



# DISABILITY DISCLOSURE

A guide on disclosing your disability,  
requesting workplace accommodations and the  
Americans with Disabilities Act (ADA)

Information taken from:  
JAN Job Accommodation Network  
[www.askjan.org](http://www.askjan.org)  
and  
U.S. Equal Employment Opportunity Commission  
[www.eeoc.gov](http://www.eeoc.gov)

# *Disability Disclosure* and the **Americans with Disabilities Act (ADA)**

---

Deciding if, when, and how to share disability-related information with a prospective or current employer can be overwhelming. The decision-making process requires answering a number of personal questions that may be different with each employment experience. There is no single right or wrong approach to disclosing a disability. The disability disclosure decision-making process can include questions like: “Do I have an obligation to disclose?” “When is the right time?” “How much information does the employer need?” and “How will disclosing the information affect my employment?”

The remainder of this resource is a summary of issues and answers to some of the most frequently asked questions related to disability disclosure and the Americans with Disabilities Act (ADA). This information is relevant to both individuals with disabilities and employers.

## **Information about Disability Disclosure and Employment**

Disability disclosure can occur during any stage of the employment process, including pre-employment, post-offer, and while employed – whether it be within days, months, or years of initially being hired. Generally, it is up to the individual with the disability to determine the right time to disclose. The ADA places restrictions on disability-related questions that can be asked of applicants and current employees so there are only limited situations when disclosure may be required. Applicants should be aware that covered employers are not permitted to ask non-voluntary disability-related questions on a job application. Disability-related questions can be asked after a conditional job offer has been made, but only if the same questions are asked of all applicants entering into the same job category. After an individual has started working, an employer may only ask disability-related questions if they are job-related and consistent with business necessity – for example, when an accommodation is requested or when an employee is having performance issues that may be related to a known medical condition.

## **Disclosure and Pre-Employment**

With limited exceptions, an employer may not require an applicant to disclose information about a disability or medical condition prior to making an offer of employment. However, there are situations when an applicant may need to disclose information about a disability during this early stage in the employment process. For example, if an accommodation is needed to complete an on-line application, participate in a job interview, or take an employment test, an applicant may need to disclose their disability to receive an accommodation.

Only applicants with disabilities are entitled to receive an accommodation under the ADA. When an accommodation is requested for the hiring process, and the need for the accommodation is not obvious, an employer may ask an applicant for reasonable documentation about their disability because the employer, in this instance, is entitled to know that the applicant has a disability in order to receive accommodation (EEOC, 1995). An applicant may be asked to provide a note from an [appropriate professional](#) (e.g., healthcare provider, mental health professional, rehabilitation counselor, etc.) that explains the individual's disability, limitations, and need for accommodation. Applicants seeking further information regarding their rights under the ADA, should see the Equal Employment Opportunity Commission (EEOC) publication, [Job Applicants and the ADA](#).

In limited circumstances, employers can ask applicants to voluntarily disclose their disability status without violating the ADA's restrictions on medical inquiries. Employers who are required to undertake affirmative action based on federal, state, or local laws, and those who use disability-related information to benefit individuals with disabilities may invite applicants and employees to voluntarily self-identify as having a disability. In requesting this information, an employer must state clearly, in writing or otherwise, that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to self-identify will not subject the person to any adverse treatment, and that the information will be used only in accordance with the ADA and federal laws that require affirmative action (e.g., [Section 503 of the Rehabilitation Act](#)). The voluntarily-disclosed information must be kept separate from the application. For more information, see JAN's [Affirmative Action and Disability: What Can Employers Ask?](#)

### **Disclosure and Post-Offer**

Individuals are often compelled to share disability-related information during the post-offer stage of employment because many employers ask medical questions or require medical examinations before a newly hired employee begins working. Employers are not limited in the categories of questions that can be asked during the post-offer stage. This means that after receiving a conditional job offer, an individual may be asked about their medical history in its entirety, as long as the employer asks the same questions of other applicants offered the same type of job. An employer may ask specific individuals for more medical information if the follow-up questions are related to the medical information obtained during the post-offer inquiry or examination. While this essentially requires an individual to disclose information about disability – even when an accommodation is not needed – the information revealed during post-offer cannot be used to rescind a job offer unless it can be shown that the individual would be unable to perform the essential functions of the job (with or without accommodation), or would pose a direct threat to themselves or others (EEOC, 1995).

### **Disclosure to Receive Reasonable Accommodation**

Generally, there is no obligation to disclose disability-related information to an employer until the need for reasonable accommodation becomes apparent. Reasonable accommodation may be needed to participate in the hiring process, to perform essential job functions, or to receive a

benefit or privilege of employment. The need to disclose and request accommodation will become evident when an individual knows there is a workplace barrier due to a disability. An accommodation can be requested even when a disability was not disclosed upon being hired. Of course, the timing of a request can be rather important. It is better to disclose a disability and request accommodation before job performance suffers or conduct problems occur. According to the EEOC, an employer does not have to rescind discipline (including a termination) or an evaluation warranted by poor performance simply because an employee has disclosed a disability or requested accommodation (EEOC, 2008).

