

## **Americans with Disabilities Act Considerations in the Hiring Process**

### **1. Accessibility**

Employers, including church organizations, are required to provide necessary reasonable accommodations to enable an applicant to have equal opportunity in the interview process. The EEOC provides the following as examples of accommodations during interviews:

- a. An accessible location for people with mobility impairments.
- b. A sign interpreter for a deaf person.
- c. A reader for a blind person.

### **2. Worker's Compensation Claims History**

It is the EEOC's position that:

a. The ADA prohibits employers from inquiring into an applicant's workers' compensation history before making a conditional offer of employment.

b. After making a conditional job offer, an employer may ask about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category.

c. An employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future.

d. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation. Ch. IX, Americans with Disabilities Act of 1990, EEOC Technical Assistance Manual, § 9.1.

e. In the pre-employment phase of the hiring process, the Conference should not ask:

- (1) Have you ever been injured on the job?

- (2) Have you ever filed a claim for workers' compensation?
- (3) Have you ever received workers' compensation or disability benefits?
- (4) Identify the dates, the circumstances surrounding such injury, and the nature of any workers' compensation claim you have filed.

### **3. Prohibited Pre-Employment Medical Inquiries and Examinations**

a. The Conference cannot conduct medical examinations or ask medical questions prior to making a conditional offer of employment. 42 U.S.C. § 12112(c)(2)(A).

b. The Conference cannot ask a former employer or a reference about the applicant's disability or the nature or severity of the disability in any background or reference check. Ch. V, Manual, § 5.5(a), p. V-5.

c. The Conference cannot single out a disabled employee to request that he or she demonstrate his ability to perform a job-related task where the disability will not prevent the employee from performing these job-related tasks (e.g., an interview may not single out a disabled applicant with one leg to demonstrate his ability to assemble small parts with his hands while seated at a table). 29 C.F.R. § 1630, Appendix, § 1630.14(a).

d. Conference interviewers cannot ask a job applicant, in writing or verbally, any of the following questions:

- (1) Do you have a disability?
- (2) If so, explain the nature or severity of your disability.
- (3) Have you filed any claims for workers' compensation?
- (4) If so, identify the dates and nature of any workers' compensation claims you have filed.
- (5) How did you become disabled?
- (6) How did you lose your \_\_\_\_\_?

- (7) Was the loss of your \_\_\_\_\_ caused by an impairment?
- (8) What is your prognosis?
- (9) How often will you require leave for treatment of your disability?
- (10) Have you ever had or been treated for any of the following conditions or diseases? (Followed by a checklist of various conditions and diseases).
- (11) Have any of your family members ever had or been treated for any of the conditions listed above?
- (12) Please list any conditions or diseases for which you have been treated in the past three years.
- (13) Have you ever been hospitalized? If so, for what condition?
- (14) Have you ever been treated by a psychiatrist or a psychologist? If so, for what condition?
- (15) Have you ever been treated for any mental condition?
- (16) Is there any health-related reason you may not be able to perform the job for which you are applying?
- (17) Have you had a major illness in the last five years?
- (18) How many days were you absent from work because of illness last year?
- (19) Do you have any physical or mental defects which preclude you from performing specific kinds of work? If yes, describe such defects and specific work limitations.
- (20) Do you have any disabilities or impairments which may affect your performance in the position for which you are applying. If so, identify any accommodations that would enable you to perform the job.
- (21) Are you taking any prescribed drugs?

- (22) Have you ever been treated for drug addiction or alcoholism?
- (23) Are you involved or have you been involved with an individual who has been diagnosed with the HIV virus?

#### **4. Permitted Pre-Employment Medical Inquiries and Examinations**

a. A Conference interviewer may ask an applicant whose known disability may interfere with or prevent the performance of a job-related function to demonstrate his or her ability to perform the function whether or not the Conference routinely makes this request of all applicants.

b. A Conference interviewer may ask a disabled applicant with a known disability which will not interfere with the performance of a job-related function to demonstrate his or her abilities only if an employer routinely asks all applicants to demonstrate their abilities.

c. If an applicant with a known disability has indicated that he could perform a job with reasonable accommodation, a previous employer may be asked about the accommodations made by that employer (but not about the particular disability).

d. The Conference may require an applicant to submit to a drug test. A drug test is not considered a medical exam. 42 U.S.C. § 12114(d)(1). (The statute and regulations do not address testing for alcohol and, therefore, the Conference should not test for alcohol prior to a conditional offer of employment.)

e. A Conference interviewer may ask an applicant, in writing or verbally, any of the following questions:

- (1) Are you able to perform the job functions (identified in a job description or described verbally)?
- (2) Can you perform these job functions (identified in a job description or described verbally) with or without reasonable assistance or accommodation.
- (3) If you are able to perform the job functions with an accommodation, how would you perform the task and with what accommodation(s)?

- (4) Demonstrate or to explain how, with or without reasonable accommodation, you (a teller person with one arm) would be able to transport yourself and your tools up or down stairs.
- (5) The attendance requirements of the job are \_\_\_\_\_. Can you meet these requirements.
- (6) Can you perform both the essential     (specify)     and marginal     (specify)     job functions.<sup>1</sup>
- (7) The regular work hours of the job are \_\_\_\_\_. Can you meet this requirement?
- (8) The special attendance needs of the job are \_\_\_\_\_. Can you comply with this requirement?
- (9) The travel requirements of the job are \_\_\_\_\_. Can you comply with this requirement?
- (10) Do you engage in the current illegal use of drugs?

---

<sup>1</sup> Although this inquiry is specifically suggested by the EEOC, the EEOC reminds employers that any employment decision may not be based upon the applicant's inability to perform non essential functions. For this reason, despite the position of the EEOC, managers should be cautious in concentrating on an applicant's ability to perform admittedly non essential functions of the position.