Disability Self Disclosure

Self Disclosure is the act of letting the company know of a disability by filling out form CC 305,

Reason companies ask people to fill Cut this form s to show the Federal government that the company has hired a person with a disability.

Frequently Asked Question About Disability Disclosure Under the Americans with Disabilities Act (ADA) From Disabilities Rights IOWA

1. When may an employer request disability-related information?

The Equal Employment Opportunity Commission (EEOC) has divided the employment process into three stages. The amount of disability- related information that an employer may request depends on which stage of the employment process is involved. The three employment stages are:

A. Pre-Employment: An employer may not request any disability- related information or give any medical examinations prior to making a job offer to the applicant. Any question that may elicit disability-related information is prohibited. Therefore, information about the following may not be requested during this stage: medical conditions, history, or treatment; prescription medications; past sick leave; Worker’s Compensation history; whether an individual receives Social Security benefits, or whether a reasonable accommodation is needed would all be protected information. In addition, an employer may not administer medical tests to job applicants, including personality tests.

B. After a Conditional Job Offer is Made: A “conditional job offer” is a job offer that is conditioned on the applicant successfully meeting the reasonable and legitimate physical and medical requirements of the job. Once an employer makes a job offer to a job applicant, the employer may require medical examinations before hiring and may ask wide-ranging questions that involve disability-related information. However, the information must be requested of every applicant for that position. If an employer uses this information to disqualify a job candidate, the reasons behind the disqualification must not be discriminatory and must be “job- related” and “consistent with business necessity.”

C. Once An Employee is on the Job: Once an individual is on the job, the employer may only seek disability-related information if there is a “reasonable basis” for the employer to think that the employee: is unqualified to do the job; needs a reasonable accommodation; or poses a direct threat to the health or safety of the employee or others.

2. Must an individual with a disability disclose a disability when applying for a job or on the job?

An individual does not have to disclose a disability to an employer unless they have an immediate need for a “reasonable accommodation” under the ADA during the interview, application process, or while on the job. However, as noted above, after receiving a “conditional job offer” and in other limited situations, individuals may lawfully be asked disability-related questions. An applicant or employee should comply with an employer’s lawful information requests promptly and accurately.

3. Should an individual with a disability disclose the disability when applying for a job, after accepting the job, while on the job, or never?

That is a more difficult question and depends on the situation. Generally, the only situation where an individual is legally required to disclose a disability is when they are seeking a reasonable

accommodation under the ADA. In almost all other situations, the decision to disclose is voluntary and a disability does not have to be disclosed unless a reasonable accommodation is needed. Due to the fact that there are still many prejudices and stereotypes connected with disabilities, many people choose not to disclose their disabilities unless necessary. It is important to remember that people with apparent disabilities are in a different situation than people with not so apparent disabilities.

However, there may be situations when disclosing a disability may be beneficial such as when the prospective employer will see the disability as a positive factor for hiring. For this reason, an individual should research the company before disclosing. Employers who may look positively on a disability include organizations that serve persons with disabilities, companies that receive federal grants, or companies that have a policy for hiring persons with disabilities.

When in doubt about an employer’s reaction to the disclosure, it is usually best not to disclose unless a reasonable accommodation is needed.

4. If an employer notices that a job applicant or employee has a disability, what is the employer allowed to say regarding the disability, if anything?

When an employer notices that an individual has a disability and reasonably believes that the individual will need reasonable accommodations to apply for or to safely perform the essential functions of a job, the employer may ask certain limited questions. Specifically, the employer may ask whether the applicant would need reasonable accommodations, and if so, what type of accommodations would be needed. However, the employer may not ask questions that are either unrelated to the functions of the job or relate to the applicant’s underlying condition apart from the need for an accommodation.

5. If a job applicant or employee chooses to disclose a disability to an employer, what may the employer ask about the applicant’s disability?

Once an employer knows about an individual’s disability, if the employer reasonably believes that an applicant may need a reasonable accommodation, the employer may ask whether an accommodation is needed, and if so, what type of accommodation will be needed. The employer’s questions must focus on the reasonable accommodation, not the applicant’s underlying condition. The employer’s questions may not address reasonable accommodations unrelated to job functions. Any employer inquiry must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.

6. May an employer ever inquire whether an accommodation is needed even if one is not requested?

If an employer is aware of a disability and a reasonable basis exists to believe that an accommodation is needed, (for example, if the employees work performance has been inadequate), an employer may inquire whether a reasonable accommodation is needed.

