



Employment Rights Helpline at Equip for Equality

SELF-ADVOCACY ASSISTANCE ★ LEGAL ADVICE ABOUT EMPLOYMENT RIGHTS ★ SAMPLE LETTERS & FORMS ★ REFERRALS

FACT SHEET: Disclosing Your Disability

Am I required to disclose my disability on an employment application or during a job interview?

No. You are not required to disclose your disability on an employment application or during a job interview, unless you need a reasonable accommodation for the application or interview process.

What if I know that I will need a reasonable accommodation to do the job? Then am I required to disclose my disability on an employment application or during a job interview?

No. Even if you know that you will need a reasonable accommodation to do your job, you are not required to disclose your disability on an application or during a job interview.

If I have two disabilities, do I need to disclose both of them when asking for a reasonable accommodation?

It depends. You are *only* required to disclose your disability that is related to your reasonable accommodation request.

- *Example:* If you have bipolar disorder and diabetes, but only need a reasonable accommodation for your diabetes, then when requesting a reasonable accommodation, you need to disclose your diabetes but not your bipolar disorder.

I'm concerned that I will be lying during a job interview if I do not disclose my disability. Won't my employer be mad that I didn't volunteer this information?

This is a very normal concern, but you are not lying by failing to disclose your disability. Consider all of the aspects of your personal life that you do not typically share during a job interview, such as your relationships or your religion. Think of your disability through that same lens.

Your employer should not be angry with you, as under the ADA, there is no requirement that you disclose your disability. In fact, many employers do not want you to disclose your disability during a job interview.

Should I disclose my disability on an employment application or during a job interview?

This is a more complicated question. While it is generally considered a best practice not to disclose your disability on an employment application or during a job interview (unless you need a reasonable accommodation), some people with disabilities choose to disclose.

Disclosure is a personal decision. Be thoughtful about whether to disclose your disability and do so only after weighing the pros and cons of doing so.

Potential reasons for disclosing your disability during the application process include:

- Your disability may make you more qualified for a job.
 - *For example, maybe you are applying for a job as a substance abuse counselor and you have a history of substance abuse. You may choose to disclose your disability as your own experiences make you more qualified for that particular position.*
- You may be applying for a job with affirmative action obligations or for a company that is known for proactive hiring of people with disabilities.
 - *If so, you may want to consider disclosing your disability, as it may make it more likely that you will be hired.*
- You may feel strongly that you want to work for certain employers.
 - *For example, maybe you have had a negative experience in your last job after disclosing your disability and so you have decided that you are willing to wait for the “perfect fit” for you before accepting your next position. You want to use the interview process to ask hard questions of the employer to be sure that you end up at a job that will work for you.*

Can an employer ask me about my disability during the application and interview process? Can an employer require me to go to a medical examination before offering me a job?

No. The ADA restricts employers from asking *any* disability or medical-related questions or requiring any medical examinations before extending a conditional offer of employment, subject to two exceptions explained more below.

Examples of impermissible questions include:

- Do you have a disability?
- Did you take a lot of sick leave at your past job?
- Do you need a reasonable accommodation? (subject to the exception below).
- What type of medications do you take?
- Do you receive Social Security Disability Insurance benefits?

When can an employer ask questions about disability during the application and interview process?

There are two limited times when an employer can ask certain disability-related questions.

Exception 1: The employer knows you have a disability and reasonably believes you may need a reasonable accommodation.

- *If an employer knows that you have a disability (either because you disclosed your disability or because your disability is obvious) and has reason to believe that your disability will make it difficult for you to perform a specific task, then the employer may ask if you need a reasonable accommodation. If you say yes, then the employer may ask what accommodation is needed.*

Exception 2: Voluntary questions for affirmative action purposes

- Many employers have affirmative action programs to increase the number of people with disabilities in their workforce. Such employers may *ask* applicants to *voluntarily* disclose their disability without violating the ADA.

However, employers requesting information for affirmative action purposes should include a statement assuring applicants that:

- The information is being requested on a voluntary basis
- The information will be kept confidential
- Refusal to self-identify will not subject the applicant to any adverse treatment
- The information will be kept separate from the application
- The information will be used in accordance with applicable law

What should I do if I am asked an unlawful question on an employment application or during a job interview?

On an employment application

- You should do what you are most comfortable with, but the best practice is to simply leave this question blank.

