

Manager & Supervisor

GUIDE TO

**Employment
Accommodation
Requests**



EMPLOYMENT
ACCOMMODATIONS
RESOURCE CENTER

Table of Contents

1. What is the Employment Accommodations Resource Center (EARC).....	1
2. About this Guide.....	1
3. Interactive Process.....	2
4. Employee Responsibility.....	2
5. Identifying the Trigger to the Interactive Process.....	2
5.1 Direct Employment Accommodation Requests.....	3
5.2 Indirect Employment Accommodation Requests.....	3
6. Managerial Responsibility.....	4
7. Making the Referral.....	5
7.1 Scenario A - Employee Accepts Referral.....	5
7.2 Scenario B - Employee Declines Referral.....	5
8. Document the Process.....	6
9. What If a Referred Employee Does Not Contact the EARC?.....	6
10. Confidentiality.....	6
11. Referral Letter Template.....	7
12. Trigger to the Interactive Process Flowchart.....	8

Building an Inclusive Workforce.

WHAT IS THE EMPLOYMENT ACCOMMODATIONS RESOURCE CENTER (EARC)?

The EARC is the University's administrative program charged with collecting confidential medical and professional verification of a qualified employee's disability to determine reasonable and appropriate employment accommodations. The EARC determines reasonable and appropriate employment accommodations for qualified SJSU employees with verified disabilities on a case-by-case basis. In general, an employment accommodation is "any change in the work environment or in the way things

are customarily done that would enable a qualified employee with a disability to enjoy equal employment opportunities."¹ Employment accommodations prescribed may include, as appropriate: job restructuring, part-time or modified work schedules, acquisition or modification of equipment/devices, adjustment or modifications or examinations, training materials or policies, the provision of qualified readers or interpreters, removal of physical access barriers, or reassignment to a vacation position.

About this Guide

Managers/supervisors receiving inquiries and/or requests from hired employees regarding employment accommodations due to a disability related issue must direct all employees to the EARC. In an effort to assist managers and supervisors in understanding their legal responsibilities related to employment disability and accommodation issues, the EARC created the Managers & Supervisor Guide to Employment Accommodations, which is a tool to assist managers and supervisors in understanding if, when, and how it is appropriate to refer an employee to the EARC. Included in this Guide you will find the following tools: (1) The EARC Referral Letter - a template created by the EARC to be used by managers and supervisors to facilitate an appropriate, documented referral of an employee requesting employment accommodations to the EARC; and (2) The Trigger to the Interactive Process: Interactions Between the Employee, Manager/Supervisor & the EARC Flowchart - a



comprehensive flowchart detailing the actions taken by the employee, manager/supervisor, and the EARC after an employee discloses a disability and/or requests an accommodation.

This guide is meant as a general tool and should not substitute direct consultation with the EARC regarding complex disability related employee issues. Should you have questions while reviewing these guidelines, please contact us.



IMPORTANT: Before using the EARC referral letter template, please be sure to:

1. Carefully review the information included in this guide.
2. Consult with the EARC if the employee has an open Worker's Compensation claim.
3. Consult with the EARC if you have questions regarding the use of the EARC referral letter template.
4. Carefully review the EARC's Trigger to the Interactive Process flowchart.

3. Interactive Process

To determine reasonable and appropriate employment accommodations for qualified SJSU employees, the EARC engages in an interactive process with the employee and employee's manager/supervisor. The interactive process is the collaborative process by which an employee and an employee's manager/supervisor engage in discussion, review, and/or implementation of reasonable and appropriate employment accommodations. Furthermore, the interactive process may be an ongoing process as the employee's condition and/or position description change overtime. Upon notification and/or request from an employee with a disability for employment accommodation, the EARC will invoke the interactive process with the employee and his/her manager/supervisor. The EARC will:

1. Review the employee's medical/professional disability verification documentation to determine if the employee qualifies as an employee with a disability under the California Fair Employment Housing Act (FEHA) or the Americans with Disabilities Act (ADA). NOTE: Not all employees presenting medical/professional documentation will qualify as a person with a disability under the FEHA or ADA.
2. Meet with the employee to discuss his/her specific functional limitations resulting from the disability as they relate to his/her job functions. EARC and the employee assess potential barriers to job performance to determine if they can be mitigated with a reasonable and appropriate employment accommodation(s).
3. Consult with the employee's manager/supervisor to identify any undue hardship, discuss business necessities, and assess the effectiveness of the proposed accommodation(s) in enabling the employee to perform his/her essential job functions.
4. If appropriate, prescribe reasonable employment accommodation(s) to the employee and the employee's manager/supervisor.

