

ADA Q&A...How Can I Help My Son or Daughter Get That Job?

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The ADA, The Rehabilitation Act, and The Job Interview

The Americans with Disabilities Act (ADA) of 1990 and the Rehabilitation Act of 1973 with its 1992 Amendments are both Civil Rights laws that protect people with disabilities from discrimination. The ADA protects persons from discrimination by private employers, public agencies and state and local government agencies. The Rehabilitation Act covers programs and services which receive federal money. This article will focus on the provisions in the law that protect people with disabilities in the job interview.

The ADA protects **qualified** persons from discrimination based on their disability. The Rehabilitation Act can help your son or daughter become qualified for work. It provides for direct services through the Division of Rehabilitation Services (DRS) or Minnesota State Services for the Blind (SSB) to people with disabilities to help persons become qualified for employment and placement services. If they are still in school, the Individualized Education Plan (IEP) team and the school counselor should help them in career planning. A rehabilitation counselor from DRS or SSB should be included in transition planning.

Q. How can I help my son or daughter prepare for the world of work?

A. It's very important to encourage young people to become involved in the world of work by visiting job sites that interest them, and by encouraging students to become more aware of their own interests and skills. It's also very important to encourage your son or daughter to be more aware of their own disability and the accommodations they might need on the job.

Parents can encourage their students to become strong self-advocates as they face the challenges of work. Knowing how the ADA and the Rehabilitation Act work can help

your son or daughter become a capable self-advocate.

Q. How do the laws work to protect my son or daughter?

A. There are several important ways that these laws work.

Let's look at who is covered by the ADA.

PERSON WITH A DISABILITY

First, your son or daughter has to fit the definition of a person with a disability. That means they must be a person with a physical or mental impairment that substantially limits their ability to do major life activities, such as walking, hearing, seeing, speaking, working, learning, breathing, and self-care. If your son or daughter has a history of having such an impairment or is regarded as having such an impairment, he or she is also protected under the law.

Your son or daughter has to be qualified for the job and has to be able to do the essential functions of the job with or without reasonable accommodations. A reasonable accommodation can be any change or modification in the job site or in the way that the job has traditionally been done that make it possible for a person with a disability to do the job.

EMPLOYERS

Employers of 15 or more people must comply with the ADA. In Minnesota, the state Equal Employment law provides similar protection to people with disabilities who work for an employer who has one or more employees.

Employment practices must be fair in all areas of employment. That means everything from hiring to benefits to promotions and retirement—and everything in between. Everyone has to be treated equally. Employers

have to provide reasonable accommodations to help people with disabilities do the job, unless the accommodation costs too much or is extremely difficult to do.

Q. What kinds of things can't the employer do during or after the interview?

A. There are several things that an employer cannot do during the initial stages of hiring.

APPLICATION FORMS

Employers can no longer ask questions about disabilities on the application form your son or daughter completes before an interview. That means any questions about workers' compensation claims, previous treatment by a doctor, or other questions likely to elicit information about disabilities are illegal. Your son or daughter does not have to answer these questions at all.

Many people with and without disabilities ask for an application form, fill it out at home and then return it to the employer. This is an excellent idea for people who are unable to read print or who need non-distracting environments to do paper work.

THE INTERVIEW

Employers cannot ask questions at an interview which are intended to elicit information about disabilities. If your daughter's or son's disability is obvious or if she or he has chosen to tell the employer that they have a disability, then the employer can ask how they would do the tasks of the job. The employer cannot ask questions about the disability itself or other personal questions.

It is important for you to talk with your son or daughter about ways job tasks can be done. A good example is that of moving heavy objects. An employer might focus on an applicant's lifting capacity when the real task is that of moving the objects from one place to another. Lifting may not be necessary. An employer is likely to be impressed with your son's or daughter's ingenuity in suggesting possible accommodations or creative solutions to the problem.

Remind your daughter or son that the interviewer is there to learn about the potential employee. It is a good opportunity to make sure that the employer has a chance to hear about all the abilities your student brings to the job.

Q. Should my son or daughter tell the interviewer about their disability?

A. This is a hard decision to make. Unless the disability is obvious, job seekers have to think very hard about this question. They do not have to reveal anything about the disability unless they plan to ask for accommodations, and

they don't have to ask for accommodations until after a job offer has been made.

Some people choose to discuss their disability because they feel that it gives them an opportunity to tell the employer some important things about themselves. It can be an opportunity to show their eagerness to work, their creativity in solving problems and a history of determination.

Some people choose not to tell because they only want to talk about their qualifications for the job, don't want the employer to make judgments about them based on preconceived notions about disabilities, and are concerned that the employer can choose not to offer the job. If an employer withdraws a job offer after finding out about a disability, it is much easier to show that the law was violated. Violation is mor difficult to prove if the employer simply does not offer the job.

Whether or not to discuss disabilities at a job interview is a difficult choice and depends entirely on the individual. If your son or daughter decides to talk about their disability during the job interview, give him or her plenty of opportunities to practice how they will talk about it.

Q. What about medical examinations?

A. It is illegal for an employer to require medical exams of applicants before a job offer has been made. If they ask your son or daughter to take a medical exam after the job offer, the same exam must be required of all newly hired employees.

If your son or daughter asks for reasonable accommodations, the employer can require medical documentation of the need for accommodations. Those medical records must be kept confidential and stored separately from regular personnel files.

Q. Can my son or daughter be required to take a drug test?

A. For purposes of the ADA, drug testing is not considered a medical exam. Such tests can be required of your daughter or son before a job offer has been made. Such testing, however, must be required of all prospective employees.

Q. Who should we contact if we think the law has been violated?

A. It's very important that you help your son or daughter learn about self-advocacy skills and about the laws which protect their rights. For information, resources and advocacy call Rachel Parker at PACER Center (952) 838-9000 voice; (952) 838-0190 TTY. You can also call the local office of the federal Equal Employment Opportunity Commission at (612) 335-4040 or the Minnesota Department of Human Rights (651) 296-5663. Ask for an intake officer.