCL 37.2202(d), prohibit discriminatory treatment on the basis of pregnancy, childbirth, or related medical conditions, and women affected by pregnancy, childbirth, or related medical conditions. Under the law, employers may not refuse to hire a woman because of her pregnancy, a pregnancy-related condition, or the prejudices of coworkers, clients, or customers. So long as she can perform the job, her pregnancy or related conditions cannot be reason for failing to hire
her. In addition, employers cannot force employees to take a leave while they are pregnant – so long as they can perform their jobs.

If an employee is absent for a pregnancy-related condition and recovers, an employer cannot force her to remain on leave until the baby’s birth. Also, the employer may not have a rule prohibiting an employee from returning to work for a predetermined length of time after childbirth. Pregnant employees or employees recovering from childbirth must be permitted to work so long as they can perform their jobs.

The employer must treat her the same as other temporarily disabled employees by, for example, providing modified tasks, alternating assignments, or offering disability leave or leave without pay. The employer must also hold jobs open for pregnant employees for the same length of time that it holds them open for employees on sick or disability leave.

Both the PDA and the ELCRA are antidiscrimination laws rather than a leave law, and therefore do not require covered employers to give pregnancy leaves of any specific duration. They require that the employer treat pregnancy-related leaves of absence the same as other disability-related absences.

Thus, an employer may not single out pregnancy-related conditions for special procedures to determine an employee’s ability or inability to work. However, if, for instance, an employer requires its employees to submit a doctor’s statement concerning their inability to work before granting a leave or paying sick benefits, then the same may be required for employees affected by pregnancy-related conditions.

The Family Medical Leave Act of 1993 (“FMLA”) however, is a leave law that does require an employer to give pregnancy leaves of a specific duration provided the employee meets certain criteria. 29 USC §2612. Employees are covered by FMLA if 1) he/she has been employed for at least 12 months and 2) worked at least 1,250 hours in the preceding 12-month period. 29 USC §2611(2)(A). A covered employee will be entitled to 12 weeks of unpaid leave per year for the birth of a child. Health insurance coverage must be maintained for the duration of the leave. Those employees must be restored to the same or equivalent position when they return to work.

Further, under FMLA, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees.

The ELCRA also prohibits employers from discriminating against women because of pregnancy and/or childbirth. The pertinent provision of the Act provides as follows:

(1) An employer shall not do any of the following…:

(d) Treat an individual affected by pregnancy, childbirth, or a related medical condition differently for any employment-related purpose from another individual who is not so affected but similar in ability or inability to work, without regard to
the source of any condition affecting the other individual’s ability or inability to work. For purposes of this subdivision, a medical condition related to pregnancy or childbirth does not include nontherapeutic abortion not intended to save the life of the mother.

M.C.L.A. 37.2202(d).

V. ADDITIONAL FORMS OF DISCRIMINATION

A. Equal Pay Act

The Equal Pay Act (the “EPA”) makes it illegal to pay different wages to men and women where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. 29 USC §206(d)(1). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

It is important to note that under the law employers are also regulated in the following areas:

Employers may not reduce wages of either sex to equalize pay between men and women.

A violation of the EPA may occur where a different wage was/is paid to a person who worked in the same job before or after an employee of the opposite sex.

A violation may also occur where a labor union causes the employer to violate the law.

Title VII also makes it illegal to discriminate based on sex in pay and benefits. Therefore, someone who has an Equal Pay Act claim may also have a claim under Title VII.

B. Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act (the “GINA”) prohibits discrimination against applicants, employees, and former employees on the basis of genetic information. 42 USC §2000ff. Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members (i.e. an individual’s family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. This includes a prohibition on the use of genetic information in all employment decisions; restrictions on the ability of employers and other covered entities to request or to acquire genetic information, with limited exceptions; and a requirement to maintain the confidentiality of any genetic information acquired, with limited exceptions. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
It will usually be unlawful for an employer to get genetic information. There are six narrow exceptions to this prohibition:

- Inadvertent acquisitions of genetic information do not violate GINA, such as in situations where a manager or supervisor overhears someone talking about a family member’s illness.
- Genetic information (such as family medical history) may be obtained as part of health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
- Genetic information may be acquired as part of the certification process for FMLA leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition.
- Acquisition through commercially and publicly available documents like newspapers is permitted, as long as the employer is not searching those sources with the intent of finding genetic information.
- Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
- Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.
What Constitutes A Disability Under the ADA?
Employer Quick Reference Chart for Making Reasonable Accommodations

