



Job Applicants and the Americans with Disabilities Act

Introduction

Title I of the Americans with Disabilities Act of 1990 (ADA) makes it unlawful for an employer to discriminate against a qualified applicant or employee with a disability. The ADA applies to private employers with 15 or more employees and to state and local government employers. The U.S. Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA.

The ADA defines an individual with a disability as a person who: (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record or history of a substantially limiting impairment, or (3) is regarded or perceived by an employer as having a substantially limiting impairment.

An applicant with a disability, like all other applicants, must be able to meet the employer's requirements for the job, such as education, training, employment experience, skills, or licenses. In

addition, an applicant with a disability must be able to perform the "essential function" of the job, the fundamental duties either on her own or with the help of "reasonable accommodation." However, an employer does not have to provide a reasonable accommodation that will cause "undue hardship," which is significant difficulty or expense.

This fact sheet addresses common questions about how the ADA protects applicants with disabilities. The information in this fact sheet also applies to applicants for federal employment, who are protected from discrimination by Section 501 of the Rehabilitation Act. Section 501's requirements are the same as those that apply to employers covered by the ADA. There are many other documents, some of which are listed at the end of this fact sheet, that provide more in-depth information about the employment rights of individuals with disabilities.

Reasonable Accommodation for the Application Process

1. I have a disability and will need an accommodation for the job interview. Does the ADA require an employer to provide me with one?

Yes. Employers are required to provide “reasonable accommodation” – appropriate changes and adjustments – to enable you to be considered for a job opening. Reasonable accommodation may also be required to enable you to perform a job, gain access to the workplace, and enjoy the “benefits and privileges” of employment available to employees without disabilities. An employer cannot refuse to consider you because you require a reasonable accommodation to compete for or perform a job.

2. Can an employer refuse to provide an accommodation because it is too difficult or too expensive?

An employer does not have to provide a specific accommodation if it would cause an “undue hardship,” that is, if it would require significant difficulty or expense. However, an employer cannot refuse to provide an accommodation solely because it entails some costs, either financial or administrative.

If the requested accommodation requires an undue hardship, the employer still would be required to

provide another accommodation that does not.

Example: A trucking company conducts job interviews in a second floor office. There is no elevator. The company calls Tanya to arrange for an interview for a secretarial position. She requests a reasonable accommodation because she uses a wheelchair. Installing an elevator would be an undue hardship, but the employer could conduct the interview in a first floor office. The employer must move the location of the interview as a reasonable accommodation.

3. What are some examples of “reasonable accommodations” that may be needed during the hiring process?

Reasonable accommodation can take many forms. Ones that may be needed during the hiring process include (but are not limited to):

- Providing written materials in accessible formats, such as large print, Braille, or audiotape
- Providing readers or sign language interpreters
- Ensuring that recruitment, interviews, tests, and other components of the application process are held in accessible locations
- Providing or modifying equipment or devices

- Adjusting or modifying application policies and procedures

Example 1: John is blind and applies for a job as a customer service representative. John could perform this job with assistive technology, such as a program that reads information on the screen. If the company wishes to have John demonstrate his ability to use the computer, it must provide appropriate assistive technology as a reasonable accommodation.

Example 2: An employer requires job applicants to line up outside its facility to apply for a job, a process that could take several hours. Tara has multiple sclerosis and that makes her unable to tolerate prolonged exposure to temperatures in the 90s. Tara therefore requests that she be allowed to wait indoors where it is air conditioned until the human resources department is ready to take her application. The employer would need to modify its hiring procedure to accommodate Tara.

4. Because of my learning disability, I need extra time to complete a written test. Does the ADA require an employer to modify the way a test is given to me?

Yes. An employer may have to provide testing materials in alternative formats or make other adjustments to tests as an accommodation for you. The format

and manner in which a test is given may pose problems for persons with impaired sensory, speaking, or manual skills, as well as for those with certain learning disabilities. For example, an applicant who is blind will not be able to read a written test, but can take the test if it is provided in Braille or the questions are tape recorded. A deaf person will not understand oral instructions, but these could be provided in a written format or through the use of a sign language interpreter. A 30-minute timed written test may pose a problem for a person whose learning disability requires additional time.

Thus, the ADA requires that employers give application tests in a format or manner that does not require use of your impaired skill, unless the test is designed to measure that skill.

Example 1: An employer gives a written test for a proofreading position. The employer does not have to offer this test in a different format (e.g., orally) to an applicant who has dyslexia because the job itself requires an ability to read.

Example 2: An employer gives a written test to learn about an applicant's knowledge of marketing trends. Maria is blind and requests that the test be given to her in Braille. An individual's knowledge of marketing trends is critical to this job, but the employer can test Maria's knowledge by giving her the test in

Braille. Alternatively, the employer could explore other testing formats with Maria to determine if they would be effective for example, providing a reader or computer version of the test.