Sometimes employees disclose disability-related information, but do not specifically request an accommodation. It can be difficult for supervisors and managers to know what to do with a simple disclosure. If a disclosure is not made in the context of an employee requiring an adjustment or change at work for a reason related to a medical condition, then it may not be necessary to proceed with an interactive process to discuss accommodations. However, it may be necessary to seek clarification from the employee regarding why the disability-related information was disclosed and if the employee is asking the employer to provide a reasonable accommodation. If the employee clarifies that their medical condition is affecting job performance, then the two parties should begin the interactive process to discuss possible accommodations.

When an individual is prepared to disclose their disability because an accommodation is needed, the individual should inform someone who can act upon a request, such as a manager, supervisor, or human resources professional. The employee should make it known that an adjustment or change at work is needed for a reason related to a medical condition. According to the EEOC, the employee can use "plain English" and does not have to mention the ADA or use the phrase "reasonable accommodation." After a disclosure and request for accommodation is made, then the interactive process should begin. EEOC suggests that individuals with disabilities might find it useful to document accommodation requests in the event there is a dispute about whether or when they disclosed their disability and requested accommodation. One way to document an accommodation request is to make a written request. JAN offers a sample accommodation request letter to assist individuals in drafting a request for accommodation. See JAN's [Ideas for Writing an Accommodation Request Letter](#).

## **Disclosure and Confidentiality**

Individuals with disabilities are often hesitant to disclose their disability or share information about a medical condition because they prefer to keep the information private. They do have a right to keep medical information private. There is no requirement to inform coworkers about a disability or need for accommodation. While coworkers may be aware that an employee is receiving accommodations because it may be obvious, they are not entitled to know why. Informing all employees about the ADA and the right to request accommodations, and encouraging a workplace culture that is inclusive of workers with disabilities, are ways to ward off unnecessary questions related to coworker accommodations.

The ADA requires employers to keep all disability-related information confidential. Employee medical information should only be shared with those who are considered to be on a need-to-know

basis. Managers and supervisors are encouraged to limit the information they acquire about an employee's disability. They often do not need to know the specifics of an employee's medical condition to implement accommodations. Details about the accommodation may be all that is needed to make a schedule change, provide equipment, or modify a policy, etc. Knowing fewer details about an employee's medical condition will be beneficial when other employees ask management questions about accommodations because a manager will be less likely to unintentionally reveal confidential information. For more about confidentiality of medical information and the ADA, these resources may be useful:

- JAN's Blog, [The Manager's Dilemma: "An employee is asking about a co-worker's accommodation. As a manager, what do I say?"](#)
- JAN's [Consultants' Corner, Confidentiality of Medical Information under the ADA](#)

## **Questions and Answers Related to Disability Disclosure**

JAN responds to a variety of questions related to disability disclosure and the ADA. While JAN is not a legal service and does not provide legal assistance or advice, JAN does share ADA guidance provided by the EEOC to assist our customers. Following are some examples of common questions and answers related to disability disclosure, the ADA, and medical inquiries:

### **1. Is an applicant required to disclose their medical condition when applying for a job?**

No, with limited exceptions. Under the ADA, an employer generally may not require an applicant to disclose information about a disability or medical condition prior to making an offer of employment. Covered employers are not permitted to ask non-voluntary disability-related questions on a job application or during the hiring process. However, there are situations when an applicant may need to disclose information about a disability during this early stage in the employment process. For example, if an accommodation is needed to complete an on-line application, participate in a job interview, or to take an employment test, an applicant may need to disclose their disability to receive an accommodation. Another example is when an employer could reasonably believe that an applicant will need reasonable accommodation to perform the functions of the job. In that case, the employer may ask whether the applicant needs reasonable accommodation and what type of reasonable accommodation would be needed. Also, in limited circumstances (e.g., for affirmative action purposes), employers can ask applicants to voluntarily disclose their disability status.

### **2. Must an employee with a disability disclose their disability and request reasonable accommodation at a certain time?**

No. An individual with a disability may request a reasonable accommodation at any time during the hiring process or during the period of employment. The need to disclose and request accommodation will become evident when an individual knows there is a workplace barrier due to a disability. An accommodation can be requested even when a disability was not disclosed upon being hired. According to the EEOC, it is usually in an employee's best interest to request a reasonable accommodation before performance suffers or conduct problems occur.

**3. If an employer asks disability-related questions during the post-offer stage, is the individual required to disclose their disability?**

The decision whether to share information about a medical condition is up to the individual to make. However, an employer may condition an offer of employment on the satisfactory completion of a medical questionnaire or examination. If a questionnaire is not completed or an individual refuses to participate in an examination, an employer may rescind an offer.

**4. Is an applicant or employee required to complete the self-identification of disability form used by federal contractors to meet their affirmative action obligations under Section 503 of the Rehabilitation Act?**

[Section 503 of the Rehabilitation Act](#) requires covered federal contractors to invite applicants to self-identify as an individual with a disability during the pre-offer and post-offer phases of the application process, and to invite employees to self-identify every five years. This is an invitation to self-identify, not a requirement. The [self-identification of disability form](#) is a voluntary form, so each individual may choose to disclose their disability status, or not. Federal contractors are required to use the form provided by the Office of Federal Contract Compliance Programs (OFCCP) for this purpose. The form also includes a statement that invites individuals to request accommodation to apply for a job or perform job duties.

