

# JAN

Job Accommodation Network

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## Accommodation and Compliance Series

# Accommodation and Compliance Series: Disability Disclosure and the Americans with Disabilities Act (ADA)

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## **JAN'S Accommodation and Compliance Series**

### **Introduction**

Deciding if, when, and how to share disability-related information with a prospective or current employer can be overwhelming. The decision-making process requires answering a number of personal questions that may be different with each employment experience. There is no single right or wrong approach to disclosing a disability. The disability disclosure decision-making process can include questions like: “Do I have an obligation to disclose?” “When is the right time?” “How much information does the employer need?” and “How will disclosing the information affect my employment?”

The remainder of this resource is a summary of issues and answers to some of the most frequently asked questions related to disability disclosure and the Americans with Disabilities Act (ADA). This information is relevant to both individuals with disabilities and employers.

### **Information about Disability Disclosure and Employment**

Disability disclosure can occur during any stage of the employment process, including pre-employment, post-offer, and while employed – whether it be within days, months, or years of initially being hired. Generally it is up to the individual with the disability to determine the right time to disclose. The ADA places restrictions on disability-related questions that can be asked of applicants and current employees so there are only limited situations when disclosure may be required. Applicants should be aware that covered employers are not permitted to ask non-voluntary disability-related questions on a job application. Disability-related questions can be asked after a conditional job offer has been made, but only if the same questions are asked of all applicants entering into the same job category. After an individual has started working, an employer may only ask disability-related questions if they are job-related and consistent with business necessity – for example, when an accommodation is requested or when an employee is having performance issues that may be related to a known medical condition.

### **Disclosure and Pre-Employment**

With limited exceptions, an employer may not require an applicant to disclose information about a disability or medical condition prior to making an offer of employment. However, there are situations when an applicant may need to disclose information about a disability during this early stage in the employment process. For example, if an accommodation is needed to complete an on-line application, participate in a job interview, or take an employment test, an applicant may need to disclose their disability to receive an accommodation.

Only applicants with disabilities are entitled to receive an accommodation under the ADA. When an accommodation is requested for the hiring process, and the need for the

accommodation is not obvious, an employer may ask an applicant for reasonable documentation about their disability because the employer, in this instance, is entitled to know that the applicant has a disability in order to receive accommodation (EEOC, 1995). An applicant may be asked to provide a note from an [appropriate professional](#) (e.g., healthcare provider, mental health professional, rehabilitation counselor, etc.) that explains the individual's disability, limitations, and need for accommodation. Applicants seeking further information regarding their rights under the ADA, should see the Equal Employment Opportunity Commission (EEOC) publication, [Job Applicants and the ADA](#).

In limited circumstances, employers can ask applicants to voluntarily disclose their disability status without violating the ADA's restrictions on medical inquiries. Employers who are required to undertake affirmative action based on federal, state, or local laws, and those who use disability-related information to benefit individuals with disabilities may invite applicants and employees to voluntarily self-identify as having a disability. In requesting this information, an employer must state clearly, in writing or otherwise, that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to self-identify will not subject the person to any adverse treatment, and that the information will be used only in accordance with the ADA and federal laws that require affirmative action (e.g., [Section 503 of the Rehabilitation Act](#)). The voluntarily-disclosed information must be kept separate from the application. For more information, see JAN's [Affirmative Action and Disability: What Can Employers Ask?](#)

### **Disclosure and Post-Offer**

Individuals are often compelled to share disability-related information during the post-offer stage of employment because many employers ask medical questions or require medical examinations before a newly hired employee begins working. Employers are not limited in the categories of questions that can be asked during the post-offer stage. This means that after receiving a conditional job offer, an individual may be asked about their medical history in its entirety, as long as the employer asks the same questions of other applicants offered the same type of job. An employer may ask specific individuals for more medical information if the follow-up questions are related to the medical information obtained during the post-offer inquiry or examination. While this essentially requires an individual to disclose information about disability – even when an accommodation is not needed – the information revealed during post-offer cannot be used to rescind a job offer unless it can be shown that the individual would be unable to perform the essential functions of the job (with or without accommodation), or would pose a direct threat to themselves or others (EEOC, 1995).

### **Disclosure to Receive Reasonable Accommodation**

Generally there is no obligation to disclose disability-related information to an employer until the need for reasonable accommodation becomes apparent. Reasonable accommodation may be needed to participate in the hiring process, to perform essential job functions, or to receive a benefit or privilege of employment. The need to disclose and request accommodation will become evident when an individual knows there is a

workplace barrier due to a disability. An accommodation can be requested even when a disability was not disclosed upon being hired. Of course, the timing of a request can be rather important. It is better to disclose a disability and request accommodation before job performance suffers or conduct problems occur. According to the EEOC, an employer does not have to rescind discipline (including a termination) or an evaluation warranted by poor performance simply because an employee has disclosed a disability or requested accommodation (EEOC, 2008).