5. When do I have to tell an employer that I need an accommodation for the hiring process?

It is best to let an employer know as soon as you realize that you will need a reasonable accommodation for some aspect of the hiring process. An employer needs advance notice to provide many accommodations, such as sign language interpreters, alternative formats for written documents, and adjusting the time allowed for taking a written test. An employer may also need advance notice to arrange an accessible location for a test or interview.

Asking for an Accommodation

6. How do I request a reasonable accommodation?

You must inform the employer that you need some sort of change or adjustment to the application/interviewing process because of your medical condition. You can make this request orally or in writing, or someone else might make a request for you (e.g., a family member, friend, health professional, or other representative, such as a job coach.)

7. What happens after I request an accommodation?

The employer may need to discuss your request more fully in order to understand your disability and why you need an accommodation. You should respond to the employer's questions as quickly as possible and be sure to explain how a proposed accommodation would enable you to participate fully in all aspects of the application/interviewing process. If your disability and need for accommodation are not obvious, the employer may ask you for reasonable documentation explaining the disability and why an accommodation is needed.

Example: A department store requires applicants to take a written test. Rodney has dyslexia and requests that the test be read to him as a reasonable accommodation. The human resources associate is unfamiliar with dyslexia and requests information about the condition and why the accommodation is necessary. Rodney must provide this information.

8. I asked for a specific accommodation, but the employer offered me a different one instead. Do I have to accept it?

An employer has to offer an accommodation that will meet your needs. If more than one accommodation meets your needs,

then the employer may choose which one to provide. You cannot insist on a specific accommodation only because it is a personal preference. If the employer's proposal does not meet your needs, then you need to explain why.

Example: Charles is blind and asks that a written test be read to him as a reasonable accommodation. The employer proposes to provide Charles with a Braille version of the test, but Charles explains that he cannot read Braille. Thus, a Braille version would not be an effective accommodation. The employer then proposes to provide Charles with an audiotape version of the test. While Charles preferred to have someone read the questions to him, the audiotape version meets his needs and thus is acceptable as a reasonable accommodation.

Discussing Disability with the Potential Employer

The ADA prohibits employers from asking questions that are likely to reveal the existence of a disability before making a job offer (i.e., the pre-offer period). This prohibition covers written questionnaires and inquiries made during interviews, as well as medical examinations. However, such questions and medical examinations are permitted after extending a job offer but before the individual begins work (i.e., the post-offer period).

9. What are examples of questions that an employer cannot ask on an application or during an interview?

Examples of prohibited questions during the pre-offer period include:

- Do you have a heart condition? Do you have asthma or any other difficulties breathing?
- Do you have a disability which would interfere with your ability to perform the job?
- How many days were you sick last year?
- Have you ever filed for workers' compensation? Have you ever been injured on the job?
- Have you ever been treated for mental health problems?
- What prescription drugs are you currently taking?

10. May the employer ask me these questions after making a job offer?

Yes. An employer can ask all of the questions listed in Question 9, and others that are likely to reveal the existence of a disability, after it extends you a job offer as long as it requires the same medical examination of other applicants offered the same type of job.

11. May an employer ask me whether I will need a reasonable accommodation for the hiring process?

Yes. An employer may tell all applicants what the hiring process involves (for example, an interview, timed written test, or job demonstration), and then ask whether they will need a reasonable accommodation for this process. (See Question 16 for a discussion about employers asking about an applicant's need for reasonable accommodation for the job.)

12. I have an obvious disability. Can an employer ask me medical questions during an interview?

No. Except as explained in Question 15 below, an employer cannot ask questions about an applicant's disability either because it is visible or because the applicant has voluntarily disclosed a hidden disability.

13. After I got a job offer, the employer had me take a medical examination in which I revealed I have epilepsy. Can the employer withdraw my job offer?

While the employer had the right to require a post-offer medical examination, he cannot withdraw the job offer solely because you revealed you have a disability. Instead, the employer can withdraw the job offer only if it can show that you are unable to perform the essential functions of the job (with or without reasonable accommodation), or that you pose a significant risk of causing

substantial harm to yourself or others.

Example: Darla receives a job offer to be a cook at a hotel resort, and during the medical examination she discloses that she has epilepsy. The hotel doctor expresses concern about Darla working around stoves and using sharp utensils. Darla tells the doctor that her seizures are controlled with medication and offers to bring information from her neurologist to answer the doctor's concerns. Darla also points out that she has worked as a cook for seven years without any incidents. The hotel will violate the ADA if it withdraws Darla's job offer based on her epilepsy.

14. During the hiring process, I gave the employer medical information that I do not want anyone else to know about. Must the employer keep this information confidential?

Yes. The ADA contains strict confidentiality requirements. Medical information revealed during the hiring process (pre- or post-offer) must be kept confidential, with certain expectations. The confidentiality requirements protect both information voluntarily revealed as well as information revealed in response to an employer's written or oral questions or during a medical examination.