**5. Is an individual with a disability required to disclose their specific diagnosis when requesting accommodation under the ADA?**

Many employees who request accommodations prefer not to disclose their diagnosis, usually out of fear related to stereotypes or stigma attached to the condition. There is no formal guidance from the EEOC regarding this question. Under the ADA, employers may be able to insist on knowing the name of the impairment as part of determining whether the employee has a covered disability. However, some state laws (e.g., California) restrict employers from requesting a diagnosis or asking for detailed medical information. Employers should be informed about the requirements of state law before requesting a diagnosis.

An employee may begin by giving a more general description of the condition when an accommodation is requested. For example, “I have a mental health condition” or “I have a condition that affects my immune system.” In some situations, a limited description will not sufficiently describe the individual’s impairment, limitations, and need for accommodation. An employer may request reasonable documentation to determine that an individual has a covered disability for which he or she needs a reasonable accommodation (EEOC, 2002).

**6. If an employee discloses a disability in response to a poor performance evaluation or discipline for unacceptable conduct, is an employer required to change the evaluation or withhold disciplinary action?**

No. An employer may hold an employee with a disability accountable under the same uniformly applied performance standards and conduct standards that are job-related and consistent with business necessity as they would employees without disabilities. If a disability is disclosed or an accommodation is requested in response to poor performance or misconduct, an employer should engage in an interactive process with the employee to discuss how the disability affects

performance or conduct and what accommodations may be effective in assisting the employee to meet the standards. For more detailed information, see the EEOC's guidance on [Applying Performance and Conduct Standards to Employees with Disabilities](#).



# U.S. Equal Employment Opportunity Commission

## Job Applicants and the ADA

Title I of the Americans with Disabilities Act of 1990 (ADA) makes it unlawful for an employer to discriminate against a qualified applicant or employee with a disability. The ADA applies to private employers with 15 or more employees and to state and local government employers. The U.S. Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA.

The ADA defines an individual with a disability as a person who: (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record or history of a substantially limiting impairment, or (3) is regarded or perceived by an employer as having a substantially limiting impairment.

An applicant with a disability, like all other applicants, must be able to meet the employer's requirements for the job, such as education, training, employment experience, skills, or licenses. In addition, an applicant with a disability must be able to perform the "essential functions" of the job the fundamental duties either on her own or with the help of "reasonable accommodation." However, an employer does not have to provide a reasonable accommodation that will cause "undue hardship," which is significant difficulty or expense.

This fact sheet addresses common questions about how the ADA protects applicants with disabilities. The information in this fact sheet also applies to applicants for federal employment, who are protected from discrimination by Section 501 of the Rehabilitation Act. Section 501's requirements are the same as those that apply to employers covered by the ADA. There are many other documents, some of which are listed at the end of this fact sheet, that provide more in-depth information about the employment rights of individuals with disabilities.

[Reasonable Accommodation for the Application Process](#)

[Asking for Accommodation](#)

[Discussing Disability with the Potential Employer](#)

[Discussing Accommodation to Perform the Job](#)

[Being "Qualified" for the Job](#)

[Obtaining More Information about the ADA](#)

[Filing a Charge of Discrimination](#)

### Reasonable Accommodation for the Application Process

1. I have a disability and will need an accommodation for the job interview. Does the ADA require an employer to provide me with one?

Yes. Employers are required to provide "reasonable accommodation" -- appropriate changes and adjustments -- to enable you to be considered for a job opening. Reasonable accommodation may also be required to enable you to perform a job, gain access to the workplace, and enjoy the



"benefits and privileges" of employment available to employees without disabilities. **An employer cannot refuse to consider you because you require a reasonable accommodation to compete for or perform a job.**

2. Can an employer refuse to provide me with an accommodation because it is too difficult or too expensive?

An employer does not have to provide a specific accommodation if it would cause an "undue hardship" that is, if it would require significant difficulty or expense. However, an employer cannot refuse to provide an accommodation solely because it entails some costs, either financial or administrative.

If the requested accommodation causes an undue hardship, the employer still would be required to provide another accommodation that does not.

**Example:** A trucking company conducts job interviews in a second floor office. There is no elevator. The company calls Tanya to arrange for an interview for a secretarial position. She requests a reasonable accommodation because she uses a wheelchair. Installing an elevator would be a undue hardship, but the employer could conduct the interview in a first floor office. The employer must move the location of the interview as a reasonable accommodation.

3. What are some examples of "reasonable accommodations" that may be needed during the hiring process?

Reasonable accommodation can take many forms. Ones that may be needed during the hiring process include (but are not limited to):

- providing written materials in accessible formats, such as large print, braille, or audiotape
- providing readers or sign language interpreters
- ensuring that recruitment, interviews, tests, and other components of the application process are held in accessible locations
- providing or modifying equipment or devices
- adjusting or modifying application policies and procedures.

**Example:** John is blind and applies for a job as a customer service representative. John could perform this job with assistive technology, such as a program that reads information on the screen. If the company wishes to have John demonstrate his ability to use the computer, it must provide appropriate assistive technology as a reasonable accommodation.