The Americans with Disabilities Act of 1990 (the “ADA”) requires employers to make “reasonable accommodations” for employees with qualified disabilities where the accommodation would not impose an “undue hardship” to the employer. A qualified disability is a current physical or mental impairment that “substantially limits” one or more of an individual’s “major life activities.” 42 USC 12102(1). The congressional intent of the ADA is to construe the definition of disability broadly. 42 USC 12102(4).

<table>
<thead>
<tr>
<th>Qualified Major Activities</th>
<th>Unqualified disabilities/major life activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Caring for oneself</td>
<td>• Seeing</td>
</tr>
<tr>
<td>• Performing Manual Tasks</td>
<td>• Hearing</td>
</tr>
<tr>
<td>• Eating</td>
<td>• Standing</td>
</tr>
<tr>
<td>• Walking</td>
<td>• Bending</td>
</tr>
<tr>
<td>• Lifting</td>
<td>• Breathing</td>
</tr>
<tr>
<td>• Speaking</td>
<td>• Thinking</td>
</tr>
<tr>
<td>• Learning</td>
<td>• Reading</td>
</tr>
<tr>
<td>• Concentrating</td>
<td>• Working</td>
</tr>
<tr>
<td>• Communicating</td>
<td>• Operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive systems.</td>
</tr>
<tr>
<td>• Short term Conditions (i.e. infections, broken bones, etc. from which the employee is expected to make a full recovery)</td>
<td></td>
</tr>
<tr>
<td>• Less than perfect vision that can be corrected through the use of glasses or contacts</td>
<td></td>
</tr>
<tr>
<td>• Illegal Use of Drugs</td>
<td></td>
</tr>
<tr>
<td>• Alcoholism</td>
<td></td>
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<tr>
<td>• Pregnancy</td>
<td></td>
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<tr>
<td>• Normal Aging Process</td>
<td></td>
</tr>
<tr>
<td>• Driving a Car</td>
<td></td>
</tr>
<tr>
<td>• Traveling</td>
<td></td>
</tr>
</tbody>
</table>

Reasonable Accommodation

<table>
<thead>
<tr>
<th>Reasonable Accommodations</th>
<th>Unreasonable Accommodations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Job Restructuring</td>
<td>• Equipment or devices designed to assist a disabled person on and off the job, such as:</td>
</tr>
<tr>
<td>• Part-time or modified work schedules</td>
<td>o Prosthetic limbs</td>
</tr>
<tr>
<td>• Reassignment to a vacant position</td>
<td>o Wheelchairs</td>
</tr>
<tr>
<td>• Acquisition or modification of equipment or devices</td>
<td>o Eyeglasses</td>
</tr>
<tr>
<td>• Appropriate adjustment or modifications of examinations, training materials or policies</td>
<td>• An item that is not work related, unless it’s also provided to other employees, such as:</td>
</tr>
<tr>
<td>• The provision of qualified readers or interpreters</td>
<td>o A hot plate</td>
</tr>
<tr>
<td>• Other similar accommodations</td>
<td>o Refrigerator</td>
</tr>
</tbody>
</table>

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General: As an affirmative action/equal opportunity institution, the College encourages diversity and provides equal opportunity in education, employment, all of its programs, and the use of its facilities. In order to provide equal employment and educational opportunities to all individuals, employment decisions at the College will be based on merit and qualifications. The College does not discriminate in educational or employment opportunities or practices on the basis of race, color, religion, gender, national origin, veteran’s status, age, disability unrelated to an individual’s ability to perform adequately, height, weight, marital status, political belief, sexual orientation, or any other characteristic protected by law. This policy governs all aspects of employment, including, but not limited to, academic decisions, selection, job assignment, compensation, discipline, termination, and access to benefits and training.

