

EEOC Releases New Guidance on Accommodating Visually-Impaired Employees under the Americans with Disabilities Act

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On July 26, 2023, the U.S. Equal Employment Opportunity Commission (EEOC) released a [technical assistance document](#) titled “Visual Disabilities in the Workplace and the Americans with Disabilities Act.” This guidance explains how the Americans with Disabilities Act (ADA) applies to job applicants and employees with visual disabilities.

The new guidance is part of a Q & A series addressing how the ADA applies to particular disabilities in the workplace. It outlines such topics as when an employer may ask an applicant or employee questions about their vision, how an employer should treat voluntary disclosures about visual disabilities, and what types of reasonable accommodations those with visual disabilities may need in the workplace.

Proper Questioning Surrounding Employers with Vision Impairments

The guidance makes clear that “not everyone who wears glasses is an individual with a disability under the ADA.” Instead, when deciding if someone with a vision impairment who uses (or used, in the case of a past impairment) “ordinary eyeglasses or contact lenses” is an individual with an “actual” or “record of” a disability, the guidance instructs that an employee’s impairment should be assessed as it is corrected by the lenses. If using ordinary lenses results in no substantial limitation to a major life activity, then a person’s vision impairment does not constitute a disability under the ADA’s definitions of “actual” or “record of” a disability.

The guidance provides that employers are generally not allowed to ask applicants about whether they have a vision impairment. However, if an applicant has an obvious impairment or voluntarily discloses the existence of a vision impairment, and based on that information the employer reasonably believes that the applicant will require an accommodation to perform the job, the employer can inquire whether the applicant will need an accommodation and the kind of accommodation the applicant will need.

As to current employees, employers can ask about an employee's vision impairment if they observe performance problems and reasonably believe that the problems are related to a vision impairment. Employers can also ask for such an employee's medical information if they have observed symptoms or receive reliable information from someone like a family member or coworker that the employee may have a vision impairment.

Safety Concerns

As with other types of disabilities, if an employer wishes to refuse to hire an applicant, or terminate or restrict an employee's duties based on safety concerns related to the applicant or employee's vision impairment, the employer must conduct an individualized assessment as to whether the individual can safely perform the essential functions of the job. Such determination must be based on reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence, and not on speculation or stereotyping. Employers must also remember to consider whether any reasonable accommodation may be available that would reduce or eliminate the safety hazard.

Reasonable Accommodations

The guidance also highlights that a wide range of possible modifications to the application process, or in the way an employee performs their work, can serve as reasonable accommodations for individuals with vision impairments. It lists many potential accommodations, including "assistive technology (such as text-to-speech software); accessible materials (such as braille or large print); modification of workplace/employer policies or procedures (such as allowing the use of guide dogs in the work area), testing (such as allowing alternative testing), or training; ambient adjustments (such as brighter office lights); [and] sighted assistance or services (such as a qualified reader)." The guidance emphasizes, however, that this is not an exhaustive list and applicants and employees may need other forms of changes or adjustments.

Of particularly timely relevance, especially given the recent push by [the EEOC](#) and various [states](#) and [localities](#) to regulate use of artificial intelligence (AI) in the workplace, the guidance also specifically cautions employers of the risk that algorithms and AI decision-making tools may (whether intentionally or unintentionally) serve to “screen out” applicants and employees – for example, where an applicant or employee may have a visual disability that reduces the accuracy of an AI assessment used to evaluate the individual . Where such screening out may occur, the guidance states that employers have an obligation to provide a reasonable accommodation, such as an alternative testing format, that would provide a more accurate assessment of the applicant’s or employee’s ability to perform the position, absent undue hardship. The guidance further suggests that employers take affirmative steps to provide information about how any algorithm or AI decision-making tools evaluate applicants or employees, so that those with visual disabilities will know if they may need to request a reasonable accommodation.

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