Further, an employer may have a legal duty to investigate accommodations even if the employee does not request one. Employers are never required to accommodate a disability that they do not know about. For this reason, and because of the many legal liability issues connected to medical information, many employers prefer to limit the amount of medical information that is required.

7. How should an individual disclose their disability when requesting a reasonable accommodation?

According to the EEOC, there are no “magic words” that must be used as part of a reasonable accommodation request. The EEOC states than when individuals decide to request an accommodation, they must let their employer know that they need a change at work for a reason related to a medical condition. The request need not be in writing, although that is usually recommended for the benefit of both the employer and the individual with a disability. An employer is allowed to ask for a restricted amount of disability-related information as it relates to the accommodation request. This information must be specifically limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation. Employers are not entitled to seek a General Release of Information in response to an accommodation request.

If an individual’s disability is not obvious or known to the employer, the employer may require documentation of the individual’s disability and their need for a reasonable accommodation. For this reason, employees often find it helpful to submit the accommodation request with a brief doctor’s report outlining the employee’s disability and how the requested accommodation will enable them to do the essential functions of the job.

8. What happens if an individual initially decides not to disclose a disability, but discovers later that they will need an accommodation?

An individual with a disability may request a reasonable accommodation at any time during the application process or during employment. The ADA does not prevent an employee with a disability from requesting a reasonable accommodation because they did not ask for one when applying for a job or after receiving a job offer. However, it may be in an employee’s best interest to request a reasonable accommodation before performance suffers or other problems occur.

9. If an employee has more than one disability, what should be disclosed?

An employee is only required to disclose a disability if the disability requires a reasonable accommodation. Therefore, an employee need not disclose any disability unrelated to a request for a reasonable accommodation.

10. How can an employer determine whether an individual is able to perform the essential functions of a job?

An employer may ask an individual to describe or demonstrate how they would perform the essential job functions if this is done for all applicants of that position. In addition, an employer may ask this if the employer is aware of a disability, (for example if a person uses a wheelchair or has an apparent disability), and has a reasonable basis to believe that an accommodation is needed to allow the individual to perform the essential job functions or to remove or lessen a risk to the health or safety of the individual or others.

An employer may ask whether a job applicant can do the essential job functions with or without a reasonable accommodation. Both individuals with and without disabilities can answer this question without revealing disability information. However, in general, an employer cannot ask whether an accommodation is needed.

11. What are the confidentiality requirements for medical information in the possession of the employer?

Under the ADA, employers must keep all information concerning the medical condition or history of their applicants or employees confidential. The information must be collected on a separate form and kept in a separate medical file, apart from an employee’s personnel file. Only staff that needs to know the medical information, usually direct supervisors and managers, should know this information. If co-workers inquire as to why a colleague seems to have accommodations, a different work schedule, or what is perceived as preferential treatment, the employer may only explain that they are acting for legitimate business reasons or to comply with federal law. Laws other than the ADA may have confidentiality requirements as well.

12. May an employer disclose an employee’s disability-related information for emergency evacuation procedures, for affirmative action purposes, or for federal reporting requirements without violating the ADA or other confidentiality requirements?

Although employers are generally required to keep an employee’s medical information confidential, there are limited exceptions. An employer may tell first aid and safety personnel about an employee’s disability if the disability might require emergency treatment. In addition, employers must provide relevant information when government officials are investigating compliance with the ADA. Finally, an employer may invite applicants to voluntarily self-identify themselves as individuals with disabilities for purposes of the employer’s affirmative action program. However, the decision to self-identify must be voluntary, and an employer must keep the information disclosed confidential by keeping it on a separate form apart from the application.

It is important to note that as employees, if your employer does not know that the employee has a disability, the actions of the employer as to adverse employment decisions made with respect to the disabled employee are not covered by the ADA. Therefore, under that circumstance, the ADA cannot be invoked to protect the employment rights of the disabled individual where the actions of the employer are adverse.

Section 503 of the Rehabilitation Act New Rules: Fact Sheet From The ADA National Network

On March 24, 2014, new rules for Section 503 of the Rehabilitation Act (RA) took effect, covering employers who are federal contractors or subcontractors. These new rules strengthen the enforcement of the ADA and put into place new employer requirements around recruiting, hiring and accommodating individuals with disabilities. Section 503 new regulations can be found at <http://www.dol.gov/ofccp/regs/compliance/section503/503_rule_qa_508c.pdf>. (Please note: New rules for the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA) were announced in tandem with RA Section 503. For more information on VEVRAA, go to the Fact Sheet at <https://adata.org/VEVRAA)>.