The following general policy statements apply:

1. Qualified candidates are considered for all levels of employment regardless of gender, race, color, religion, age, handicap, sexual orientation, or national origin.
2. Equal employment opportunities provide for career growth within the College for capable and qualified employees.
3. Appropriate recruitment and advertising sources will be used to promote the College’s diversity efforts.
4. The College will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship for the College.
5. In addition to its commitment to provide equal employment and educational opportunities to all qualified individuals, the College has established an affirmative action plan to promote employment opportunities for individuals in certain underutilized job groups throughout the organization, pursuant to its obligation under U.S. Presidential Executive Order 11246, as amended.
6. Employees with questions or concerns about any type of discrimination in the workplace are encouraged and expected to bring these issues to the attention of their immediate supervisor or the College’s senior Human Resources manager. Students with questions or concerns about any type of discrimination at the College are encouraged to bring these issues to the attention of an appropriate Academic Dean or the College’s senior Human Resources manager. Employees and students may raise concerns and make reports without fear of reprisal.
7. Employees found to be engaging in any type of unlawful discrimination in violation of this policy will be subject to disciplinary action, up to and including termination.


Reviewed: June 22, 2009
Reviewed: October 19, 2009
Approved: October 26, 2009
5202 Other Harassment

General: Discrimination and/or harassment based on an individual’s gender, sexual orientation, race, ethnicity, age, religion, or any other legally protected characteristic will not be tolerated.

Discrimination includes but is not limited to, harassment and treating an employee or student differently because of an individual’s legally protected characteristic.

Harassment includes but is not limited to, offensive language, words, jokes, or other verbal, graphic or physical conduct, whether overt or subtle, direct or indirect, deliberate or unintentional, that is known, or ought reasonably be known, to be offensive and/or unwelcome.

The following basic policy statements apply:

1. The College encourages and expects all victims of discrimination and/or harassment and persons with knowledge of harassment to promptly report the matter to his or her supervisor or Human Resources. If the supervisor or Human Resources is unavailable, or the employee believes it would be inappropriate to contact that person, the employee should immediately contact another member of management. Students should report the matter to Human Resources. Employees and/or students may raise concerns and make reports without fear of reprisal.

2. Any employee who becomes aware of possible harassment should promptly advise the College’s senior Human Resources manager or one of the College’s Vice Presidents who must handle the matter in a timely and confidential manner.

3. The College will investigate and respond to reported complaints of discrimination and/or harassment in a timely manner, and will take corrective action as necessary and appropriate. Anyone engaging in harassment will be subject to disciplinary action, up to and including termination of employment.

4. Retaliation Prohibited: Retaliation against any person who has spoken up about illegal discriminatory and/or harassing behavior, submitted a complaint, or otherwise participated in an investigation, legal proceeding, or hearing related to a complaint is prohibited and will not be tolerated, even if the investigation concludes that no discrimination occurred. Such activity is unlawful and any person who retaliates is subject to immediate disciplinary action, up to and including suspension, exclusion, or termination. For purposes of this Policy, retaliation includes but is not limited to the following: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, and any other form of harassment.

5. Confidentiality: It is College policy to respect the privacy and anonymity of all parties and witnesses to complaints brought under this Policy. However, because an individual’s need for confidentiality must be balanced with the College’s obligations to cooperate with police investigations or legal proceedings, to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve a complaint, the College retains the right to disclose the identity of parties and/or witnesses to complaints in appropriate circumstances to individuals with a need to know.

LEGAL REF: 42 U.S.C. 2000e et seq., MCL 37.2101 et seq., as amended

Reviewed: August 17, 2009
Reviewed: October 19, 2009
Approved: October 26, 2009
DisAbility Services

STATE AND FEDERAL STATUTES

Mott Community College does not discriminate in the admission or treatment of students on the basis of disability.

The college is committed to compliance with the Americans With Disabilities Act and Section 504 of the Rehabilitation Act:

Section 504 of the Rehabilitation Act of 1973: "No otherwise qualified, handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

Students, who believe their rights have been violated, or feel there has been a failure by this institution to comply with the requirements of the Americans With Disabilities Act and Section 504 of the Rehabilitation Act, may file a complaint in accordance with the grievance procedure.
DisAbility Services

DISABILITY SERVICES RESPONSIBILITY

Verify that a student has a documented disability.

Develop/prescribe a reasonable and appropriate support services plan.

Provide the student with an Instructor Notification letter so if they choose to utilize services they qualify for, they can do so by giving the letter to the instructor at the start of each semester.

