



Employment Brief

Disability and Employment: Job Applicants with Disabilities Should Know their Rights

National Technical Assistance Center

www.ntac.hawaii.edu

Tel: (808)956-3648

Fax: (808)956-5713

Tty: (808)956-2890

Mission:

To increase employment opportunities for Asian Americans and Pacific Islanders with disabilities nationwide.

Based at:

University of Hawaii
at Manoa, Center on
Disability Studies

In collaboration with:

Hawaii Centers for
Independent Living

Hawaii Vocational
Rehabilitation and
Services for the Blind
Division

Funded by:

U.S. Department of
Education
Rehabilitation Services
Administration

The purpose of this brief is to provide information and resources to educate individuals with disabilities seeking employment on how Title I of the Americans with Disabilities Act (ADA) protects their rights throughout the hiring process. The information applies to all Americans with disabilities, including minority groups such as Asian Americans and Pacific Islanders (AAPI), and is adapted from the U.S. Equal Opportunity Commission (EEOC) fact sheet: Job Applicants and the Americans with Disabilities Act.

While many people with disabilities are aware of the Americans with Disabilities Act, they may not fully understand how the law protects them. An EEOC fact sheet, portions of which follow, clarifies many aspects of Title I including the employer's requirement of "reasonable accommodation" for applicants with disabilities who need assistance during the hiring process. It also explains the ADA's rules on when employers may seek medical information from applicants.

In addition to clarifying rights afforded to all job applicants with disabilities by ADA, the EEOC recommends to these job applicants that just as employers cannot refuse to hire an applicant simply because he or she has a disability if the person can perform the essential functions of the job, an applicant should also focus during the hiring process on his or her qualifications rather than on the disability.

The following fact sheet addresses common questions about how the ADA protects job applicants with disabilities. 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

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.

Can an employer refuse to provide me with 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.

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.

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

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 (for example, a family member, friend, health professional, or other representative, such as a job coach).

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.

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).

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?
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- 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?

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

Yes. An employer can ask questions that are likely to reveal the existence of a disability, after a job offer is extended as long as the same questions are asked of all applicants offered the same type of job. In other words, an employer cannot ask such questions only of those who have obvious disabilities. Similarly, an employer may require a medical examination after making a job offer as long as the same medical examination is required of other applicants offered the same type of job.

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

No, 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.

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.

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 exceptions. 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 also may use the information for insurance purposes.

Discussing Accommodation to Perform the Job

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.

Do I have to tell the employer during the application process that I might 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

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.

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.¹

Resources

You can obtain more information about the ADA and its requirements through the EEOC’s website, www.eeoc.gov. This website contains documents addressing various ADA issues, including definition of disability, reasonable accommodation and undue hardship, preemployment disability-related questions and medical examinations, and the ADA and psychiatric disabilities.

These documents can also be obtained by calling EEOC’s Publications Distribution Center at 1-800-669-3362 (Voice) or 1-800-800-3302 (TTY).

Also available from the Center is the ADA Technical Assistance Manual, a practical and comprehensive explanation of all of the ADA employment provisions. The Manual comes with a nationwide resource directory. All documents are free and available in alternative formats.

References

1. “Job Applicants and the Americans with Disabilities Act” by the U.S. Equal Employment Opportunity Commission (EEOC): Copyright 2003 by the U.S. Equal Employment Opportunity Commission. Adapted with permission. Retrieved December 2, 2003 from <http://www.eeoc.gov/facts/jobapplicant.html>.

