



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

THE CATHOLIC UNIVERSITY OF AMERICA

Office of the General Counsel

ADA Guidelines

Interview of Applicants

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Permissible Inquiries

Prohibited Inquiries

The Americans with Disabilities Act expressly prohibits certain inquiries and examinations at the pre-offer stage, that is, before a formal job offer is made. The employer may not ask disability related questions and may not conduct medical examinations until after it makes a conditional job offer to the applicant. The purpose of this is to ensure that an applicant's disability is not considered before the employer evaluates the applicant's non-medical qualifications.

An employer may make inquiries about whether an applicant will require reasonable accommodation only when the applicant has an obvious disability, when the applicant voluntarily discloses that he or she has a disability, or when the applicant voluntarily discloses that he or she will require reasonable accommodation. "Reasonable accommodation" refers to those adjustments made to the work setting that will allow the disabled individual to perform the essential functions of the position. Adjustments may include making existing facilities readily accessible and usable by the disabled individual, job restructuring or part-time or modified work schedules, and the use of equipment or devices to augment communication.

See Reasonable Accommodation/Employment for an in-depth treatment of what might be included. For more general information about the employment interview process, see the CUA Equal Opportunity Office Interview Guidelines and the Office of General Counsel Interview Guidelines. Comprehensive guidance from the EEOC on interviewing in the ADA context can be found at <http://www.eeoc.gov/docs/preemp.txt>.

Permissible Inquiries

- * Employers may ask about an applicant's ability to perform specific job functions. Use the already established "essential functions" as a guideline. The employer should state that the performance may be with or without reasonable accommodation.
- * Employers may ask about an applicant's non-medical qualifications and skill, such as work history, licensing, education, etc..
- * Employers may ask an applicant to describe or demonstrate how they would perform job tasks. If this question is asked, it should be asked of all applicants to avoid a claim that any particular applicant was treated differently than others and thus unfairly. The employer must either provide reasonable accommodation if necessary, or allow the applicant to explain how the accommodation would allow them to perform the job.
- * Employers may ask applicants whether they will need reasonable accommodation for the hiring process.
- * Employers may ask for documentation of a disability if the applicant requests reasonable accommodation for the hiring process.
- * Employers may ask whether an applicant can meet the employer's attendance requirements.
- * Employers may ask questions about impairments that are not likely to elicit information about a protected disability, e.g., "how did you break your leg?"
- * Employers may ask applicants about their current illegal use of drugs.
- * When the question is job related, employers may ask an applicant whether or not they have been convicted for drunk driving, or whether they drink alcohol, as well as questions about the use of illegal drugs such as, "Have you used illegal drugs in the past six months?"

Prohibited Inquiries

- * Employers may not ask applicants whether they will need reasonable accommodation to perform the functions of the job, unless the employer

- * Employers may not ask applicants whether they will need reasonable accommodation to perform the functions of the job, unless the employer reasonably believes the applicant will need reasonable accommodation because of an obvious disability, or because of a hidden disability that the applicant has voluntarily disclosed to the employer.
- * Employers may not ask applicants if they can perform major life activities.
- * Employers may not ask applicants about their workers' compensation histories.
- * Employers may not ask applicants about their lawful drug use. However, if an applicant tests positive for a controlled substance, then the employer may ask about lawful drug use.
- * Employers may not ask at the pre-offer stage, the following types of questions: "How often did you use illegal drugs in the past?" "Have you ever been addicted to drugs?" or "Have you ever been treated for drug addiction or drug abuse?" These types of questions are considered questions that would lead to discovery of a disability, rather than questions that are related to ability to perform the job in question.
- * Employers may not ask applicants how much they drink or whether they have participated in an alcohol rehabilitation program.
- * After giving a job offer to an applicant, the employer may ask disability-related questions and perform medical examinations. Disability-related questions and medical examinations at the post-offer stage do not have to be related to the job.

Source: 34 C.F.R. § 104.14; EEOC Enforcement Guidance on the ADA, issued October 10, 1995 (<http://www.eeoc.gov/docs/preemp.txt>).

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