4. Employee Responsibility

An employee with a disability is responsible for performing the essential job functions of his/her position with or without employment accommodations. An employee may request employment accommodations at any time during his/her tenure at the SJSU. Because the employee is generally responsible for requesting an employment accommodation, an employee's request for accommodations is usually the trigger to the interactive process.

5. Identifying the Trigger to the Interactive Process

As discussed in section 3, the interactive process is the collaborative process by which an employee and an employee's manager/supervisor engage in discussion, review, and/or implementation of reasonable and appropriate employment accommodations.

As a manager/supervisor, you may have an employee directly or indirectly disclose a disability and/or request employment accommodations. Managers/Supervisors are responsible for knowing how to identify each type of disclosure/request and how to proceed. The following information, in conjunction with the EARC's Trigger to the Interactive Process flowchart, will assist managers/supervisors in identifying if, when, and how a manager/supervisor should refer an employee to the EARC.

Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act. (2002). Retrieved December 10, 2009 from The U.S. Equal Employment Opportunity Commission: <http://www.eeoc.gov/policy/docs/accommodation.html>.



5.1 Direct Employment Accommodation Requests

A direct employment accommodation request occurs when an employee discloses a disability to his/her manager/supervisor and requests an accommodation due to the condition. Direct employment accommodation requests are the trigger to the interactive process. As a result, a referral to the EARC by the manager/supervisor both verbally and in writing via the EARC referral letter should immediately follow the employee's request. Direct employment accommodation requests can be worded in a variety of ways. However, in general, the statement below characterizes a direct employment accommodation request from an employee:

“I would like [‘X’ accommodation] due to [‘X’ condition or ‘X’ mitigating measure (i.e., medication, treatment appointments, etc.)].”

The following statements are examples of direct employment accommodation requests that trigger the interactive process, and, thus, a referral to the EARC.

- Employee: “I would like voice recognition software installed on my computer due to my carpal tunnel syndrome.”
- Employee: “I would like a modified work schedule to accommodate my cancer treatment appointments.”
- Employee: “I would like departmental handouts to be made in large print to accommodate my visual impairment.”
- Employee: “I would like to take additional short breaks during the workday to accommodate my medication regimen.”

5.2 Indirect Employment Accommodation Requests

An employee's request may not be as apparent as the examples provided above whereby the employee directly discloses a disability or mitigating measure as a result of a disability and states the employment accommodation requested. An employee may not know what accommodations are available and may express his/her need for accommodation by informing the manager/supervisor of the difficulty he/she is having performing a job function due to a condition. Managers/supervisors are put on notice

of the need for an accommodation when an employee expresses he/she is having difficulty performing an assigned job duty due to a stated condition. In general, the statement below characterizes an indirect employment accommodation from an employee request that triggers the interactive process:

“I am having difficulty performing [‘X’ job duty] due to [‘X’ condition or ‘X’ mitigating measure (i.e. medication, treatment appointments, etc.)].”

Using the above template, the following statements are examples of indirect requests that trigger the interactive process and require the manager/supervisor to inquire whether or not the employee should be referred to the EARC for the review of possible employment accommodation(s).

- Employee: “I cannot scrub floors because I have arthritis.”
- Employee: “I’m having trouble concentrating because of my anxiety disorder.”
- Employee: “I have a hard time reading the computer screen because I have a visual impairment.”
- Employee: “It is very difficult for me to get into work in the mornings because of my medication regimen.”
- Employee: “I’m in pain carrying my heavy teaching equipment to and from classrooms across campus due to my knee condition.”

Following an indirect employment accommodation request, the manager/supervisor is required to engage in an interactive dialogue with the employee by asking the employee, “How can I help you?” In response, the employee may request an employment accommodation, which would then invoke a verbal referral to the EARC and a follow up in writing with the EARC referral letter. Please refer to section 6: Making the Referral.