Sometimes employees disclose disability-related information, but do not specifically request an accommodation. It can be difficult for supervisors and managers to know what to do with a simple disclosure. If a disclosure is not made in the context of an employee requiring an adjustment or change at work for a reason related to a medical condition, then it may not be necessary to proceed with an interactive process to discuss accommodations. However, it may be necessary to seek clarification from the employee regarding why the disability-related information was disclosed and if the employee is asking the employer to provide a reasonable accommodation. If the employee clarifies that their medical condition is affecting job performance, then the two parties should begin the interactive process to discuss possible accommodations.

When an individual is prepared to disclose their disability because an accommodation is needed, the individual should inform someone who can act upon a request, such as a manager, supervisor, or human resources professional. The employee should make it known that an adjustment or change at work is needed for a reason related to a medical condition. According to the EEOC, the employee can use "plain English" and does not have to mention the ADA or use the phrase "reasonable accommodation." After a disclosure and request for accommodation is made, then the interactive process should begin. EEOC suggests that individuals with disabilities might find it useful to document accommodation requests in the event there is a dispute about whether or when they disclosed their disability and requested accommodation. One way to document an accommodation request is to make a written request. JAN offers a sample accommodation request letter to assist individuals in drafting a request for accommodation. See JAN's [Ideas for Writing an Accommodation Request Letter](#).

## **Disclosure and Confidentiality**

Individuals with disabilities are often hesitant to disclose their disability or share information about a medical condition because they prefer to keep the information private. They do have a right to keep medical information private. There is no requirement to inform coworkers about a disability or need for accommodation. While coworkers may be aware that an employee is receiving accommodations because it may be obvious, they are not entitled to know why. Informing all employees about the ADA and the right to request accommodations, and encouraging a workplace culture that is inclusive of workers with disabilities, are ways to ward off unnecessary questions related to coworker accommodations.

The ADA requires employers to keep all disability-related information confidential. Employee medical information should only be shared with those who are considered to

be on a need-to-know basis. Managers and supervisors are encouraged to limit the information they acquire about an employee's disability. They often do not need to know the specifics of an employee's medical condition to implement accommodations. Details about the accommodation may be all that is needed to make a schedule change, provide equipment, or modify a policy, etc. Knowing fewer details about an employee's medical condition will be beneficial when other employees ask management questions about accommodations because a manager will be less likely to unintentionally reveal confidential information. For more about confidentiality of medical information and the ADA, these resources may be useful:

- JAN's Blog, [The Manager's Dilemma: "An employee is asking about a co-worker's accommodation. As a manager, what do I say?"](#)
- JAN's [Consultants' Corner, Confidentiality of Medical Information under the ADA](#)

## Questions and Answers Related to Disability Disclosure

JAN responds to a variety of questions related to disability disclosure and the ADA. While JAN is not a legal service and does not provide legal assistance or advice, JAN does share ADA guidance provided by the EEOC to assist our customers. Following are some examples of common questions and answers related to disability disclosure, the ADA, and medical inquiries:

1. Is an applicant required to disclose their medical condition when applying for a job?

No, with limited exceptions. Under the ADA, an employer generally may not require an applicant to disclose information about a disability or medical condition prior to making an offer of employment. Covered employers are not permitted to ask non-voluntary disability-related questions on a job application or during the hiring process. However, there are situations when an applicant may need to disclose information about a disability during this early stage in the employment process. For example, if an accommodation is needed to complete an on-line application, participate in a job interview, or to take an employment test, an applicant may need to disclose their disability to receive an accommodation. Another example is when an employer could reasonably believe that an applicant will need reasonable accommodation to perform the functions of the job. In that case, the employer may ask whether the applicant needs reasonable accommodation and what type of reasonable accommodation would be needed. Also, in limited circumstances (e.g., for affirmative action purposes), employers can ask applicants to voluntarily disclose their disability status.

2. Must an employee with a disability disclose their disability and request reasonable accommodation at a certain time?

No. An individual with a disability may request a reasonable accommodation at any time during the hiring process or during the period of employment. The need

to disclose and request accommodation will become evident when an individual knows there is a workplace barrier due to a disability. An accommodation can be requested even when a disability was not disclosed upon being hired. According to the EEOC, it is usually in an employee's best interest to request a reasonable accommodation before performance suffers or conduct problems occur.

3. If an employer asks disability-related questions during the post-offer stage, is the individual required to disclose their disability?

The decision whether to share information about a medical condition is up to the individual to make. However, an employer may condition an offer of employment on the satisfactory completion of a medical questionnaire or examination. If a questionnaire is not completed or an individual refuses to participate in an examination, an employer may rescind an offer.