**Example:** An employer requires job applicants to line up outside its facility to apply for a job, a process that could take several hours. Tara has multiple sclerosis and that makes her unable to tolerate prolonged exposure to temperatures in the 90's. Tara therefore requests that she be allowed to wait indoors where it is air conditioned until the human resources department is ready to take her application. The employer would need to modify its hiring procedure to accommodate Tara.

4. Because of my learning disability, I need extra time to complete a written test. Does the ADA require an employer to modify the way a test is given to me?

Yes. An employer may have to provide testing materials in alternative formats or make other adjustments to tests as an accommodation for you. The format and manner in which a test is given may pose problems for persons with impaired sensory, speaking, or manual skills, as well as for those with certain learning disabilities. For example, an applicant who is blind will not be able to read a written test, but can take the test if it is provided in braille or the questions are tape recorded. A deaf person will not understand oral instructions, but these could be provided in a written format or through the use of a sign language interpreter. A 30-minute timed written test may pose a problem for a person whose learning disability requires additional time.

Thus, **the ADA requires that employers give application tests in a format or manner that does not require use of your impaired skill, unless the test is designed to measure that skill.**

***Example:** An employer gives a written test for a proofreading position. The employer does not have to offer this test in a different format (e.g., orally) to an applicant who has dyslexia because the job itself requires an ability to read.*

***Example:** An employer gives a written test to learn about an applicant's knowledge of marketing trends. Maria is blind and requests that the test be given to her in braille. An individual's knowledge of marketing trends is critical to this job, but the employer can test Maria's knowledge by giving her the test in braille. Alternatively, the employer could explore other testing formats with Maria to determine if they would be effective for example, providing a reader or a computer version of the test.*

5. When do I have to tell an employer that I need an accommodation for the hiring process?

It is best to **let an employer know as soon as you realize that you will need a reasonable accommodation** for some aspect of the hiring process. An employer needs advance notice to provide many accommodations, such as sign language interpreters, alternative formats for written documents, and adjusting the time allowed for taking a written test. An employer may also need advance notice to arrange an accessible location for a test or interview.

### **Asking for an Accommodation**

6. How do I request a reasonable accommodation?

You must inform the employer that you need some sort of change or adjustment to the application/interviewing process because of your medical condition. You can make this request **orally or in writing**, or someone else might make a request for you (e.g., a family member, friend, health professional, or other representative, such as a job coach).

7. What happens after I request an accommodation?

The employer may need to discuss your request more fully in order to understand your disability and why you need an accommodation. **You should respond to the employer's questions as quickly as possible** and be sure to explain how a proposed accommodation would enable you to participate fully in all aspects of the application/interviewing process. If your disability and need for accommodation are not obvious, the employer may ask you for reasonable documentation explaining the disability and why an accommodation is needed.

**Example:** A department store requires applicants to take a written test. Rodney has dyslexia and requests that the test be read to him as a reasonable accommodation. The human resources associate is unfamiliar with dyslexia and requests information about the condition and why the accommodation is necessary. Rodney must provide this information.

8. I asked for a specific accommodation, but the employer offered me a different one instead. Do I have to accept it?

An employer has to offer an accommodation that will meet your needs. If more than one accommodation meets your needs, then the employer may choose which one to provide. You cannot insist on a specific accommodation only because it is a personal preference. **If the employer's proposal does not meet your needs, then you need to explain why.**

**Example:** Charles is blind and asks that a written test be read to him as a reasonable accommodation. The employer proposes to provide Charles with a braille version of the test, but Charles explains that he cannot read braille. Thus, a braille version would not be an effective accommodation. The employer then proposes to provide Charles with an audiotope version of the test. While Charles preferred to have someone read the questions to him, the audiotope version meets his needs and thus is acceptable as a reasonable accommodation.

### **Discussing Disability with the Potential Employer**

The ADA prohibits employers from asking questions that are likely to reveal the existence of a disability before making a job offer (*i.e.*, the pre-offer period). This prohibition covers written questionnaires and inquiries made during interviews, as well as medical examinations. However, such questions and medical examinations are permitted after extending a job offer but before the individual begins work (*i.e.*, the post-offer period).

9. What are examples of questions that an employer cannot ask on an application or during an interview?

Examples of prohibited questions during the pre-offer period include:

- Do you have a heart condition? Do you have asthma or any other difficulties breathing?
- Do you have a disability which would interfere with your ability to perform the job?
- How many days were you sick last year?
- Have you ever filed for workers' compensation? Have you ever been injured on the job?
- Have you ever been treated for mental health problems?
- What prescription drugs are you currently taking?

10. May the employer ask me these questions after making a job offer?

Yes. An employer can ask all of the questions listed in Question 9, and others that are likely to reveal the existence of a disability, after it extends you a job offer as long as it asks the same questions of other applicants offered the same type of job. **In other words, an employer cannot ask such questions only of those who have obvious disabilities.** Similarly, an employer may

require a medical examination after making a job offer as long as it requires the same medical examination of other applicants offered the same type of job.

11. May an employer ask me whether I will need a reasonable accommodation for the hiring process?

Yes. An employer may tell all applicants what the hiring process involves (for example, an interview, timed written test, or job demonstration), and then ask whether they will need a reasonable accommodation for this process. (See Question 16 for a discussion about employers asking about an applicant's need for reasonable accommodation for the job.)