An employee may simply present a condition but may not request assistance. This alone invokes the interactive process [requires the manager/supervisor to begin an interactive dialogue with the employee]. Please be advised, during the interactive dialogue, an employee's accommodation request may not include the actual words “accommodation” or “disability” but may simply allude to the need for assistance. This still qualifies as a legitimate request. If you are unsure if a statement constitutes an indirect/direct request, contact the EARC for assistance.

6. Managerial Responsibility

Although an employee's request for employment accommodations is usually the trigger to the interactive process, as discussed in sections 5.1 and 5.2 (Direct & Indirect Employment Accommodation Requests), a manager/supervisor of an employee with a disability also has the responsibility of asking whether or not the employee needs an employment accommodation when the manager/supervisor is put on notice by the employee.

While the employee is generally responsible for requesting accommodations, an employer should ask whether one is needed without being asked if he/she "(1) knows that the employee has a disability, (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and (3) knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation." If the employee states that he/she does not need an accommodation, the employer has fulfilled his/her duty to participate in the interactive process.² Additionally, if the employee states he/she does not need accommodation, the manager/supervisor is obligated

to document the discussion. Please refer to section 9: Document the Process.

If a manager/supervisor knows or has reason to know an employee's performance is being negatively affected by the functional limitations of a disability, a manager/supervisor may ask an employee at any time:

Manager/Supervisor: "I have noticed you are having trouble lately performing "X" job duty. Is there anything I can do to help you?"

If at that time, the employee discloses his/her performance of "X" job duty is due to a disability and requests an employment accommodation, it is appropriate to then refer the employee to the EARC both verbally and in writing using the EARC referral letter. If an employee does not disclose that the performance issue is due to a disability, it is not appropriate to refer the employee to the EARC.

² Thompson's ADA Compliance Guide. (2008). EEOC Clarifies Employers' Responsibilities in Dealing with Conduct Stemming From Disabilities, 19, 3-16.



7. Making the Referral

Once the manager/supervisor has identified the employee is requesting an employment accommodation, the manager/supervisor should: (1) verbally inform the employee that it is recommended he/she contact the EARC to submit his/her request for an employment accommodation; (2) explain to the employee EARC's role on campus; and (3) inform the employee that he/she will be following up with him/her via a confidential letter referring the employee to the EARC. The following are examples of interactive dialogues between an employee and an employee's manager/supervisor whereby the manager/supervisor refers the employee to the EARC.

7.1. Scenario A – Employee Accepts Referral:

Employee: *"I cannot scrub floors because I have arthritis."*

Manager/Supervisor: *"How can I help you?"*

Employee: *"I would like for someone else to scrub floors instead."*

Manager/Supervisor: *"I recommend you contact the Employment Accommodations Resource Center (EARC) to make an appointment. The EARC is the administrative program on campus responsible for collecting confidential medical documentation and determining reasonable and appropriate employment accommodations. The EARC will work with us both to determine if there is a reasonable and an appropriate accommodation to assist you with the workplace barrier you stated. I will send you the EARC's contact information so that you can begin the process."*

Employee: *"Ok, thank you."*

7.2. Scenario B – Employee Declines Referral:

Employee: *"I cannot scrub floors because I have arthritis."*

Manager/Supervisor: *"How can I help you?"*

Employee: *"I would like for someone else to scrub floors instead."*

Manager/Supervisor: *"I recommend you contact the Employment Accommodations Resource Center (EARC) to make an appointment. The EARC is the administrative program on campus responsible for collecting confidential medical documentation and determining reasonable and appropriate employment accommodations. The EARC will work with us both to determine if there is a reasonable and an appropriate accommodation to assist you with the workplace barrier you stated. I will send you the EARC's contact information so that you can begin the process."*

Employee: *"No, thank you. I do not want to go to the EARC."*

Manager/Supervisor: *"Ok, that is every employee's personal decision. However, I will still send you EARC's contact information, and you can decide to act or not."*

Employee: *"Well, what about my request to have someone else mop the floors?"*

Manager/Supervisor: *"In order to address this request, you will need to work with EARC; until then, you need to continue to scrub floors."*

After the interactive dialogue has occurred, the manager/supervisor should immediately follow up with the employee's request for an employment accommodation by sending the employee the EARC referral letter. Additionally, it is extremely important to document the interactive dialogue that transpired. Please refer to section 9: Document the Process.





