The Equal Employment Opportunity Commission (EEOC) recently issued final guidance on pre-employment disability-related questions and medical examinations under the Americans with Disabilities Act (ADA). (ADA Enforcement Guidance: Pre-Employment Disability Related Questions and Medical Examinations, October 10, 1995). While the final guidance is quite similar to the interim guidance issued by the EEOC in May, 1994, it does clarify what questions an employer may ask about reasonable accommodation at the pre-offer stage.

The guidance provides that, in general, an employer may not ask questions on an application or in an interview about whether the applicant will need reasonable accommodation to perform the duties of the position sought because such questions are likely to elicit whether the applicant has a disability. However, the guidance provides that where an employer could reasonably believe that an applicant will need reasonable accommodation to perform the duties of the position sought, the employer may ask whether the applicant needs reasonable accommodation and what type of accommodation would be needed to perform the functions of the position.

According to the guidance, an employer may ask questions regarding the need for accommodation where:

- the employer reasonably believes the applicant will need reasonable accommodation because the applicant has an obvious disability;
- the employer reasonably believes the applicant will need reasonable accommodation because of a hidden disability that the applicant has voluntarily disclosed to the employer; or
- an applicant has voluntarily disclosed to the employer that he or she needs reasonable accommodation to perform the job.

While an employer may inquire as to the need for an accommodation and the type of accommodation needed in these limited circumstances, an employer should not make inquiries concerning the nature and/or extent of the underlying disability.

Further, the EEOC notes in the guidance that where an employer fails to hire an applicant who has been questioned as to their need for an accommodation, the EEOC will carefully scrutinize whether the need to provide accommodation was a reason for rejecting the applicant. Therefore, colleges should document the related business reasons for their determination not to hire such an applicant.

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