The aim of the Section 503 new rules

Despite nearly 25 years of the Americans with Disabilities Act (ADA), people with disabilities continue to face barriers to equal opportunity in employment. In 2012, the overall employment rate of adults with disabilities was 33.5%, as compared to 76.3% for others. Further, the full-time/full-year employment rate for people with disabilities was 20.9%, as compared with 56.4% for others (1). The revised Section 503 Regulations aim to change these statistics by requiring employers who are federal contractors or subcontractors to set affirmative action goals and to report progress toward meeting these goals.

Coverage and enforcement

RA Section 503 new rules are enforced by the U.S. Office of Federal Contract Compliance Programs (OFCCP). Employers with U.S. federal government contracts or subcontracts of $10,000 or more are covered by the new rules. Also, covered employers with at least 50 employees and a federal contract/subcontract of at least $50,000 must have in place an affirmative action program for hiring individuals with disabilities. However, federal contractors who already had a written affirmative action program in place on March 24, 2014 may have additional time to comply with this requirement.

A new benchmark

The new rules require federal contractors and subcontractors to aspire to, and track progress toward, employing individuals with disabilities. Though RA Section 503 has been in effect since 1973, there has not been a specific benchmark defining what the percent of individuals with disabilities are to be in the workforce of covered employers. Section 503 new rules now provide this benchmark. Called an aspirational goal, covered employers must now attain, or show progress toward attaining, a workforce that consists of at least seven percent of people with disabilities.

Overview of Section 503 new rules

The seven percent workforce goal

Called a utilization or aspirational goal, this requirement is not a quota, but a way to ensure that federal contractors include disability in their strategies around recruitment and hiring. The seven percent goal will apply to each job group in the workplace or to the entire workforce if there are fewer than 100 employees.

Invitation for voluntary self-identification

At both the job-application stage and after a job offer has been made, the employer should invite applicants to voluntarily self-identify as a person with a disability. Current employees should be invited to self-identify at least once every five years. It is important to note that this invitation to self-identify does not conflict with the ADA. Title I of the ADA (which focuses on employment) has always allowed employers to collect certain disability information from applicants and employees when specific guidelines are followed. Those who choose not to self-identify should not be penalized. All self-identification information must be kept separate from other personnel records and cannot be available or used for any employment decision that could lead to adverse impact (such as hiring or performance review). Prescribed language must be used to invite applicants and employees to self-identify. A form for voluntary self-identification can be found at the OFCCP website at <http://www.dol.gov/ofccp/regs/compliance/section503.htm>. For more information on self-identification and disclosure, go to <http://www.dol.gov/ofccp/regs/compliance/sec503/OLC_letter_to_OFCCP_8-8-2013_508c.pdf>.

Create partnerships to recruit individuals with disabilities

Create partnerships with disability organizations to assist in finding and recruiting qualified job applicants with disabilities. All outreach, partnerships, and recruitment efforts should be documented and records should be kept for three years. To find a list of potential disability organizations for these partnerships, go to the Employment Resource Referral Directory at <http://www.dol-esa.gov/errd/index.html#search>.

Data collection and tracking

Collect data about the number of applicants and employees who self-identify as having disabilities in order to demonstrate progress toward achieving the seven percent aspirational goal.

Applicants. Document the percent of job applicants who have voluntarily self-identified as having a disability as a percentage of the total applicant pool.

Job openings. Document the total number of job openings.

Hiring. Document the total number of jobs offered to and the total number filled by those who have self-identified as individuals with disabilities.

Current workforce. Document the number of current employees who have self-identified as individuals with disabilities once during the first year of coverage under RA Section 503 and at least once every five years thereafter.

Equal opportunity clause

Certain language is required when prime contractors communicate with subcontractors and when contractors collect voluntary disability self-identification data from applicants and employees. To find out more, go to <http://www.dol.gov/ofccp/regs/compliance/section503.htm> and scroll down to “Technical Assistance.”

Participate in OFCCP compliance reviews

Upon request, employers must be able to inform OFCCP of formats used to collect this data.

Apply the American with Disabilities Amendments Act (ADAAA)

Passed in 2008, the ADAAA has expanded the definition of disability, thereby including more individuals with disabilities under its protections against discrimination in the workplace and other settings. Section 503 calls for employers to review their policies and practices to ensure they are aligned with the ADAAA. For more information about the ADAAA, go to <http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm>.

Common Myths About Learning Disabilities (LD) From Center on Disability Studies

Myth #1: People with learning disabilities have below average intelligence and cannot learn.

