

JOB DEVELOPMENT, JOB COACHING AND ADA ACCOMMODATIONS: INFORMATION FOR SOCIAL SERVICE AGENCIES

What kinds of disability-related questions can an employer ask during the hiring process?

Most Job Developers are aware that an employer is limited to asking questions that relate to performing the essential functions of the job during the application and interview portions of hiring. Even when a disability is obvious, the employer can only ask about how the applicant would handle performing specific tasks.

Applicants with obvious disabilities may want to consider voluntarily bringing up concerns that the employer might have, and addressing how he/she would deal with them. For example, an individual who has had a brain injury, and has difficulties remembering information, might describe how she records directions and procedures in a notebook.

Once an employer has made a firm job offer to the applicant, the rules change. The employer may then ask any question, including those relating to disability, as long as each person is asked the same questions. It is important to understand this change in the ADA protections in order to prepare the individual for the possibility of being asked for disability-related information.

When the job starts, the rules change again, becoming more restrictive in what may be asked. The employer is not allowed to ask questions about disability unless they are “*job-related*” and “*consistent with business necessity*”. The employer must have a reasonable belief (with evidence) that the worker cannot perform the job’s essential functions, or that the worker poses a direct threat to herself, customers, or co-workers. The “direct threat” belief must be based on the severity of the behavior, its likelihood of occurring, and the likelihood of harm.

Can a new employee with a disability request the presence of a job coach as an accommodation?

Yes. The EEOC has stated that, “An employer may be required to allow a job coach paid by a public or private social service agency to accompany the employee at the job site as a reasonable accommodation”. See: <http://www.eeoc.gov/eeoc/newsroom/release/9-16-10b.cfm>



Does the employee need to disclose that they have a disability in order to ask for an accommodation?

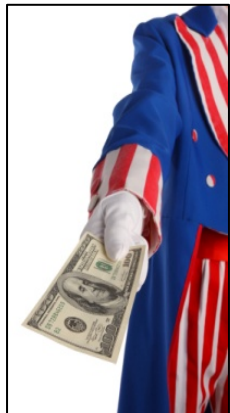
The answer is legally straightforward and, in practice, a bit nuanced. Legally, *reasonable accommodation* is a strategy for supporting a worker with a *disability* to perform the essential functions of their job. The worker who requests an accommodation may be required by the employer to provide evidence of or information on their disability. For a worker with multiple disabilities, only the disability that relates to the accommodation request needs to be revealed. So speaking from a strictly legal viewpoint, asking for the accommodation allows the employer to learn about the disability.

In practice, many employers work to support all their employees, and the individual who needs a simple accommodation may not be required to prove anything. It just depends on the manager.

How does an employee with a disability ask for an accommodation? Is there a form? Can the Job Coach ask for them?

While no specific form is required, and the worker, an advocate, the job coach, or a family member can ask for an accommodation, many individuals struggle with what to say. There is an excellent discussion on asking for an accommodation on the **Job Accommodation Network (JAN)** website that can be quite helpful. It is called “*Ideas for Writing an Accommodation Request Letter*” and it has an outline for producing the letter. See: <http://askjan.org/> and <http://askjan.org/media/accommrequestltr.html>

Are there tax incentives for businesses to provide accommodations for workers with disabilities?



Yes. There are two Internal Revenue Service (IRS) programs that are worth knowing about.

Architectural/Transportation Tax Deduction: IR Code Section 190. This one focuses on barrier removal up to a maximum of \$15,000 annually. It may be used for making a building and parking lots more accessible, modifying vehicles, etc.

Disabled Access Credit: IR Code Section 44. “Small” businesses can receive a tax credit equal to 50% of expenditures, up to \$10,250, for expenses like hiring sign language interpreters for customers or employees, producing accessible formats of printed materials, removing architectural barriers, etc. It cannot be used for new construction.

Are there any important considerations in the decision to ask for an accommodation?

Timing. An individual with a disability may ask for an accommodation before being interviewed, after the job is offered, once the job has started, or even years after becoming an employee. Some individuals with

non-apparent disabilities want to delay asking until they feel accepted by co-workers.

Selective disclosure. Asking for an accommodation doesn’t mean that the worker must disclose their entire medical situation. For example, someone with a seizure disorder might want to share information about that but not disclose about their psychiatric disability.

Once the job coach has shifted to occasional checks on the employee, does the employer ever have a legal obligation to invite the job coach back to provide additional services?

Under specific circumstances, it is possible. While we generally think of coaching in terms of assisting the new employee to learn the job, the job coach may also play a role in making sure that the employee, whose disability interferes with receptive communication, understands feedback during an employee performance review, and can incorporate it into subsequent work behavior. If the employee requests the presence of the job coach, and there is not another strategy in place to ensure that the communication is effective, then the employer will likely have an obligation to invite the job coach to the performance review. In 2009, the Department of Justice settled with Target Stores on this exact issue, See: EEOC Press Release 8-24-09, *Target Stores Sued For Disability Discrimination*, <http://www.eeoc.gov/eeoc/newsroom/release/8-24-09.cfm>

Northwest ADA Center provides technical assistance, information, and training regarding the Americans with Disabilities Act. Information is provided from the regional office in Washington State and affiliates in Alaska, Idaho, and Oregon. Specialists are available to answer specific questions pertaining to all titles of the ADA and accessibility of the built environment. Training staff offer presentations to businesses, organizations, schools, people with disabilities, and the general public.

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