During the job interview

- There is no perfect way to respond when asked an inappropriate question. Some applicants have found it helpful to redirect the interviewer by saying: "I would like to focus on my qualifications for this position."

After the job interview

- Contact Equip for Equality's Employment Rights Helpline (1-844-RIGHTS-9) to share your experience. EFE has an Employment Application Initiative through which we contact employers who ask improper disability-related questions to advise of the ADA's restrictions and confirm that such questions will not be asked in the future. Through this Initiative, EFE also affirmatively reviews job applications in an effort to eliminate improper questions from the pre-employment screening, with the goal of ensuring that applicants with disabilities are judged on the merits of their application, and not their disability.
- You also have the right to file a charge of discrimination about your experience. To learn more, review EFE's Fact Sheet about Filing a Charge of Discrimination.

Once I get a job, am I required to disclose my disability?

No. Even when you are an employee, you are not required to voluntarily disclose your disability, unless you need a reasonable accommodation.

Once I get a job, what can my employer ask me about my disability? What types of medical examinations can it require?

The ADA restricts the types of questions your employer can ask and examinations your employer can require. The rules differ based on whether you have started your job yet.

After you received a conditional offer of employment, but before you start work

During this short window of time, your employer may ask a wide range of disability-related questions and/or require broad medical examinations *if* your employer requests this information from every employee in the same job category.

Further, your new employer cannot withdraw your job offer based on information it learns *unless* your disability prevents you from doing the essential functions of your position with or without a reasonable accommodation *or* your disability poses a direct threat that cannot be eliminated or reduced with a reasonable accommodation.

After you start work

Your employer may ask disability-related questions or require medical examinations when it is job-related and consistent with business necessity. This means that your employer can require disability-related information when there is a reasonable basis to believe that you:

- Are unqualified to do the job
 - For example: *If you tell your supervisor that you are struggling in your job because you have been having back problems and your job requires extensive lifting because you are having back problems, then it would likely be reasonable for your employer to seek information related to your disability.*
- Need a reasonable accommodation
 - For example: *After you request a reasonable accommodation, so long as the disability and need for accommodation are not obvious, your employer may ask for reasonable medical documentation.*
- Pose a direct threat to the health or safety of the employee or others
 - For example: *If you operate a forklift and have been observed falling asleep close to this machinery, it would likely be reasonable for your employer to seek information related to your disability.*

Can my employer share information about my disability with others?

It depends how your employer knows about your disability.

If your employer knows about your disability due to a required medical examination, medical inquiry, or because you requested a reasonable accommodation, *then* the ADA requires your employer to keep your disability-related information confidential.

- Confidential information should be kept in a separate medical file, apart from your personnel file.
- Your employer is permitted to share this information on a need-to-know basis, such as if a supervisor must know to provide the accommodation. There are other limited exceptions, such as to first aid and safety personnel if an employee would need emergency treatment.

If your employer knows about your disability *because* you voluntarily disclosed it (separate from asking for a reasonable accommodation) or have otherwise shared this information in the workplace, then some courts have held that your employer does not have to keep this information confidential.

- If you do not want your employer to share your disability-related information, you should keep it confidential so that the ADA's confidentiality provisions apply.

Where can I learn more?

EEOC Guidance Document, Job Applicants and the Americans with Disabilities Act

- www.eeoc.gov/facts/jobapplicant.html

EEOC Letter, Opinion on the Invitation to Self-Identify

- www.dol.gov/ofccp/regs/compliance/sec503/Self_ID_Forms/OLC_letter_to_OFCCP_8-8-2013_508c.pdf

Job Accommodation Network, Disclosure Resources

- <https://askjan.org/topics/discl.htm>



DO YOU HAVE A QUESTION?

Contact Equip for Equality's Employment Rights Helpline

1-844-RIGHTS-9 (toll free) or 800-610-2779 (tty)

employment@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Employment Rights Helpline seeks to empower individuals with disabilities to advocate effectively. This publication is made possible by funding support from The Chicago Community Trust, the U.S. Department of Health and Human Services, the Administration on Intellectual and Developmental Disabilities and the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration; the U.S. Department of Education, Rehabilitation Services Administration; and the Social Security Administration. The contents of this publication are solely the responsibility of Equip for Equality and do not necessarily represent the official views of any of these agencies.

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