

Pre- and Post-Job Offer Questions: Guidance for Employers and Human Resource Personnel

Introduction

According to the Americans with Disabilities Act (ADA), employers and their human resource personnel are limited in the types of questions they can ask during the pre- and post-job offer phase of employment. Specifically, this refers to disability-related questions as well as requirements for medical examinations. The act does not allow employers to ask disability-related questions or require medical exams until after a conditional job offer is made.

During the "pre-job offer" stage

The pre-job offer stage includes both the job application and the job interview(s). Employers can ask general or specific questions to determine if the applicant is qualified to do the job. These questions could be related to ability to perform job



tasks, how they might carry out those tasks, and other qualifications and skills such as education, work history, and certification or licenses for the job.

During the pre-job offer stage, employers cannot ask disability-related questions. Disability-related questions are those that would likely provide information about a disability such as directly asking if the applicant has a disability. However, if the question being asked is general enough that many different answers are possible, this would not be considered a disability-related question.

What Are Some Examples of Questions an Employer Can Ask?

- Are you able to perform the required job functions as indicated in the job announcement? **For example, an employer could ask someone applying as a certified nursing assistant (CNA) if they are able to perform the physical requirements of the job.**
- Can you describe how you would perform this task? **If it is possible this question could reveal a disability or need for an accommodation, then the question would need to be asked of all job applicants.**
- Are you able to meet our daily attendance requirements? **An employer can also ask questions to determine if an applicant abuses their**

leave such as how many days were they absent during their last job. However, they may not ask how many days were they out sick.

- Are you currently or have you ever used illegal drugs? In general, an employer may not ask about legal drug use unless the question is not likely to give information about a disability. Questions about illegal drug use cannot be about drug abuse or addictions or treatment for addictions and abuse.
- Do you drink alcohol? Questions cannot address frequency of alcohol consumption nor treatment for abuse of alcohol.

Medical Examinations

In the pre-job offer stage, employers cannot require medical examinations that provide information on the applicant's general health or physical or mental impairments. Physical tests are allowed if it is a requirement of the job such as running or lifting.



In the Post-Offer Stage

Once the applicant receives a conditional job offer, the employer is permitted to ask disability-related questions and request medical exams. However, the employer must ensure that all applicants applying for this position receive the same questioning and examination requirements. The employer must also ensure that all medical information is kept confidential.

More detailed information on this topic can be found at the U.S. Equal Employment Opportunity Commission website at

<https://www.eeoc.gov//policy/docs/preemp.html>

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