8. Document the Process

Upon commencement of the interactive process, it is recommended that managers/supervisors document the interactive dialogues that have occurred with the employee. All documentation regarding the employee's request or decline of an employment accommodation, including the EARC referral letter, should be kept in a confidential file in a secure area separate from the employee's personnel file.

9. What If a Referred Employee Does Not Contact the EARC?

After a manager/supervisor has referred an employee who is requesting employment accommodations to the EARC, it is the responsibility of the employee to contact the EARC to continue the interactive process. Registration with the EARC is not mandatory. An employee has the right to choose not to contact the EARC regardless of a referral from a manager/supervisor. Should an employee not contact the EARC, the manager/supervisor should continue to evaluate the employee's performance as he/she normally would. Please refer to section 9: Document the Process.

10. Confidentiality

As the manager/supervisor of an employee with whom you are engaged in the interactive process, you will be subject to confidential information. Confidentiality regarding an employee's disability and employment accommodation(s) must be maintained at all times. Confidentiality commences as soon as an employee discloses his/her disability to an EARC representative and/or to his/her manager/supervisor and is maintained throughout the duration of employment at SJSU.

As a manager/supervisor, it is inappropriate to share confidential information pertaining to the interactive process with your manager unless mitigating circumstances are determined by the EARC. If necessary, managers/supervisors may disclose to his/her manager that they are working with the EARC to assist an employee. However, no further information can be disclosed unless otherwise determined by the EARC. Additionally, coworkers are often curious about why one employee is receiving something that other employees do not receive. The Job Accommodation Network (JAN) refers to the Equal Employment Opportunity Commission (EEOC), which suggests an employer "explain that it is acting for legitimate business reasons or in compliance with federal law."

11. Referral Letter Template



The following letter template is to be used by managers and supervisors to facilitate an appropriate, documented referral of an employee requesting employment accommodations to the EARC. Please be sure to copy the EARC.

CONFIDENTIAL MEMORANDUM

TO: Name of Employee, Title, Department
FROM: Name of Supervisor, Title, Department
DATE: Date
SUBJECT: Referral to the EARC

This letter is a follow-up to our conversation regarding employment accommodations and/or modifications. To ensure you are provided with appropriate employment accommodations/modifications, the Department of XXX is referring you to the Employment Accommodations Resource Center (EARC). The EARC is San José State University's administrative office charged with:

- collecting confidential medical and professional verification of an employee's disability;
- and determining reasonable and appropriate employment modifications/accommodations for qualified employees with disabilities.

Please contact the EARC at 408.924.6003 at your earliest convenience to schedule an appointment with an EARC representative. Additional information may be obtained by visiting EARC's website at www.earc.sjsu.edu. Please be advised that you are to continue to perform the essential functions of your job until otherwise notified by the EARC. All interactions with the EARC are confidential.

c: EARC

Trigger to the Interactive Process :

