



Texas School for the Blind and Visually Impaired
Outreach Programs

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Employment Challenges and Legal Options

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Disability and Employment Law: Practical Information for Job Applicants

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Disclaimer

- Information, materials, and technical assistance provided as part of this presentation are presented solely for informational purposes and should not be interpreted as legal advice.
- Opinions (and jokes!) are the presenter's own and do not represent the opinions of the Texas Council for Developmental Disabilities.

Trying to make sense of disability law can look like this...



Figure 1 Erin sits at her desk with a gloomy look on her face, surrounded by papers and trash from snacks.

Comment [LE1]: Capitalization is a little inconsistent throughout the headings, probably because the headings on the actual powerpoint used all capitals (an automatic setting in PPT). I find it distracting, so I suggest only capitalizing the first word (e.g. "Trying to make sense of disability law can look like this this...")

So let's make this easy.

Agenda

Practical questions and answers for job applicants with disabilities:

- Do I have rights?
- Do I have to disclose my disability on a job application or in an interview?
- Am I entitled to a reasonable accommodation in the application process?
- What kinds of questions can an employer ask me in an interview?
- Your questions

I'm a texan with a disability. Do I have rights when I apply for a job?

Rights of Texas job applicants with disabilities

- Yes.
- The Americans with Disabilities Act (ADA), a federal civil rights law, contains employment protections for people with disabilities.
- The Texas Labor Code, a state law, contains mirror provisions and incorporates the ADA by reference.
- These laws apply throughout the employment life cycle, including the job application process.

Wait! How do I know if I'm covered by these Laws?

"Disability" definition under the ADA

- Three groups of people are considered "people with disabilities" eligible for protections under the ADA.
 - Actual disability: a person who has a physical or mental impairment that substantially limits one or more major life activities,
 - Record of a disability: a person who has a record of such an impairment, or
 - "Regarded as" a person with a disability: a person who is regarded by others as having such an impairment
- People discriminated against because they have a known association or relationship with an individual with a disability also have some limited protections.

Are all employers required to follow these rules?

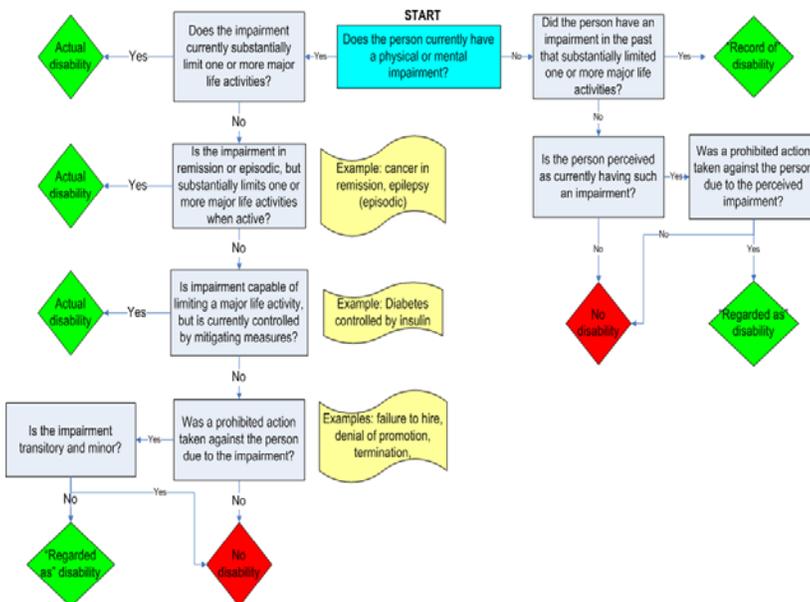


Figure 2 Flowchart of ADA definition of disability: A complicated flowchart that walks readers through the determination of whether a person meets the definition of "person with a disability" under the ADA.

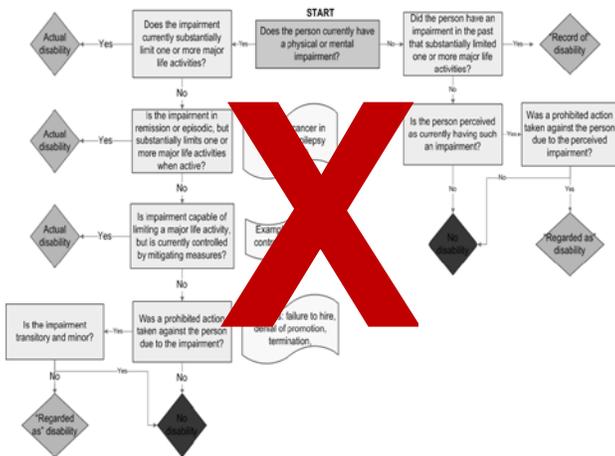


Figure 3 Flowchart with large red X through it. The same flowchart from the previous slide, with a large red X through it, indicating that we can ignore this complicated definition.

Are all employers required to follow these rules?

Employer coverage under the ADA

- No, but most are.
- The ADA employment provisions apply to private employers with 15 or more employees and all state and local government employers, regardless of size.
- The federal government is subject to almost identical rules contained in a different federal law.

Are applicants with disabilities given preference in the hiring process?

The ADA can't guarantee you a job

- Generally no.
- An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to a disability.
- Disability employment protections are anti-discrimination protections, not affirmative action programs. Most employers are not required to meet quotas related to hiring people with disabilities.
- Some employers choose to give preference to some applicants with disabilities.