Coordinate and/or provide reasonable accommodations as listed on the Instructor Notification letter.

Serve as a resource for faculty students and staff.

Date Modified:
February 28, 2007
FACULTY RESPONSIBILITY

Follow Instructor Notification guidelines.
Faculty are required to honor these requests. Students with disabilities request services and provide proof of their disability through the DisAbility Services Department and students are responsible for delivering these Notification to you at the beginning of each semester.

Do not provide accommodations if you have not received an Instructor Notification. Refer student to DisAbility Services to get one. Providing unauthorized services can create problems and lead to unnecessary complaints and legal complications.

Contact DisAbility Services if you have concerns about a particular accommodation. You can do this by calling the coordinator at (810) 762-0369 v tty, or by e-mail. Although disability information is confidential, we can assist with concerns you may have in this area.

Evaluate student performance fairly - hold disabled students to the same standards as any other student.

Expect adherence to the Student Code of Conduct. When violations occur take the same actions you do with non-disabled students.

Do not embarrass or intimidate the student. Talk to them in private about your concerns and questions.

Individuals with Disabilities should be assisted in an emergency evacuation situation. Please refer to Public Safety if needed or call them at 762-0222.
DisAbility Services

STUDENT RESPONSIBILITIES

Identify yourself to the DisAbility Services office as a student with a disability and apply for services. This means you will sit down and have an "intake" done with a DisAbility Services Specialist.

Provide adequate documentation of your disability on a timely basis. This means that the documentation was done by a professional in the field, and not more than 5 years ago. It must be received within 30 days. Eligibility for specific services will be determined by you, the DisAbility Services Specialist and the Program Director based on the documentation.

Initiate request for accommodations from your DisAbility Services Specialist each semester by informing them after you have registered. He/She will provide letters to inform faculty of the accommodations you require. YOU are responsible for delivering this letter to your instructor the first week of class if you want to receive services for that class. Provide your coordinator a minimum of two weeks notice for all accommodation requests (special accommodations may require more time). Services are continued, as needed, unless they are refused or abused by the student.

When receiving testing accommodations, the student must assume responsibility notifying his/her DisAbility Services Specialist that you will have a test at least two days ahead of time, and reminding instructors to send your tests to the appropriate area.

Provide for your own transportation, personal items, personal attendants, or other disability needs not related to the academic environment.

Assume personal responsibility for maintaining contact with your DisAbility Services Specialist, for requesting accommodations, meeting with faculty, and maintaining appropriate academic standards.

Most importantly remember you are responsible for your own education. You are responsible for following guidelines and policies of faculty in each of your classes and abiding by the Student Code of Conduct at all times.
SUPPORT SERVICES AVAILABLE

The following services are available through DisAbility Services but not all are appropriate for all students. If you think that you could benefit from any of these services, because you feel your disability directly impacts your ability to perform a related task, please consult with your DisAbility Services Specialist.

The two of you will discuss the right services for you and will develop an Individualized Student Support Plan. This plan can be changed or modified as the need arises and is backed up by documentation you provide. It may be necessary to obtain current or updated documentation. The student is always able to deny any of the services that they do not feel they need or prefer not to take advantage of.

Support services are determined in consultation with the student and directly related to the documented disability on file. An instructor notification letter is prepared for each individual student and classroom support may vary based on the design and requirements of each course as well as the individual student’s needs.

Services & Other Assistance:

- Sign Language/Interpreting
- Testing Accommodation
- Note Taking
- Evacuation Assistance
- Recorded Books
- Orientation to Facilities
- Recording Lectures
- Braille
- Referrals (college and community services)
- Adaptive Equipment
- Scheduling

Please remember that DisAbility services does not provide personal attendant care or transportation.