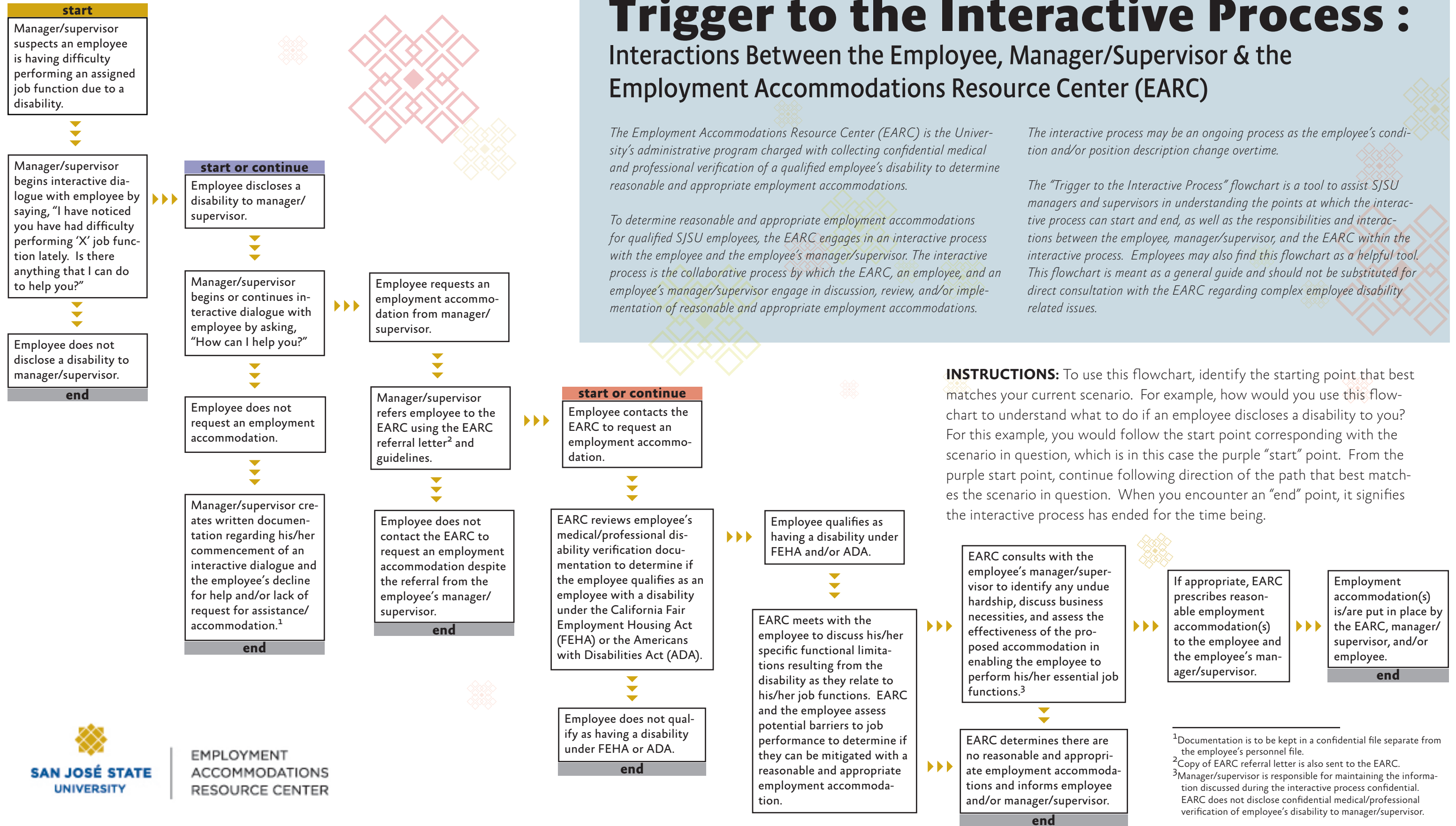
Interactions Between the Employee, Manager/Supervisor & the Employment Accommodations Resource Center (EARC)

The Employment Accommodations Resource Center (EARC) is the University's administrative program charged with collecting confidential medical and professional verification of a qualified employee's disability to determine reasonable and appropriate employment accommodations.

To determine reasonable and appropriate employment accommodations for qualified SJSU employees, the EARC engages in an interactive process with the employee and the employee's manager/supervisor. The interactive process is the collaborative process by which the EARC, an employee, and an employee's manager/supervisor engage in discussion, review, and/or implementation of reasonable and appropriate employment accommodations.

The interactive process may be an ongoing process as the employee's condition and/or position description change overtime.

The "Trigger to the Interactive Process" flowchart is a tool to assist SJSU managers and supervisors in understanding the points at which the interactive process can start and end, as well as the responsibilities and interactions between the employee, manager/supervisor, and the EARC within the interactive process. Employees may also find this flowchart as a helpful tool. This flowchart is meant as a general guide and should not be substituted for direct consultation with the EARC regarding complex employee disability related issues.



INSTRUCTIONS: To use this flowchart, identify the starting point that best matches your current scenario. For example, how would you use this flowchart to understand what to do if an employee discloses a disability to you? For this example, you would follow the start point corresponding with the scenario in question, which is in this case the purple "start" point. From the purple start point, continue following direction of the path that best matches the scenario in question. When you encounter an "end" point, it signifies the interactive process has ended for the time being.

¹Documentation is to be kept in a confidential file separate from the employee's personnel file.

²Copy of EARC referral letter is also sent to the EARC.

³Manager/supervisor is responsible for maintaining the information discussed during the interactive process confidential. EARC does not disclose confidential medical/professional verification of employee's disability to manager/supervisor.