4. Is an applicant or employee required to complete the self-identification of disability form used by federal contractors to meet their affirmative action obligations under Section 503 of the Rehabilitation Act?

[Section 503 of the Rehabilitation Act](#) requires covered federal contractors to invite applicants to self-identify as an individual with a disability during the pre-offer and post-offer phases of the application process, and to invite employees to self-identify every five years. This is an invitation to self-identify, not a requirement. The [self-identification of disability form](#) is a voluntary form, so each individual may choose to disclose their disability status, or not. Federal contractors are required to use the form provided by the Office of Federal Contract Compliance Programs (OFCCP) for this purpose. The form also includes a statement that invites individuals to request accommodation to apply for a job or perform job duties.

5. Is an individual with a disability required to disclose their specific diagnosis when requesting accommodation under the ADA?

Many employees who request accommodations prefer not to disclose their diagnosis, usually out of fear related to stereotypes or stigma attached to the condition. There is no formal guidance from the EEOC regarding this question. Under the ADA, employers may be able to insist on knowing the name of the impairment as part of determining whether the employee has a covered disability. However, some state laws (e.g., California) restrict employers from requesting a diagnosis or asking for detailed medical information. Employers should be informed about the requirements of state law before requesting a diagnosis. An employee may begin by giving a more general description of the condition when an accommodation is requested. For example, "I have a mental health condition" or "I have a condition that affects my immune system." In some situations, a limited description will not sufficiently describe the individual's impairment, limitations, and need for accommodation. An employer may request



reasonable documentation to determine that an individual has a covered disability for which he or she needs a reasonable accommodation (EEOC, 2002).

6. If an employee discloses a disability in response to a poor performance evaluation or discipline for unacceptable conduct, is an employer required to change the evaluation or withhold disciplinary action?

No. An employer may hold an employee with a disability accountable under the same uniformly applied performance standards and conduct standards that are job-related and consistent with business necessity as they would employees without disabilities. If a disability is disclosed or an accommodation is requested in response to poor performance or misconduct, an employer should engage in an interactive process with the employee to discuss how the disability affects performance or conduct and what accommodations may be effective in assisting the employee to meet the standards. For more detailed information, see the EEOC's guidance on [Applying Performance and Conduct Standards to Employees with Disabilities](#).

## References

- Equal Employment Opportunity Commission. (1995). [Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations](#). Retrieved September 18, 2015.
- Equal Employment Opportunity Commission. (2002). [Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act](#). Retrieved September 25, 2015.
- Equal Employment Opportunity Commission. (2008). [Enforcement Guidance: Applying Performance and Conduct Standards to Employees with Disabilities](#). Retrieved September 18, 2015.

## Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

### **Jude, an applicant with a depression and anxiety, is applying for a customer service position that requires a pre-employment test.**

Due to medication that Jude takes for both conditions, his processing speed is a bit slower. He feels he can only do his best on the test if he has the accommodations of extended time as well as taking the test in a private location to help limit distractions. In order for the employer to even consider those accommodations, the employee will need to disclose the mental health impairments and be prepared to provide medical documentation.

### **Phillipe travels in person to the HR department of a prospective employer in order to pick up an application for employment to take home and complete.**

He is told that the application cannot leave the building. Phillipe may need to disclose and ask for a change in policy as an accommodation if the employer does not have an online application process that could be completed at home. Phillipe feels that his anxiety level will escalate and be disruptive to the process if he is required to complete the application in the office setting.

### **Lexie is a nurse with PTSD.**

She has applied for a nursing position and has been called for an interview. In her last interview that didn't go very well, she sat across the table in a very small room from four people, the nursing administrator, the personnel director, a nurse manager, and a physician. Lexie feels that if there were no more than two people in the room, she would be able to better represent herself, making her interview more successful. In order to limit the interviewers, Lexie may have to disclose and ask for an accommodation.

### **Jack is a school psychologist who is in the midst of interviewing with several school districts for a position of staff psychologist.**

He has had numerous interviews, but hasn't been able to land a position. He feels that because the interviews have all taken place in the late afternoon, he is not at his best. Jack feels that if he could have an interview slot in the early morning, he would be more energized, be able to better stay on task, and give the employer a better sense of who he really is. If the opportunity to schedule a morning interview isn't available, Jack may need to ask for one, which could lead to a disclosure.

### **Charmaine is an employee with epilepsy who needs to disclose her disability and ask for an accommodation of a flexible schedule while she adjusts to new medication.**

She is having difficulty waking and has been late three days in a row. She is wary of disclosing her medical condition, but doesn't want to get into disciplinary action. Charmaine decides to disclose and provides medical documentation. Since her work



doesn't depend on or affect others, the employer found no hardship to flex her daily schedule as long as she gets her time in between the core business hours of 8:00 am to 6:00 pm.

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