



QUESTIONS AND ANSWERS:

THE AMERICANS WITH DISABILITIES ACT AND HIRING POLICE OFFICERS

The Americans with Disabilities Act, or ADA, is a civil rights law guaranteeing equal opportunity to jobs for qualified individuals with disabilities. The following questions and answers respond to the concerns most commonly raised by police departments.

Further information about the ADA's employment requirements may be obtained from the Equal Employment Opportunity Commission at 800-669-4000 (voice) or 800-669-6820 (TDD). Other ADA information is available through the Department of Justice's ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TDD).

1. Q: Who is a "qualified individual with a disability" for employment?

A: A qualified individual with a disability is an employee or job applicant who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks. The person must also be able to perform the "essential" (as opposed to marginal or incidental) functions of the position either with or without reasonable accommodation. Job requirements that screen out or tend to screen out people with disabilities are legitimate only if they are job-related and consistent with business necessity.

2. Q: The ADA prohibits making disability-related inquiries or giving applicants for police jobs medical examinations until a conditional offer of employment is made. Why?

A: In the past, people with disabilities, particularly those with hidden disabilities, were denied jobs once potential employers found out about their disabilities. The ADA seeks to prohibit discrimination by limiting an employer's knowledge of an applicant's disability to a later stage of the job application process. Under the ADA an employer may only ask about an applicant's disability or give a medical examination after the employer has made a job offer. The job offer can be conditioned on successfully passing a medical examination. Thus, if the person with a disability is denied the job because of information obtained from the medical examination or because of the applicant's disability, the reason for this decision is out in the open. This procedure should limit impermissible consideration of disability.

3. Q: I know I can't give a job applicant a medical exam before a conditional job offer is made. But what about physical agility and physical fitness tests?

A: You can give job applicants tests measuring an applicant's ability to perform job-related tasks or physical fitness tests (tests measuring performance of running, lifting, etc.) before any job offer is made. Tests that measure simply an applicant's ability to perform a task are not considered to be medical examinations. But remember, job requirements that screen out or tend to screen out persons with disabilities are legitimate only if they are job-related and consistent with business necessity.

4. Q: But to limit the police department's liability, I need to get a medical approval that it's o.k. for a job applicant to take the physical fitness test. Doesn't the ADA create a catch-22 for police departments?

A: No, the ADA's prohibition on medical exams does not make it illegal for a police department to ask an applicant to provide a certification from a doctor that he or she can safely perform the physical fitness test. The ADA allows an employer to require a limited medical certification in these circumstances. The medical certification should only indicate whether or not the individual can safely perform the test and should not contain any medical information or explanation. The police department may also ask the applicant to sign a waiver releasing the employer from liability for injuries during the test resulting from any physical or mental disorders.

5. Q: Recently a job applicant for a police officer's job came into the police department with fingers that were visibly impaired. The police department required that he demonstrate that he could pull the trigger on the police issue firearm and reload it before a conditional job offer was made. Did this violate the ADA?

A: No. If an individual has a "known" disability that would reasonably appear to interfere with or prevent performance of job functions, that person may be asked to demonstrate how these functions will be performed, even if other applicants are not asked to do so.

6. Q: Can I refuse to consider an applicant because of his current use of illegal drugs?

A: Yes, individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of an "individual with a disability" when an employer takes action on the basis of their current use.

7. Q: What about applicants with a history of illegal drug use? Do they have rights under the ADA?

A: It depends. Casual drug use is not a disability under the ADA. Only individuals who are addicted to drugs, have a history of addiction, or who are regarded as being addicted have an impairment under the law. In order for an individual's drug addiction to be considered a disability under the ADA, it would have to pose a substantial limitation on one or more major life activities. In addition, the individual could not currently be using illegal drugs. Denying employment to job applicants solely because of a history of casual drug use would not raise ADA concerns. On the other hand, policies that screen out applicants because of a history of addiction or treatment for addiction must be carefully scrutinized to ensure that the policies are job-related and consistent with business necessity. If safety is asserted as a justification for such a policy, then the employer must be able to show that individuals excluded because of a history of drug addiction or treatment would pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. Again, individuals who currently use illegal drugs, even users who are addicted, may be denied employment because of their current use.

8. Q: May an applicant be asked prior to a conditional job offer whether he or she has ever used illegal drugs or been arrested for any reason?

A: Yes. It does not violate the ADA to ask whether the applicant has ever used illegal drugs or been arrested for such use. However, a law enforcement agency may not ask at the pre-offer stage about the frequency of past illegal drug use or whether the applicant has ever been addicted to drugs or undergone treatment for addiction.

9. Q: Can I disqualify all applicants with felony convictions even though a former addict with a felony drug conviction would be excluded?

A: Yes, as long as you can show that the exclusion is job-related and consistent with business necessity.