Sign Language Interpreting:

Qualified interpreters are provided by DisAbility Services to eligible deaf and hard of hearing students on a semester to semester basis. You are responsible for notifying your DisAbility Services Specialist of your schedule at least two weeks prior to the start of the semester. It is advisable to register early and with the assistance of the Support Service Coordinator. You may be asked to change your schedule so that we can accommodate you with interpreters. The interpreters may be withdrawn from classes where students abuse the service by non-attendance or other serious offenses. Students may request interpreters for special campus events, counseling, tutoring, or other needs. Informing your DisAbility Services Specialist of this need, including the date, time, and location, with at least three (3) days advance notice, is recommended.
Testing Accommodation

This is a service provided to specific students who have been determined by DisAbility Services to have this need. For testing situations a student may use more time, readers, scribes, taped tests, a non-distractive area to take the test, or a combination of services. **The student must request this service and inform their DisAbility Services Specialist no more than two (2) days ahead of time so an appointment with a trained work-study student can be made. It is also the responsibility of the student to remind the instructor** of this need so the test is sent to us on a timely basis. Each time a test is scheduled, the student completes a Support Service Assignment form. Students are discouraged from delivering tests to or from the classroom.

Note Taking

You should talk with your instructor on the first or second day of class to help you identify a student volunteer to take notes. This is outlined in the Instructor Notification letters you are responsible to provide to them see Student Responsibilities for more information. The willing student can pick up free note taker paper in our office, or you can pick it up for them.

Evacuation Assistance

For students who are disabled i.e. mobility impaired or visually impaired, and need assistance during an emergency such as fire or severe weather conditions, the office of DisAbility Services will notify your instructor by letter to secure the need for evacuation assistance. Please discuss this possible need with your instructor and staff each semester so proper assistance can be given should the need arise.

Alternative Format Media

Mott Community College DisAbility Services office maintains a library of alternative format textbooks to meet the various needs of students. In addition Mott Community College maintains a participating membership in a national program called Recordings for the Blind and Dyslexic (RFB&D). Students who are eligible to receive recorded books can borrow them from the DisAbility Services office for their first year. The loan process for this material

You are responsible to inform your DisAbility Services Specialist of the books you will need on CD each semester, including the title, author, and edition. Remember this needs to be done in a timely basis to ensure services, at least two weeks in advance of the start of the semester is recommended

Equipment and Books on CD Form must be agreed to and signed by the student.

Upon failure to return the equipment at the end of the semester, an obligation hold may be placed on the student's registration.

The hold will be removed once the student has returned or otherwise accounted for the equipment. If this proves to be beneficial for you we will assist with providing guidance, paperwork, and support for you to obtain your own personal account to continue this service for your academic and professional future.

Orientation to Facilities

For those students with visual impairments, orientation to their classrooms the first week of the semester may be requested. An individual from DisAbility Services would be happy to assist you, **set up an appointment** for this with your DisAbility Services Specialist.

Recording Lectures

When appropriate DisAbility Services allows recording lectures of classroom instruction
and in some cases, an instructor may request a form be signed. This form will indicate you agree to destroy all tapes at the end of the semester and the tapes will not be shared with other students.

Brailling

DisAbility Services has a Duxbury Braille system and Braille music translator. For any required handouts, syllabi, tests, or in-class readings we would provide this service to you upon request at no charge. Adequate lead-time is required to produce most documents.

Referrals

Based on your need, referrals can be made within the college or to community agencies. Please refer to the section earlier in this handbook entitled Your DisAbility Services Specialist.

Adaptive Equipment

There is a wide variety of adaptive equipment available during our regular office hours for use by students with disabilities. Your DisAbility Services Specialist would be happy to assist you and/or show you the location of any of the following:

**OPTELEC**
A closed circuit television (CCTV) which enlarges materials onto a monitor.

**Phonic Ear FM System and The Easy Listening System**
Provides sound magnification in the classroom using a headset or a loop.

**Kurzweil 3000**
A software application that will scan materials in the computer, display it on the monitor, and highlight the text as it reads. It can also enlarge the scanned materials.

**Dragon Naturally Speaking (Dragon Dictate)**
A speech recognition and dictation program.

**JAWS**
A screen reading application that verbalizes everything on the monitor and uses key commands to maneuver in and out of various computer programs. It is used by blind or visually impaired individuals.

**Zoom Text**
A software package that magnifies a portion of the computer screen.

Adaptive equipment/devices will be loaned to qualified DisAbility Services students free of charge. Equipment can be loaned on a daily, weekly, or semester basis depending on need and demand for the equipment by other students. Students are held responsible for the equipment.