12. I have an obvious disability. Can an employer ask me medical questions during an interview?

No. Except as explained in Question 15 below, an employer cannot ask questions about an applicant's disability either because it is visible or because the applicant has voluntarily disclosed a hidden disability.

13. After I got a job offer, the employer had me take a medical examination in which I revealed I have epilepsy. Can the employer withdraw my job offer?

While the employer had the right to require a post-offer medical examination, he cannot withdraw the job offer solely because you revealed you have a disability. Instead, the employer can withdraw the job offer only if it can show that you are unable to perform the essential functions of the job (with or without reasonable accommodation), or that you pose a significant risk of causing substantial harm to yourself or others.

**Example:** *Darla receives a job offer to be a cook at a hotel resort, and during the medical examination she discloses that she has epilepsy. The hotel doctor expresses concern about Darla working around stoves and using sharp utensils. Darla tells the doctor that her seizures are controlled with medication and offers to bring information from her neurologist to answer the doctor's concerns. Darla also points out that she has worked as a cook for seven years without any incidents. The hotel will violate the ADA if it withdraws Darla's job offer based on her epilepsy.*

14. During the hiring process, I gave the employer medical information that I do not want anyone else to know about. Must the employer keep this information confidential?

Yes. **The ADA contains strict confidentiality requirements.** Medical information revealed during the hiring process (pre- or post-offer) must be kept confidential, with certain exceptions. The confidentiality requirements protect both information voluntarily revealed as well as information revealed in response to an employer's written or oral questions or during a medical examination.

An employer may share medical information with other decision-makers involved in the hiring process who need it so they can make employment decisions consistent with the ADA. The ADA also permits an employer to share medical information with the following individuals:

- supervisors and managers may be told about necessary restrictions on the work or duties of an employee and about reasonable accommodations
- first aid and safety personnel may be told if the disability might require emergency treatment

- government officials investigating compliance with the ADA
- state workers' compensation offices, state second injury funds, or workers' compensation insurance carriers.

An employer also may use the information for insurance purposes.

### **Discussing Accommodation to Perform the Job**

15. May an employer ask applicants on an application form or during an interview whether they will need reasonable accommodation to perform the job?

Generally, no. An employer cannot ask all applicants whether they would need reasonable accommodation to perform a job because the answer to this question is likely to reveal whether an applicant has a disability.

However, if the employer knows that an applicant has a disability, and it is reasonable to question whether the disability might pose difficulties for the individual in performing a specific job task, then the employer may ask whether she would need reasonable accommodation to perform that task. An employer might know that an applicant has a disability because it is obvious or she has voluntarily revealed the existence of one. If the applicant indicates that accommodation will be necessary, then the employer may ask what accommodation is needed.

**Example:** *Carl has a severe limp and uses a cane because of his prosthetic leg. He applies for an assembly line job which does not require employees to move around but does require that they stand for long periods of time. The employer asks Carl about his ability to stand and whether he will need reasonable accommodation to perform the job. Carl replies that he will need accommodation. The employer asks Carl for examples of accommodations, and Carl suggests two possibilities: a tall stool so that he can sit down but still reach the conveyor belt, or alternatively, a "sit-stand" chair which will provide support and enable him to do the job.*

Also, if the employer believes an applicant with an obvious disability will need a reasonable accommodation to do the job, it may ask the applicant to describe or demonstrate how she would perform the job with or without reasonable accommodation.

**Example:** *Alberto uses a wheelchair and applies for a job that involves retrieval of files that would seem to be beyond his reach. The employer can show him the files and ask him to explain or demonstrate how he would perform this task.*

16. Do I have to tell the employer during the application process that I might need an accommodation to perform the job?

No. The ADA does not require that an applicant inform an employer about the need for a reasonable accommodation at any particular time, so this information need not be volunteered on an application form or in an interview.

**Determining the best moment to tell a prospective employer about the need for reasonable accommodation on the job is a personal decision.** Sometimes, applicants are not aware they may need a reasonable accommodation until they have more information about the job, its requirements, and the work environment. Some applicants choose to inform an employer during

the application process after they better understand the job and its requirements. Others choose to wait until they have a job offer.

### Being "Qualified" for the Job

17. What if my disability prevents me from performing some job duties?

An employer does not have to hire you if you are unable to perform all of the essential functions of the job, even with reasonable accommodation. However, **an employer cannot reject you only because the disability prevents you from performing minor duties that are not essential to the job.**

***Example:** Wei is deaf and applies for a file clerk position. The essential functions for this job are to file and retrieve written materials. While the job description states that the clerk must also answer the phone, in practice the clerk rarely does this because other employees have responsibility for this duty. The employer cannot reject Wei solely because she is unable to answer the phone since that is not an essential part of performing this job.*

18. Can an employer refuse to hire me because she believes that my disability makes it unsafe for me to perform a job?

An employer can refuse to hire you only if your disability poses a significant risk of substantial harm to you or others. If an employer has such concerns, he must seek appropriate information to assess the level of risk and the nature of the harm. This can include asking questions about prior work experience and requesting specific information from your doctor related to health and safety.

**An employer cannot refuse to hire you based on a slightly increased risk, speculation about future risk, or generalizations about your disability.** The employer must also consider whether a risk can be eliminated or reduced to an acceptable level with a reasonable accommodation.

