

## REQUIRING A HIGH SCHOOL DIPLOMA MAY VIOLATE THE ADA, THE EEOC SUGGESTS



Not all jobs require a college degree, but nearly every employer looks for applicants who have a high school diploma. However, in an “informal discussion letter” recently posted, the Equal Employment Opportunity Commission (EEOC) says that requiring a high school diploma may very well be discriminatory. The letter, which stresses its informality and that it “should not be considered an official opinion of the EEOC,” says that making a high school diploma a stipulation for prospective employees may discriminate against those with disabilities. If a person has a disability that prevents him/her from earning a diploma, and that fact eliminates the person’s chances of being hired for a possible job, then, according to the letter, it would be a violation of the Americans with Disabilities Act (ADA). “Under the ADA,” the letter states, “a qualification standard, test, or other selection criterion, such as a high school diploma requirement, that screens out an individual or a class of individuals on the basis of a disability must be job related for that position in question and consistent with business necessity. A qualification standard is job related and consistent with business necessity if it accurately measures the ability to perform the job’s essential functions (i.e. its fundamental duties). Even where a challenged qualification standard, test, or other selection criterion is job related and consistent with business necessity, if it screens out an individual on the basis of disability, an employer must also demonstrate that the standard or criterion cannot be met, and the job cannot be performed, with a reasonable accommodation.” In other words, if a job applicant had not graduated from high school due to a learning disability, one that satisfies how the ADA defines “disability,” an employer would not be able to reject that person as a candidate based on the lack of a diploma unless the diploma was essential for the functional aspects of the job. Even then, if the applicant proved that he/she could still perform the duties of the job, the employer could no longer show that the high school diploma was an adequate requirement for probable employees. The letter provides additional details: “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 prevents him from meeting it can perform the essential functions of the job, with or without a reasonable accommodation. It may do so, for example, by considering relevant work history and/or by allowing the applicant to demonstrate an ability to do the job’s essential functions during the application process. If the individual can perform the job’s essential functions, with or without a reasonable accommodation, despite the inability to meet the standard, the employer may not use the high school diploma requirement to exclude the applicant. However, the employer is not required to prefer the applicant with a learning disability over other applicants who are better qualified.” Though the informal letter is not an official statement or decision from the EEOC, it could be a precursor to later discussions and possible changes in the Commission’s guidelines. The letter can be found on the EEOC website.

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