**This equipment includes:**
- Talking Spelling Thesaurus
- Victor Reader CD player
- Franklin Language Master
- Talking calculator
- Calcscribe Word Processor
- Page and Bar Magnifiers

**The loan process is:**

Students must request to borrow the equipment through their DisAbility Services Specialist who decides if the request is reasonable, based on individual disability. When picking up the equipment an Equipment Loan Form must be read and signed for by the student.
Upon failure to return the equipment at the end of the semester, an obligation hold may be placed on the student’s registration.

The hold will be removed once the student has returned or you have spoken with your DisAbility Services Specialist about it.

**Loaning Equipment such as the FM system or the Easy Listening System:**

Students must request this service through their DisAbility Services Specialist who decides if the request is reasonable, based on individual disability.

The student is responsible for picking up the equipment in the DisAbility Services Office prior to class and returning the equipment at the end of each class.

Failure to return the equipment on a timely basis may effect usage for other students who depend on the same equipment for their class.

Inappropriate use, including not returning this equipment on time, could result in losing the privilege of borrowing our equipment.

**Scheduling**

Your DisAbility Services Specialist can assist with scheduling classes to meet your needs as a student with a disability.
FREQUENTLY ASKED QUESTIONS

What do I do when I receive an Instructor Notification letter?

Keep that letter in your files for that class/section to refer to and follow/provide the services that are outlined in the letter.

The first class session is an important time to determine if services will be utilized. Students are encouraged to approach you with their intent to use accommodations and at that point you can verify their needs by following what is outlined on the Instructor Notification letter.

If the student is entitled to a notetaker and has made you aware that they would like to utilize this service, we ask you to assist by obtaining a volunteer student to take notes.

If the student is entitled to special testing arrangements and makes you aware of their intent to use this service, please deliver the test to our office, fax it to us at (810) 232-9520, or e-mail it to the address above. This should be done several days prior to the date it will be administered. The Learning Center maintains strict confidentiality with all tests, and they are returned promptly.

If you have any questions or concerns regarding the student or services, please contact a coordinator in the DisAbility Services office at (810) 752-0399 vtty, or e-mail us at the address above.

What do I do if a student approaches me disclosing they have a disability, but he/she does not have an Instructor Notification letter?

Refer them to DisAbility Services in the Learning Center and wait for a letter from us to provide services.

Suppose a student with a disability tells me he/she does not want to use services through DisAbility Services, but insists they need accommodations?

The student should be treated as any other student. If they can conduct themselves in accordance with the student code of conduct and are able to work independently just as other students, they are not required to disclose their disability officially to the college. However, if they need some type of academic support or services, especially related to testing situations, the responsibility for coordinating those services for MCC students in compliance with the law, (ADA and 504) Americans With Disabilities Act and Section 504 of the Rehabilitation Act, reside...
with the DisAbility Services office. Please do not provide any kind of assistance without the
direct knowledge of this office.

What if a student with a disability acts inappropriately?

First you need to remember to treat a student with a disability just as you would any other
student. They are bound by the same rules of conduct and expectations in the classroom
setting. If a violation of the Student Code of Conduct has allegedly occurred, all complaints
should be made to the Registrar in writing and in detail.
General: The employment of relatives in the same area of an organization may cause serious conflicts and problems with favoritism and employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment could be carried into day-to-day working relationships.

The following basic policy statements apply:

1. Relatives of persons currently employed by the College may be hired only if they will not be working directly for, or supervising, a relative, or they will not occupy a position in the same line of authority within the organization. This policy applies to any relative, higher or lower in the organization, who has the authority to review employment decisions. College employees cannot be transferred into a reporting relationship which violates this anti-nepotism policy.

2. If the relative relationship is established after employment, the individuals concerned will decide who is to be transferred. If that decision is not made within 30 calendar days, management will decide who is to be transferred.

3. In cases where a conflict or the potential for conflict arises, even if there is no supervisory relationship between the parties involved, the parties must be separated by reassignment or terminated from employment.

4. For the purposes of this policy, a relative is any person who is related by blood or marriage; who has a membership in the same household as an employee, including domestic partners; who has an intimate relationship with an employee; or whose relationship with the employee is similar to that of persons who are related by blood or marriage.

LEGAL REF: MCL 389.103, as amended

Reviewed: September 21, 2009
Approved: October 26, 2009