An employer may share medical information with other decision-

makers involved in the hiring process who need it so they can make employment decisions consistent with the ADA. The ADA also permits an employer to share medical information with the following individuals:

- Supervisors and managers may be told about necessary restrictions on the work or duties of an employee and about reasonable accommodations
- First aid and safety personnel may be told if the disability might require emergency treatment
- Government officials investigating compliance with the ADA
- State workers' compensation offices, state second injury funds, or workers' compensation insurance carriers

An employer may also use the information for insurance purposes.

Discussing Accommodation to Perform the Job

15. May an employer ask applicants on an application form or during an interview whether they will need reasonable accommodation to perform the job?

Generally, no. An employer cannot ask all applicants whether they would need reasonable accommodation to perform a job because the answer to

this question is likely to reveal whether an applicant has a disability.

However, if the employer knows that an applicant has a disability, and it is reasonable to question whether the disability might pose difficulties for the individual in performing a specific job task, then the employer may ask whether she would need reasonable accommodation to perform that task. An employer might know that an applicant has a disability because it is obvious or she has voluntarily revealed the existence of one. If the applicant indicates that accommodation will be necessary, then the employer may ask what accommodation is needed.

Example: Carl has a severe limp and uses a cane because of his prosthetic leg. He applies for an assembly line job which does not require employees to move around but does require that they stand for long periods of time. The employer asks Carl about his ability to stand and whether he will need reasonable accommodation to perform the job. Carl replies that he will need accommodation. The employer asks Carl for examples of accommodations, and Carl suggests two possibilities: a tall stool so that he can sit down but still reach the conveyor belt, or alternatively, a "sit-stand" chair which will provide support and enable him to do the job.

Also, if the employer believes an applicant with an obvious disability

will need a reasonable accommodation to do the job, it may ask the applicant to describe or demonstrate how she would perform the job with or without reasonable accommodation.

Example: Alberto uses a wheelchair and applies for a job that involves retrieval of files that would seem to be beyond his reach. The employer can show him the files and ask him to explain or demonstrate how he would perform this task.

16. Do I have to tell the employer during the application process that I might not need an accommodation to perform the job?

No. The ADA does not require that an applicant inform an employer about the need for a reasonable accommodation at any particular time, so this information need not be volunteered on an application form or in an interview.

Determining the best moment to tell a prospective employer about the need for reasonable accommodation on the job is a personal decision.

Sometimes, applicants are not aware they may need a reasonable accommodation until they have more information about the job, its requirements, and the work environment. Some applicants choose to inform an employer during the application process after they better understand the job and its

requirements. Others choose to wait until they have a job offer.

Being “Qualified” for the Job

17. What if my disability prevents me from performing some job duties?

An employer does not have to hire you if you are unable to perform all of the essential functions of the job, even with reasonable accommodation. However, an employer cannot reject you only because the disability prevents you from performing minor duties that are not essential to the job.

Example: Wei is deaf and applies for a file clerk position. The essential functions for this job are to file and retrieve written materials. While the job description states that the clerk must also answer the phone, in practice the clerk rarely does this because other employees have responsibility for this duty. The employer cannot reject Wei solely because she is unable to answer the phone since that is not an essential part of performing this job.

18. Can an employer refuse to hire me because she believes that my disability makes it unsafe for me to perform a job?

An employer can refuse to hire you only if your disability poses a significant risk of substantial harm to you or others. If an employer has such concerns, he must seek

appropriate information to assess the level of risk and the nature of the harm. This can include asking questions about prior work experience and requesting specific information from your doctor related to health and safety.

An employer cannot refuse to hire you based on a slightly increased risk, speculation about future risk, or generalizations about your disability. The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

Example: An employer learns during a post-offer medical examination that Simone has major depression. She has been offered a high-level managerial position, but the employer is concerned that the job will be too stressful, causing Simone's illness to worsen. But, Simone's depression is well-controlled with medication and she has been working for two years in a similar position with no effect on her depression or her performance. Based on this information, Simone's disability would not pose a high level of risk of harm and therefore the employer could not refuse to hire her based on fears that she will experience an increased number of depressive episodes or that she would be unable to perform the job.

RESOURCES

Assistive Technology Partners
601 E. 18th Avenue, Suite 130

Denver, CO 80203
303/315-1280 Main
800/255-3477
303/837-8964 TTY
303/837-1208 FAX
www.assistivetechologypartners.org

Rocky Mountain Disability and
Business Technical Assistance
Center
3630 Sinton Road, #103
Colorado Springs, CO 80907
800/949-4232 Voice/TTY
719/444-0269 FAX
www.ada-infonet.org

U.S. Equal Employment Opportunity
Commission (EEOC)
800/669- EEOC Voice
800/800-3302 TTY
www.eeoc.gov

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