10. Q: Does the ADA have any impact on the use of drug-testing?

A: No. Police departments may subject current employees to testing for illegal use of drugs and may require job applicants to undergo such testing at any stage of the application process.

11. Q: If an applicant tests positive for illegal drug use, can I ask whether he or she is using any prescription medications under a doctor's care that may have caused a positive result?

A: Yes. Inquiries into the use of prescription drugs are permitted in response to a positive drug test, even though the answers may disclose information about a disability.

12. Q: Are alcoholics covered by the ADA?

A: Yes. While a current illegal user of drugs is not protected by the ADA if an employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection. An alcoholic is a person with a disability and is protected by the ADA if he or she is qualified to perform the essential functions of the job. An employer may be required to provide an accommodation to an alcoholic. However, an employer can discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct. An employer also may prohibit the use of alcohol in the workplace and can require that employees not be under the influence of alcohol.

13. Q: Can police departments still use polygraph tests at the application stage or do we have to wait until a conditional job offer has been made?

A: You can conduct polygraph exams before a conditional job offer is made. However, employers must exercise care not to ask any prohibited disability-related inquiries in administering the pre-offer polygraph exam.

14. Q: May a police department wait to conduct a background check on applicants until after the information from the medical exam has been reviewed -- which is after a conditional offer of employment has been made?

A: Yes, in certain circumstances. In general, a job offer is not viewed as "bona fide" under the ADA, unless an employer has evaluated all relevant non-medical information which, from a practical and legal perspective, could reasonably have been analyzed prior to extending the offer. However, a law enforcement employer may be able to demonstrate that a proper background check for law enforcement personnel could not, from a practical perspective, be performed pre-offer because of the need to consult medical records and personnel as part of the security clearance process. Where the police department uses the information from the medical exam during the background check, doing the background check at the post-offer stage saves the police department the cost of doing a second background check.

Federal investigators will carefully scrutinize situations in which a police department withdraws an offer after a post-offer background examination to determine whether the withdrawal was based on non-medical information in the background check or on information obtained through post-offer medical examinations and disability-related inquiries. If it is determined that the offer was withdrawn because of the applicant's disability, then the police department must demonstrate that the reasons for the withdrawal are job-related and consistent with business necessity.

15. Q: The police department hires from a pool of applicants that have received conditional offers. Does the ADA allow a police department to re-rank the applicants in the pool based on the results of the medical examination?

A: Yes, if certain procedures are followed. The ADA allows police departments to make conditional job offers to a pool of applicants that is larger than the number of currently available vacancies if an employer can demonstrate that, for legitimate reasons, it must provide a certain number of offers to fill current or anticipated vacancies. A police department must comply with the ADA when taking individuals out of the pool to fill actual vacancies. It must notify an individual (orally or in writing) if his or her placement into an actual vacancy is in any way adversely affected by the results of a post-offer medical examination or disability-related question. The police department must be able to demonstrate that the basis for any adverse action is job-related and consistent with business necessity.

16. Q: If an employee is injured or becomes ill can he or she be required to take a medical examination?

A: Yes, as long as the examination is job-related and consistent with business necessity.

17. Q: Do I have to create another job for an employee who, because of disability, can no longer perform the essential functions of her job even with reasonable accommodation?

A: No. The ADA does not require an employer to create jobs for people with disabilities. However, the employee must be reassigned to a vacant position for which the individual is qualified if it does not involve a promotion and it would not result in an undue hardship. A municipal rule prohibiting transfers between different municipal personnel systems does not automatically constitute an undue hardship. Whether it would be an undue hardship to modify a no-transfer rule in a particular situation must be evaluated on a case-by-case basis.

18. Q: May a police department create a light duty job category reserved only for incumbent officers without offering identical positions to job applicants?

A: Yes. A police department may create a specific class of light duty jobs that are limited to incumbent police officers.

19. Q: If an officer wants to stay in a street job and his supervisor wants him to go on light duty because of a disability, can the supervisor force him to accept a light duty position?

A: It depends. If the employee can still perform the essential functions of the "street job" with or without reasonable accommodation, and without being a direct threat to health or safety, he or she cannot be forced into a light duty position because of a disability.

20. Q: If a charging party receives a right to sue letter, does that mean that the government has found that there has been a violation of the ADA?

A: No. The receipt of a right to sue letter in and of itself only signifies that the complainant has exhausted administrative remedies under title I and is now entitled to bring a lawsuit if he or she chooses. In some cases a right to sue letter may be accompanied by an EEOC finding that there is reasonable cause to believe that an ADA violation has occurred. In this situation, it is the EEOC finding and not the existence of the right to sue letter that establishes reasonable cause. More frequently a right to sue letter is issued after a charge has been dismissed for jurisdictional reasons, for lack of merit, or because the charging party has requested the letter and the government has determined that it will not be able to complete its investigation in a timely manner.

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