Everything You Want to Know About ADA Employment Requirements

The following are questions asked during the webinar of this title on October 2nd and the presenter’s responses.

Q 1: When qualifications for a job are listed in a way that could possibly rule someone out or deter them for applying, is that a problem? For example, a listing might include seeing, standing, hearing as requirements.

A 1: It would seem like it is excluding a large group of people if you put in the essential functions that you have to be able to see or hear or stand. The way to think about this is that there are in reality certain positions where you need specific motor or sensory abilities to do the job, like a forklift operator. But there are certain times and if the essential functions are not written in stone. If the person is qualified to do the things on the list and there is one thing that the person may or may not be able to do but they cannot be screened out because there might be an accommodation that would work for that person. So, if seeing was one of the functions that is required in a specific job position then if you have someone who has a visual impairment, then the consideration that the employer needs to make before that screen someone out…above anything is whether they can accommodate this person. If after a time of discussion with the employee and there is not a feasible way of accommodating the applicant, then HR professionals would document everything and that they have gone through an interactive process and can’t find a way to accommodate this person.

Often, job postings are boiler plate language that is copied and pasted and some of the essential functions in one position may be relevant but not in another position. So it is important that job postings be specific to the position but understanding that it is about allowing anyone to apply for the job and then consider whether and how the employer can accommodate that person.

Q 2: I have a question regarding the space between the interview and making an offer. Let’s say I offer a job to the best qualified candidate but want to ensure they will be able to regularly attend work. The job has very little wiggle room for flexibility with start or end hours. The employee needs to be present on a regular basis. So what sort of inquiry could I make?

A 2: The way you could approach this because the job offer hasn’t been made yet. It is still in the preemployment phase is…you can just inquire and say…this job has very strict hours. Ask all employees if they would be able to do that. I’d be curious to know. Legally you would need to ask this to all applicants. If the person has an obvious disability, I would not ask the specific person but ask to all applicants and include it in the description. Posting the shift hours on the job announcement and asking if the person can be present during that time frame is also a good practice.

Q 3: Working on a computer is central to most office positions. Should we list the requirement of sight in the job description because all or almost all of the work is done on a computer?

A 3: No, I wouldn’t because what people can do on a computer now is amazing. You don’t need to have sight to work on a computer now because there is so much assistive technology available. I would not list having sight as a job requirement. Assistive technology can be purchased for the person with a visual impairment so that the person does the job the same way as someone with sight could do it.

Q 4: What if there are crosswalks and building access points on a campus that are not accessible due to vertical curbs or a small set of stairs. I wonder what a university’s legally obligation is to make the campus and facilities accessible to wheelchairs.

A 4: This question relates more to the fact that the university is covered by Title II of the ADA as a state government entity. There are certain architectural standards that the university needs to comply with depending on how old the buildings are or how recently the streets or sidewalks have been renovated. There are a number of considerations. If the university has an ADA transition plan in place to look at the campus accessibility, that would be a consideration to make. But yes, the university does have an obligation to make its programs accessible and if the university can’t put in ramps in this locations then they would have to make the classes or programs in those buildings accessible to a wheelchair user who cannot physically get to that building. Or if a ramp could be added on a different side of the building, they can do that in order to provide access.

Q 5: Can an employer deny a new employee life insurance due to a past medical condition such as, for example, cancer? Is that discrimination?

A 5: If it is based on the disability itself, you may not deny the person the life insurance, but insurance is a little bit different as you can use actuarial data and things like that in determining whether someone gets the benefit or not. So that is an HR question. You’ll have to refer to the policy of the insurance and look at the criteria. The employer would also be obligated to look at other options for that employee. If there is another way to have the employee to be covered, the employer would have an obligation to do that.