



Work Comp Associates, Inc.

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Instructions to Interviewers on the ADA

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Instructions to follow.

This form is provided courtesy of Work Comp Associates, Inc.

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INSTRUCTIONS TO INTERVIEWER ON THE ADA*

The basic requirements regarding pre-employment inquiries and the types of questions that are prohibited on job application forms apply to the job interview as well. An interviewer may not ask questions about disability, but may obtain more specific information about the ability to perform job tasks and about any needed accommodation.

To assure that an interview is conducted in a nondiscriminatory manner, interviewers should be well-informed about the ADA's requirements. Most employment discrimination against people with disabilities is not intentional. Discrimination most frequently occurs because interviewers and others involved in hiring lack knowledge about the differing capabilities of individuals with disabilities and make decisions based on stereotypes, misconceptions, or unfounded fears.

The job interview should focus on the ability of an applicant to perform the job, not on disability.

For example: If a person has only one arm and an essential function of a job is to drive a car, the interviewer should not ask if or how the disability would affect this person's driving. The person may be asked if s/he has a valid driver's license, and whether s/he can perform any special aspect of driving that is required, such as frequent long-distance trips, with or without an accommodation.

The interviewer also could obtain needed information about an applicant's ability and experience in relation to specific job requirements through statements and questions such as: "Eighty-percent of the time of this sales job must be spent on the road covering a three-state territory. What is your outside selling experience? Do you have a valid driver's license? What is your accident record?"

Where an applicant has a visible disability (for example, uses a wheelchair or a guide dog, or has a missing limb) or has volunteered information about a disability, the interview may not ask questions about:

- the nature of the disability;
- the severity of the disability;
- the condition causing the disability;
- any prognosis or expectation regarding the condition or disability; or
- whether the individual will need treatment or special leave because of the disability.

The interviewer may describe or demonstrate the specific functions and tasks of the job and ask whether an applicant can perform these functions with or without a reasonable accommodation.

For example: An interviewer could say: "The person in this mailroom clerk position is responsible for receiving incoming mail and packages, sorting the mail, and taking it in a cart to many offices in two

* Taken in large part from the EEOC Technical Assistance Manuals [as excerpted in *2007 Workers' Compensation Desk Manual* by James McConaughay].

buildings, one block apart. The mailclerk also must receive incoming boxes of supplies up to 50 pounds in weight, and place them on storage shelves up to 6 feet in height. Can you perform these tasks? Can you perform them with or without a reasonable accommodation?"

The interviewer also may give the applicant a copy of a detailed position description and ask whether s/he can perform the functions described in the position, with or without a reasonable accommodation.

Questions may be asked regarding ability to perform all functions, not merely those that are essential to the job.

For example: A secretarial job may involve the following functions:

1. transcribing dictation and written drafts from the supervisor and other staff into final written documents;
2. proof-reading documents for accuracy;
3. developing and maintaining files;
4. scheduling and making arrangements for meetings and conferences;
5. logging documents and correspondence in and out;
6. placing, answering, and referring telephone calls;
7. distributing documents to appropriate staff members;
8. reproducing documents on copying machines; and
9. occasional travel to perform clerical tasks at out of town conferences.

Taking in to account the specific activities of the particular office in which this secretary will work, and availability of other staff, the employer has identified functions 1-6 as essential, and functions 7-9 as marginal to this secretary's job. The interviewer may ask questions related to all 9 functions; however, an applicant with limited mobility should not be screened out because of inability to perform the last 3 functions due to her disability. S/he should be evaluated on ability to perform the first 6 functions, with or without accommodation.

An interviewer may obtain information about an applicant's ability to perform essential job functions and about any need for accommodation in several ways, depending on the particular job applicant and the requirements of a particular job:

- The applicant may be asked to describe or demonstrate how s/he will perform specific job functions, if this is required of everyone applying for a job in this job category, regardless of disability.

For example: an employer might require all applicants for a telemarketing job to demonstrate selling ability by taking a simulated telephone sales test, but could not require that a person using a wheelchair take this test if other applicants are not required to take it.

- If an applicant has a known disability that would appear to interfere with or prevent performance of a job-related function, s/he may be asked to describe or demonstrate how this function would be performed, even if other applicants do not have to do so.

For example: If an applicant has one arm and the job requires placing bulky items on shelves up to six feet high, the interviewer could ask the applicant to demonstrate how s/he would perform this function with or without an accommodation. If the applicant states that s/he can perform this function with a reasonable accommodation, for example, with a step stool fitted with a device to assist lifting, the employer either must provide this accommodation so that the applicant can show that s/he can shelve the items, or let the applicant describe how s/he would do this task.

- However, if an applicant has a known disability that would **not** interfere with or prevent performance of a job related function, the employer can only ask the applicant to demonstrate how s/he would perform the function if all applicants in the job category are required to do so regardless of disability.

For example: If an applicant with one leg applies for a job that involves sorting small parts while seated, s/he may not be required to demonstrate the ability to do this job unless all applicants are required to do so.

If an applicant indicates that s/he cannot perform an essential job function even with an accommodation, the applicant would not be qualified for the job in question.

An interviewer may not ask whether an applicant will need or request leave for medical treatment or for other reasons related to a disability.

The interviewer may provide information on the employer's regular work hours, leave policies, and any special attendance needs of the job, and ask if the applicant can meet these requirements (provided that the requirements actually are applied to employees in a particular job).

For example: "Our regular work hours are 9 to 5, five days weekly, but we expect employees in this job to work overtime, evenings, and weekends for 6 weeks during the Christmas season and on certain other holidays. New employees get 1 week of vacation, 7 sick leave days and may take no more than 5 days of unpaid leave per year. Can you meet these requirements?"

Information about previous work attendance records may be obtained on the application form, in the interview or in reference checks, but the questions should not refer to illness or disability.

If an applicant has had a poor attendance record on a previous job, s/he may wish to provide an explanation that includes information related to a disability, but the employer should not ask whether a poor attendance record was due to illness, accident or disability. For example, an applicant might wish to disclose voluntarily that the previous absence record was due to surgery for a medical condition that is now corrected, treatment for cancer that is now in remission or to adjust medication for epilepsy, but that s/he is now fully able to meet all job requirements.