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

Accommodations in interviews

- Generally, yes.
- Employers are required to provide "reasonable accommodations" (appropriate changes and adjustments) to enable you to be considered for a job opening.
- An employer cannot refuse to consider you because you require a reasonable accommodation to compete for or perform a job.

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

Accommodations in the hiring process

- Providing written materials in accessible formats, such as large print, braille, audiotape, or electronic
- 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

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

Employers and "undue hardship"

- Sometimes.
- An employer does not have to provide a specific accommodation if it would cause an "undue hardship"
- "undue hardship" means 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.

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?

Accommodations on application tests

- Probably yes.
- An employer may have to provide testing materials in alternative formats or make other adjustments to tests as an accommodation for you.
- Examples of reasonable accommodations for a test include:
 - Providing the test in braille, in an electronic format, or as a recording for an applicant with a visual disability
 - Providing instructions that are usually given orally in writing or through an interpreter for an applicant who is deaf
 - Providing extended time for a timed written test for an applicant with a learning disability
- The ADA requires that employers give application tests in a format or manner that does not require use of a skill affected by disability, unless the test is designed to measure that skill.

When should I tell an employer that I need an accommodation for the hiring process?

Timing of a request for an accommodation

- 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.

How do I request a reasonable accommodation?

Wording of a request for an accommodation

- No “magic words” required.
- You must inform the employer that you need some sort of change or adjustment to the application/interviewing process because of your disability.
- You can make this request orally or in writing, or someone else can make a request for you (e.g., a family member, friend, health professional, or other representative, such as a job coach).

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

Employers asking about accommodations

- 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.

What happens after I request an accommodation?

After a request

- 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.

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

Choosing among accommodations

- It depends.
- 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.
- If the employer's proposal does not meet your needs, then you should explain why it does not.

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

Pre-offer questions

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?

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

Post-offer questions

- Sometimes.
- An employer can ask all of the questions listed in the previous slide 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.

How should I respond to an employer's question in an interview that may be illegal?

Responding to an illegal question

- You are not required to respond to an illegal question.
- Try reframing the question:
 - "I think what you are really asking is ..."
 - "It sounds like job performance is important to you. Let me tell you about how I would perform this job..."

After I received a job offer, I was required to take a medical examination that revealed that I have a disability. Can the employer withdraw my job offer?

Withdrawal of job offer after exam

- It depends.
- While the employer had the right to require a post-offer medical examination if these examinations are required for all applicants for the same type of job, he cannot withdraw the job offer solely because you revealed that you have a disability.
- Instead, the employer can withdraw the job offer only if he 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.

I have a disability that will be obvious in an interview. Should I talk about it?

Discussing an obvious disability

- This is a matter of personal preference.
- If you do choose to discuss your disability with your prospective employer, here is some guidance...

Guidance on Positive Disability Disclosures

- Do not include disability-related information on an application or resume. Disclosing in person will allow you to answer questions or clear up misconceptions about disability.
- If the disability is apparent, i.e., you use a white cane or wheel chair; don't wait too long into the interview to bring that up.
- Take time to answer questions about your disability as it relates to the job.
- If you state a limitation related to your disability, immediately follow that limitation with a compensatory skill. For example, if low vision prevents you from driving a personal vehicle, state the limitation and then immediately describe alternate travel methods, i.e., public transportation. You might say, "While I am not able to drive a car, I use buses, taxies, etc."

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?

Confidentiality

- Yes.
- The ADA contains strict confidentiality requirements.
- These requirements protect information voluntarily disclosed and information disclosed in response to an employer's questions or in a medical exam.
- The ADA 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 and other agencies involved in workers' compensation.

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

Disclosing need for an accommodation on 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.

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

Job duties: essential versus marginal

- 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 (marginal) duties that are not essential to the job.

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

Safety risks

- 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.

How can I get more information about the ADA?

ADA Employment Information

- Visit the EEOC's website, 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](#)
- Visit the Job Accommodation Network (JAN)'s website, www.askjan.org.

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

Reporting complaints

- Contact the EEOC promptly.
- A complaint of discrimination generally must be filed within 180 days of the alleged discrimination.
- You may also wish to contact the Texas Workforce Commission's Office of Civil Rights.

To summarize:

- Job applicants with disabilities have rights in Texas. You should be familiar with your rights and make a plan related to requesting reasonable accommodations in the hiring process, if you need them.
- You do not need to disclose a disability if your disability does not affect your ability to perform a job.
- You do need to disclose a disability to request an accommodation in the hiring process or on the job.
- When disclosing a disability, use positive language, avoid jargon, and focus on compensatory skills.

Further questions for the speaker...

Email: Erin.Lawler@tcdd.texas.gov



Figure 4 Erin drinking coffee: Erin takes a gulp from a coffee mug, surrounded by papers at her desk.

Sources

- Federal legal guidance pulled from Equal Employment Opportunity Commission publication: “[Job Applicants and the Americans with Disabilities Act](http://www.eeoc.gov/facts/jobapplicant.html),” available online at: <http://www.eeoc.gov/facts/jobapplicant.html>.
- Information on positive disability disclosures provided courtesy of Mr. David Ondich, ADA Coordinator, City of Fort Worth.
- ADA Disability Definition flowchart created by Erin Lawler.
- Photo credits: Ms. Angi English, Texas Governor’s Committee on People with Disabilities. Disability and Employment Law: Practical Information

Notes:

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Figure 5 TSBVI logo.



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Figure 6 IDEAs that Work logo and OSEP disclaimer.