***Example:** An employer learns during a post-offer medical examination that Simone has major depression. She has been offered a high-level managerial position, but the employer is concerned that the job will be too stressful, causing Simone's illness to worsen. But, Simone's depression is well-controlled with medication and she has been working for two years in a similar position with no effect on her depression or her performance. Based on this information, Simone's disability would not pose a high level of risk of harm and therefore the employer could not refuse to hire her based on fears that she will experience an increased number of depressive episodes or that she would be unable to perform the job.*

### Obtaining More Information about the ADA

19. How can I get more information about the ADA?

You can obtain more information about the ADA and its requirements through EEOC's website, [www.eeoc.gov](http://www.eeoc.gov). This website contains documents addressing various ADA issues, including the following:

- [Definition of Disability](#)
- [Reasonable Accommodation and Undue Hardship](#)

- [Preemployment Disability-Related Questions and Medical Examinations](#)
- [The ADA and Psychiatric Disabilities](#)

These documents can also be obtained by calling EEOC's Publications Distribution Center at:

1-800-669-3362 (Voice)

1-800-800-3302 (TTY).

Also available from the Center is the ADA Technical Assistance Manual, a practical and comprehensive explanation of all of the ADA employment provisions. The Manual comes with a nationwide resource directory. All documents are free and available in alternative formats.

To obtain more information about the ADA, contact the EEOC at:

1-800-669-4000 (voice)

1-800-669-6820 (TTY)

### **Filing a Charge of Discrimination**

20. What can I do if I believe an employer has violated the ADA?

If you think an employer has denied you a job or an equal opportunity to apply for a job based on your disability, refused your request for reasonable accommodation, or has asked you illegal medical inquiries or required you to take an illegal medical examination, you should contact the EEOC. A charge (complaint) of discrimination generally must be filed within 180 days of the alleged discrimination. You may have up to 300 days to file a charge if a state or local law provides relief for discrimination on the basis of disability. However, to protect your rights, it is best to contact the EEOC promptly if you suspect discrimination has occurred.

You may file a charge of discrimination by contacting any EEOC field office, located in cities throughout the United States. If you have been discriminated against, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. This means you may be entitled to hiring, back pay, or reasonable accommodation. You may also be entitled to attorney's fees.

To contact the nearest EEOC office, see our [Field Office List and Jurisdictional Map](#).

(If you are an applicant for federal employment and believe your rights have been violated under the Rehabilitation Act, then you must initiate EEO counseling within 45 days of the alleged discrimination with the agency's Equal Employment Opportunity office.)

# Disability Disclosure and Interviewing Techniques for Persons with Disabilities

*Consultants' Corner: Volume 01, Issue 13*

Deciding when to disclose a disability can be a difficult choice for a person with a disability who is job hunting. If you have a hidden disability such as a learning disability or a psychiatric impairment, when and how to disclose your condition can be a real dilemma. Below are some guidelines for dealing with disability issues in the pre-employment process:

## **Step One: Start with a Good Resume**

Take time to write a good resume. This is a written summary of your education, training, work experience, and most importantly, contact information. A resume should have three basic components:

- 1) Name, address, telephone number, and e-mail address;
- 2) Education and training experiences; and
- 3) Work history and experience.

Do not overlook the value of non-paid work experience such as internships, volunteer activities, and work that you have done for non-profit organizations such as a church, civic organization, or political party.

## **Step Two: Write a Cover Letter**

A cover letter is used to introduce you to the prospective employer. It should briefly identify who you are and why you are applying for the position. It also should invite the employer to contact you for an interview. Be sure to enclose a copy of your resume with this letter.

A cover letter also gives you your first opportunity to disclose your disability. This would be to your advantage if:

You are applying for a job with a state or federal agency that must comply with affirmative action policies;

The job you are applying for directly relates to your experience as a person with a disability such as a rehabilitation counselor; or

Having a disability is a qualification for the position.

For example, a job as an addictions counselor may require that an individual be a recovering alcoholic.

## **Step Three: Completing Applications**

For most people, the employment process begins with a company's job application. How you obtain and fill out this application can be the first impression the employer has of you. If you go to the job site to obtain an application, be mindful of your appearance. While it may not be necessary



to wear your best interview suit it is important to wear clothes that are clean, ironed, and free from tears or holes. Be polite and come prepared with a pen or pencil and a copy of your resume. If possible, take the application home with you. This will allow you to complete the information in a calm, stress-free environment. Remember that neatness counts.

The Americans with Disabilities Act prohibits employers from asking medical or disability-related questions on a job application. The exception to this is that a government agency can ask an applicant to voluntarily disclose a disability for affirmative action purposes. Otherwise, if you encounter specific questions about your disability or medical history, leave them blank. If necessary, this can give you the opportunity to explain why you did not answer the questions instead of why you intentionally gave false answers.

#### **Step Four: The Interview**

For most job seekers, the interview is the "make it or break it" point. Remember that you have about a minute to make a good first impression, and first impressions mean everything during this stage of the employment process. Disclosure of your disability is critical at this point if accommodations, such as access to the building, are necessary to do the job. Do your homework! If you know the location for the interview is not accessible to you, contact the person who will be interviewing you and request an alternative location. It is a good idea to have a location in mind, just in case the interviewer needs some suggestions.

