



Legal Alert: EEOC Publishes Guidance on Whether High School Diploma Requirement Violates ADA

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Executive Summary: The Equal Employment Opportunity Commission (EEOC) has published additional guidance addressing whether an employer violates the Americans with Disabilities Act (ADA) by requiring a high school diploma for a job. The guidance was issued in response to an earlier informal discussion letter in which the EEOC stated that such a requirement may violate the ADA if it screens out individuals who cannot obtain a diploma because of a learning disability, unless the employer can demonstrate that the requirement is job related and consistent with business necessity.

The EEOC stated that it issued the guidance, which is in question and answer format, in response to "significant commentary and conjecture" about the meaning and scope of the November 2011 discussion letter. In that letter, the agency stated:

if an employer adopts a high school diploma requirement for a job, and that requirement "screens out" an individual who is unable to graduate because of a learning disability that meets the ADA's definition of "disability," the employer may not apply the standard unless it can demonstrate that the diploma requirement is job related and consistent with business necessity. The employer will not be able to make this showing, for example, if the functions in question can easily be performed by someone who does not have a diploma.

The letter further stated that even if the diploma requirement is job related and consistent with business necessity, "the employer may still have to determine whether a particular applicant whose learning disability prevents him from meeting it can perform the essential functions of the job, with or without a reasonable accommodation." The agency noted an employer may make this determination by, for example, "considering relevant work history and/or by allowing the applicant to demonstrate an ability to do the job's essential functions during the application process."

The discussion letter was issued in response to an inquiry from the public and does not constitute an official opinion of the EEOC. It is available at: http://www.eeoc.gov/eeoc/foia/letters/2011/ada_qualification_standards.html.

In the guidance, the EEOC clarified several issues:

- Nothing in the discussion letter prohibits an employer from adopting a requirement that a job applicant have a high school diploma; however, the employer may have to allow an individual who says that a disability prevented him or her from obtaining high school diploma to demonstrate qualification for the job in some other way;

- The ADA only protects someone whose disability makes it impossible for him or her to get a diploma. It would not protect someone who simply decided not to get a high school diploma;

- The employer is not required to hire an individual with a disability, but may still choose the most qualified applicant. The employer does not have to prefer the applicant with a disability over someone who can perform the job better.

The guidance is available on the EEOC's web site at:
http://www.eeoc.gov/eeoc/newsroom/wysk_high_school_ada.cfm.

Employers' Bottom Line:

The EEOC guidance provides helpful clarification that employers are not prohibited from requiring a high school diploma for a job. It also serves as a reminder that in some situations an employer may be required to accommodate an employee or applicant whose disability, which qualifies as a disability under the ADA, prevented him or her from obtaining a diploma. If you have questions regarding this issue or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work.