

EEOC Clarifies Its Position Regarding Employers' High School Diploma Requirements

2 min read

Mar 7, 2012

On November 17, 2011, the EEOC issued an informal opinion letter discussing potential violations of the Americans with Disabilities Act (ADA) as a result of an employer's requirement that applicants hold a high school diploma. Specifically, the EEOC opined that 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, the employer may not apply the standard unless it can demonstrate that the diploma requirement is job related and consistent with business necessity. The EEOC 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 prevented him from obtaining a high school diploma can perform the essential functions of the job with or without a reasonable accommodation.

Since the issuance of the letter, there has been significant commentary and conjecture about the letter's meaning and scope. As a result, the EEOC has now issued a "Q&A" document to clarify its position.

Based on the newly-issued document, here is what EEOC wants employers to know:

- Employers can still require job applicants to hold a high school diploma. If the applicant didn't receive his or her diploma due to a disability, however, the employer should allow the employee to demonstrate qualification for the job in some other way.
- Employers can require applicants to demonstrate through documentation that they have a disability and that the disability was what prevented them from obtaining a diploma. Applicants who did not receive their diploma by choice rather than because of a disability are not protected by the ADA.
- Even if a disabled applicant demonstrates that he or she meets the requirements by means other than possession of a diploma, the employer is still free to select the best-qualified candidate.

The EEOC also reminded employers of previous precedent in which the EEOC considered the high school diploma requirement to be discriminatory. For example, in 2003, the EEOC pursued an action against an employer who had terminated an employee who served as a nursing assistant because she could not meet a new requirement

that nursing assistants had to have high school diplomas. The employee had presented evidence that she had worked successfully in the job for four years and had tried to obtain her GED, but could not do so because of her disability. When the employer refused to work with the employee's GED instructors to find an alternative way to assess the employee's ability to do the job, the EEOC pursued action against the employer for violating the ADA.

The EEOC's original letter and the additional materials explaining the letter should be particularly noted by employers who have a high school diploma requirement for any position. Where an applicant or employee expresses that he or she cannot fulfill a high school diploma requirement because of a disability, an employer needs to consider the implications of the ADA in its decision not to hire the candidate. Although an employer may require a high school diploma, under certain circumstances it may have to accommodate an applicant or employee who shows that he or she did not receive a diploma because of a disability, but is still able to do the job. In such a case, employers should contact counsel to determine what steps to take before making a decision on the applicant.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

ADA, Disability, Hiring, Education