Reality: By definition, students with LD must be average or above in intelligence as measured by an individual IQ test and have a significant discrepancy between their ability and achievement. In fact, studies indicate that as many as 33% of students with LD are gifted. Students with LD can learn and succeed in college. It takes proper recognition, intervention and lots of hard work.

Myth #2: Learning disabilities are just an excuse for irresponsible, unmotivated or lazy people.

Reality: Learning disabilities are caused by neurological impairments not character flaws. LD is a permanent disorder that interferes with acquiring, integrating, and demonstrating verbal and nonverbal abilities. Students with LD process information differently. They have a different way of learning.

Myth #3: Learning disabilities only affect children. Adults grow out of learning disabilities.

Reality: We now know that LD continues throughout the individual’s lifespan. LD may intensify in adulthood as tasks and environmental demands change. Many adults have never been formally diagnosed with a learning disability. The majority of people with learning disabilities are not diagnosed until they reach adulthood.

Myth #4: Students with learning disabilities have dyslexia so they can’t read.

Reality: Dyslexia is simply one a type of learning disability. It is a specific language based disorder affecting a person’s ability to read, write and verbally express themselves. Careless use of the term has expanded it so dyslexia has become equivalent for “learning disability” for many people.

Myth #5: Students with LD are quick to reveal their status so they can have an advantage in the classroom. Does LD become a way to “work the system?”

Reality: Many students with LD do not self-disclose when they get to college. Self-disclosure is required to receive accommodations. Many students who do disclose wish to remain anonymous in the classroom.

Myth#6: Learning disabilities are only academic in nature. They do not affect other areas of a person’s life.

Reality: Many students with LD also have social problems due to difficulties reading body language and other subtle language cues that help most students understand how to appropriately interact with others. This may cause some students with LD to have trouble asking faculty for clarifications or contributing to classroom discussions.

Myth #7: Accommodations for students with LD are usually quite time-consuming for faculty.

Reality: Many accommodations take little to no time for faculty. They will benefit all students, not only the students legally entitled to them. They can help us reach more students. They can help us question/clarify the pedagogy underlying our requirements. For individual-specific requests faculty can receive help from their Disability Student Services (DSS) office.

Myths and Facts about Mental Illness From the National Center on Workforce and Disability (NCWD)

MYTH: Mental illness is rare.

FACT: Mental illnesses are more common than cancer, diabetes, or heart disease. In any given year, more than five million Americans experience an acute episode of mental illness. One in every five families is affected in their lifetime by a severe mental illness, such as bipolar disorder, schizophrenia, and major depression. (Source: NAMI)

MYTH: Someone who is mentally ill is likely to get much worse.

FACT: The course of severe mental illness over an extended period of time is not necessarily just maintenance (staying the same) or regression (getting worse). The treatment success rate for schizophrenia is 60 percent, 65 percent for major depression, and 80 percent for bipolar disorder. Comparatively, the success rate for heart disease ranges from 41 to 52 percent. One half to two thirds of people with schizophrenia achieve considerable improvement or recovery over 20 to 25 years. With time, resources, ongoing intervention, and enough support, an individual can reach significant employment outcomes.

MYTH: If someone looks or acts odd it means that staff need to be concerned about the potential for violence.

FACT: Contrary to media focus, individuals with mental illness are no more prone to violence than the general public, and in fact, are more likely to be the victims of violence than the perpetrators. The exception is adding the presence of substance abuse, which increases the likelihood of aggressive behaviors (as it does with the general public).

Who Can Work

MYTH: If someones mental illness is not under control, they are not job ready.

FACT: Individuals with complex needs, including psychiatric disabilities, have often been labeled as not job ready. However, individuals with similar needs can be found working successfully in the community. Waiting for all disability-related issues to be under control may mean that the customer is never judged to be ready. Job readiness really happens when the skills, interests, values and needs of a person [are matched] with the demands of a specific job and the values and needs of a particular employer. (Marrone, Gandolfo, Gold, Hoff, 1998). Job readiness is a dynamic, not a static, concept.

MYTH: The stress of working is likely to cause relapses for someone with severe mental illness.

FACT: Part of the stress response for these individuals is the knowledge that the typical new worker adjustment period might be misread as a recurrence of mental illness symptoms. All people undergo stress in making major life changes, both positive and negative ones. If the changes caused by a new job are planned and have built-in supports, stress can be minimized. Individuals who are taught coping skills to anticipate potential problems are likely to do better at handling stressful situations. Education on self-monitoring can be an important tool for the individual adjusting to a new work environment.

MYTH: A person with mental illness who states he/she is not ready to enter the world of work is obviously not ready.