If you do not know if the location is accessible, call and ask questions about whether there are accessible parking spaces available or whether the building has an elevator. It is better to deal with these issues ahead of time than 15 minutes before your interview. This also shows your prospective employer that you are able to deal with these situations effectively.

The best way to handle difficult questions during the interview is to be prepared for them. Make a list of the questions you know you are going to have trouble with and formulate an answer, then practice your delivery of these answers so you will be ready for them. For example, "I see that there is a two year gap in your work history. What have you been doing during this time?" This is an opportunity to talk about what you have been doing, not what you have not been doing. Think about valuable life experiences that you have gained during this time. Have you been taking care of children or a parent, going to school, taking art classes, or volunteering? This question may prompt you to disclose your disability if you have not already done so. Be sure to do it in a way that shows how you have dealt with a difficult situation in a positive manner. Remember to keep the past in the past, stating that you are ready to move forward and are qualified and able to do the job you want.

Remember to talk about your abilities, not your disabilities. Employers need qualified, capable individuals to fill positions. Find a way to show that you are that person. Sell them on what you can do, not on what you cannot do and the interview will go better than you expect. Be positive about yourself and be honest.

**Good Luck!**

## Affirmative Action and Disability: What Can Employers Ask?

*Consultants' Corner: Volume 5, Issue 5*

**From the desk of Linda Carter Batiste, J.D., Director of Services and Publications**

The Americans with Disabilities Act (ADA) places restrictions on what disability-related questions employers can ask applicants as well as current employees. Employers who recognize the value of having employees with disabilities and want to actively recruit and retain people with disabilities are confused about how these restrictions affect their affirmative action efforts – if they are going to give preference to someone with a disability, they have to know who actually has a disability. So the question becomes: can employers ask applicants and employees to disclose their disability status without violating the ADA's restrictions on medical inquiries?

The good news is that there is a way that employers can practice affirmative action without violating the ADA. According to guidance from the Equal Employment Opportunity Commission (EEOC), an employer may invite applicants and employees to voluntarily self-identify for purposes of the employer's affirmative action program if:

- The employer is undertaking affirmative action because of a federal, state, or local law (including a veterans' preference law) that requires affirmative action for individuals with disabilities (that is, the law requires some action to be taken on behalf of such individuals); **or**
- The employer is voluntarily using the information to benefit individuals with disabilities.

Employers should remember that state or local laws sometimes permit or encourage affirmative action. In those cases, or if an employer is voluntarily adopting an affirmative action program independent of any law, an employer may invite voluntary self-identification only if the employer uses the information to benefit individuals with disabilities. Also, the invitation to self-identify must be necessary in order to provide the benefit.

Where an employer seeks self-identification of disability status, it must do the following:

- State clearly and conspicuously on any written questionnaire, or state clearly orally (if no written questionnaire is used), that the information requested is used solely in connection with its affirmative action obligations or efforts (or how disclosing will benefit the person with the disability); and
- State clearly that the information is being requested on a voluntary basis, that it will be kept confidential in accordance with the ADA, that refusal to provide it will not subject the person to any adverse treatment, and that it will be used only in accordance with the ADA.

If an employer seeks voluntary self-identification from applicants, it must be on a form that is kept separate from the application.

So for any employers who want to practice affirmative action, go ahead and ask about disability, but remember to follow these simple guidelines and then reap the benefits of having more employees with disabilities in your workplaces!

For more information, download:

- [EEOC's Preemployment Disability-Related Questions and Medical Examinations](#)
- [EEOC's Voluntary Self-Identification Opinion Letter](#)
- [Section 503 Regulations Frequently Asked Questions](#)
- [Voluntary Self-Identification of Disability Form \(CC-305\)](#)

# Dos and Don'ts of Disclosure

## Introduction

Disclosing a disability may be a consideration when starting a new job; transitioning from school, another job, or unemployment; or retaining a job after acquiring a disability. For individuals who may still be struggling with accepting their medical condition, making the decision to disclose can be overwhelming. Because some impairments are not visible, individuals may face such challenges as understanding their impairments and determining what types of accommodations are available. As with any new experience, preparation is vital. The following provides an overview of the dos and don'ts of disclosure. Note that disclosing is a very personal decision, but some of the following tips may be helpful in making that decision. Contact JAN for additional information related to job accommodations, the Americans with Disabilities Act (ADA), and other resources.

### **Do disclose when you need an accommodation:**

Deciding when to disclose can be a difficult choice for a person with a disability. If you have a hidden disability such as brain injury or post-traumatic stress disorder, knowing when to disclose your condition can be a real dilemma.

Under the ADA you can request an accommodation at any time during the application process or while you are employed. You can request an accommodation even if you did not ask for one when applying for a job or after receiving a job offer. So when should you disclose that you have a disability? In general, you should disclose your disability when you need to request a reasonable accommodation - when you know that there is a workplace barrier that is preventing you, due to a disability, from competing for a job, performing a job, or gaining equal access to a benefit of employment like an employee lunch room or employee parking.

