

The ADA provides rules for hiring people with disabilities

This Technical Update is the second in a series on Title I of the Americans with Disabilities Act of 1990 (ADA). Title I was designed to protect people with disabilities from employment discrimination. The ADA defines what an employer can and cannot do when interviewing and hiring individuals with disabilities.

What kinds of questions can I ask in an interview?

The ADA does not allow you to ask questions about disability or use medical examinations until after you make someone a conditional job offer. Employers should focus application and interview questions on non-medical job qualifications. An employer may ask a wide range of questions designed to determine an applicant's qualifications for a job. For example, employers can ask:

- Whether s/he has the right education, training, and skills for the position.
- Whether s/he can satisfy the job's requirements or essential functions (describe them to the applicant).
- How much time off the applicant took in a previous job (but not why), the reason s/he left a previous job, and any past discipline.

Employers cannot ask questions about:

- An applicant's physical or mental impairment or how s/he became disabled (for example, why the applicant uses a wheelchair);
- An applicant's use of medication;
- An applicant's prior workers' compensation history.

Where it seems likely that an applicant has a disability that will require a reasonable accommodation, you may ask whether s/he will need one. This is an exception to the usual rule that questions regarding disability and

reasonable accommodation should come after making a conditional job offer.

Can I ask disability-related questions or require a physical exam after I have made a job offer?

Yes, after making a job offer, you may ask any disability-related questions and conduct medical examinations as long as you do so for everyone in the same job category.

You may withdraw an offer from an applicant with a disability only if it becomes clear from medical or scientific evidence that s/he cannot do the essential functions of the job or would pose a direct threat (i.e., a significant risk of substantial harm) to the health or safety of himself/herself or others. Be sure to consider whether any reasonable accommodation(s) would enable the individual to perform the job's essential functions and/or would reduce any safety risk the individual might pose. Examples of what you can do:

- If you want to give a medical examination to someone who has been offered a job that involves heavy labor, you must give the same exam to anyone who is offered the same kind of job.
- You may withdraw an offer of a manufacturing job involving the use of dangerous machinery if you learn during a post-offer medical exam that the applicant has frequent and unpredictable seizures.

For example, you cannot withdraw an offer to an HIV-positive applicant because you are concerned about customer and client reactions or because you assume that anyone with HIV infection will be unable to work long and stressful hours.

For more information, contact CTSI at 303-861-0507.

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Technical Updates are available online at: www.ctsi.org

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