FACT: Individuals with mental illness may be fearful at the prospect of work due to poor self esteem or inexperience. These individuals need to build confidence through career exploration activities, such as those listed elsewhere in this section. One-Stops can assist such individuals by gradually introducing them to the world of work, through classes on interview techniques and resume building, informational interviews, job shadowing, tours, and so on. Participating in group activities at a One-Stop Center, especially activities which include individuals without disabilities, can be particularly helpful in building the confidence of people with mental illness.

MYTH: If customers request or need help to get a job, they are not ready to work.

FACT: Asking for help is a sign of health, not weakness. The professional is there not to do it all but to enhance that customers skills, presentation, and self-confidence. Professionals can help by:

identifying assets

providing training and support

gathering information

presenting options

counseling on implications

bringing in other contacts.

Securing Employment

MYTH: A person with mental illness always needs specialized disability resources to get a job.

FACT: Specialized resources can help, but basic strategies are always useful. Networking, in particular, is invaluable to all job seekers. People with mental illness may find that connections are helpful in lessening the chance of being automatically rejected due to lack of recent job experience, gaps in work history, previous terminations from jobs, and discriminatory attitudes.

MYTH: If a person with mental illness is really motivated to work he/she should be willing to try out any job.

FACT: Every person has different needs and concerns. Severe mental illnesses often arise in late adolescence or early adulthood. A person with a mental illness therefore, may not have had the opportunity for much vocational exploration and, early on in the personal journey into (or back into) employment, may need to try out different jobs based on preferences as opposed to aptitude, knowledge, or experience.

MYTH: A person with a mental illness should only work at low stress jobs that require no interpersonal contact.

FACT: While mental illness can cause problems in interpersonal relations, each persons strengths and deficits are different, as are each jobs requirements. (For example, the interpersonal skills needed for a desk clerk at a Motel 6 are different than those required for a desk clerk at a five-star hotel.) Rather than broadly generalizing about personal barriers, it is best to help job seekers with mental illness understand their own capabilities and how those capabilities fit into a specific job match.

MYTH: Since it seems impossible to find a job listing that fits a particular customer, it is unlikely he/she will be able to find any appropriate job.

FACT: There are many points of entry into the world of work. Networking and personal relationships are important ways to create jobs that fit. Employers are much more flexible then we often realize. One-Stop staff should work on finding out the needs of employers and proposing to fill them in a way that is a win-win for all involved.

Employer Issues

MYTH: Only employers who are Good Samaritans will hire someone with mental illness.

FACT: Employers hire people with mental illness for a number of reasons. The primary reason is the same reason that they hire anyone else - in order to get the services of a good employee. Additionally, employers may hire an individual with a mental illness because they appreciate the consultation and support that an agency offers, and/or because they believe it is the right thing to do. For more information, see the piece Why Employers Hire People with Disabilities elsewhere in this section.

MYTH: Employers need to know that a person has a mental illness

FACT: Under the Americans with Disabilities Act, employers cannot ask about a persons disability, and people are under no obligation to disclose that they have a disability. It is essential to discuss the issue of disclosure with a customer early in the job hunting process, and to help that person make an informed choice about the best course of action to pursue. See the discussion on disclosure in the piece entitled, Contacting Employers: Disclosure, Interviews, and Accommodations elsewhere in this section.

MYTH: Employment settings are limited in their ability to handle people who are perceived as deviating from the norm.

FACT: Community settings can and do accommodate a range of skills and behaviors, and employers are getting better every day at creating environments which value and support a wide range of personalities. Advocacy and a good person-job match are key to a successful job search.

MYTH: It is very difficult to accommodate a worker with a mental illness.

FACT: By definition, accommodation is specific to an individual and a job. There are many types of possible accommodations, such as flexible work schedules, job creation and job carving, and providing a co-worker mentor. It is important to approach the issue of accommodations with an employer in the spirit of cooperation. Most data show that accommodation costs are minimal (less than $500) in the overwhelming majority of situations. See Section 6, Job Accommodations, for additional information and examples.

MYTH: If person with mental illness gets a job and it does not work out, it means that that person is less likely to succeed in another job.

FACT: Different job situations, even the same job titles with different employers, have both similarities and differences. When a person with a mental illness loses a job, that person should not be precluded from seeking another job right away. The fact that the person was successful in becoming employed should be celebrated. At the same time, help the person understand what went awry and how it can be avoided in the future. The loss of a job can be a learning experience. Focus on what the individual learned about his/her strengths and abilities, and then use this knowledge to find a better job!