### **Do know who to disclose to:**

This can be tricky. Many employers have their own in house procedures that detail how they handle accommodation requests. Check your employee handbook or your company's intranet for this information. Also, if you have an EEO office or a human resources department, they can assist you. The other option is to talk to your manager or supervisor directly.

### **Do know how to disclose:**

According to the Equal Employment Opportunity Commission (EEOC), you only have to let your employer know that you need an adjustment or change at work for a reason related to a medical condition. You can use "plain English" to make your request and you do not have to mention the ADA or use the phrase "reasonable accommodation." Once you disclose, then the interactive process should begin. At this point, your employer can ask for limited information about your disability and your need for accommodations.

### **Don't disclose too soon:**

Many people with hidden disabilities may feel that they are not being completely honest with an employer if they do not tell everything about their disability up front at the time of their interview. Just remember that you are not obligated to do so. When you disclose, just provide basic information about your condition, your limitations, and what accommodations you may need.

**Don't disclose too late:**

Don't wait to disclose until after you begin to experience work performance problems. It is better to disclose your disability and request accommodations before job performance suffers or conduct problems occur. Employers do not have to rescind discipline that occurred before they knew about the disability nor do they have to lower performance standards as a reasonable accommodation. Remember, the purpose of an accommodation is to enable a qualified person with a disability to perform the essential functions of the job. So, disclose when you first realize you are having difficulties.

**Don't disclose to everyone:**

Remember that you have a right to keep information about your disability private. It is not necessary to inform coworkers and colleagues about your disability or your need for accommodations. While they may be aware of the accommodations, especially if you are allowed to take extra breaks or you have a flexible starting time, they are not entitled to know why. Your employer is required by the ADA to keep your disability and medical information confidential and to give it to managers and supervisors only on a need-to-know basis.

**MOST IMPORTANTLY, DO YOUR HOMEWORK:**

No one knows more about your disability than you do so tell your employer what you think you need, but also research other accommodations options such as a flexible start time or working from home part of the time.

## How To Request An Accommodation: Accommodation Form Letter

The Americans with Disabilities Act of 1990 (ADA) requires employers to provide reasonable accommodation to qualified employees and applicants with disabilities, unless such accommodations would pose an undue hardship (e.g. too costly, too extensive, too substantial, too disruptive). In general, the applicant or employee with a disability is responsible for letting the employer know that an accommodation is needed to participate in the application process, to perform essential job functions, or to receive equal benefits and privileges of employment. Employers are not required to provide accommodations if they are not aware of the need.

According to the Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcing the ADA, an accommodation request does not have to be in writing. However, the EEOC suggests that individuals with disabilities might find it useful to document accommodation requests in the event there is a dispute about whether or when they requested accommodation. One way to document an accommodation request is to make a written request.

The ADA does not include specific guidelines or forms for requesting reasonable accommodation. However, some employers have developed in-house forms. If so, employees should use the employer's forms for requesting accommodation. Otherwise, individuals with disabilities can use any method that is effective; the ADA does not require specific language or format. The following information provides an example of an accommodation request letter. Please note that the information is to be used as a guide only and is not legal advice. If legal advice is needed, contact a legal service. For additional information regarding the ADA and reasonable accommodation, contact the Job Accommodation Network.

### Sample Accommodation Request Letter

The following is an example of what can be included in an accommodation request letter and is not intended to be legal advice.

Date of Letter

Your name

Your address

Employer's name

Employer's address

Dear (e.g., Supervisor, Manager, Human Resources, Personnel):

Content to consider in body of letter:

- Identify yourself as a person with a disability
- State that you are requesting accommodations under the ADA (or the Rehabilitation Act of 1973 if you are a federal employee)

- Identify your specific problematic job tasks
- Identify your accommodation ideas
- Request your employer's accommodation ideas
- Refer to attached medical documentation if appropriate\*
- Ask that your employer respond to your request in a reasonable amount of time

Sincerely, Your signature

Your printed name

Cc: to appropriate individuals

You may want to attach medical information to your letter to help establish that you are a person with a disability and to document the need for accommodation.

## Situations and Solutions

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.



Jude, an applicant with a depression and anxiety, is applying for a customer service position that requires a pre-employment test.

Due to medication that Jude takes for both conditions, his processing speed is a bit slower. He feels he can only do his best on the test if he has the accommodations of extended time as well as taking the test in a private location to help limit distractions. In order for the employer to even consider those accommodations, the employee will need to disclose the mental health impairments and be prepared to provide medical documentation.

[Read less](#)



Phillipe travels in person to the HR department of a prospective employer in order to pick up an application for employment to take home and complete.

He is told that the application cannot leave the building. Phillipe may need to disclose and ask for a change in policy as an accommodation if the employer does not have an online application process that could be completed at home. Phillipe feels that his anxiety level will escalate and be disruptive to the process if he is required to complete the application in the office setting.

[Read less](#)



Lexie is a nurse with PTSD.

She has applied for a nursing position and has been called for an interview. In her last interview that didn't go very well, she sat across the table in a very small room from four people, the nursing administrator, the personnel director, a nurse manager, and a physician. Lexie feels that if there were no more than two people in the room, she would be able to better represent herself, making her interview more successful. In order to limit the interviewers, Lexie may have to disclose and ask for an accommodation.

[Read less](#)