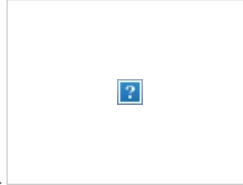


## EEOC ANSWERS QUESTIONS ON HIGH SCHOOL DIPLOMA REQUIREMENT



A few months ago, the U.S. Equal Employment Opportunity Commission (EEOC) posted an “[informal discussion letter](#)” stating that employers requiring a high school diploma for applicants may violate the Americans with Disabilities Act (ADA). Due to the responses to this letter, the EEOC recently tried to shed some light on the issue. The EEOC clarified that the intention was not to make it illegal for a company to require applicants to provide a high school diploma. The exception would be an applicant claiming that a disability prohibited him/her from earning a high school diploma, in which case the employer would have to accommodate the person and allow another way to prove qualification for the job. Employers can still require such a diploma and, according to the EEOC, will typically not be obliged to make exceptions. Some criticisms of the proposals suggested in the letter point out an ADA protection of those who do not graduate from high school, possibly discouraging students to complete high school. The protection that the ADA would provide, however, would be for those who cannot obtain a high school diploma due to a disability, not the ones who make a decision not to get a diploma. Employers will not be required to hire a person who has a disability. If the applicant demonstrates an ability to handle job tasks other than a high school diploma, the business can still select the person most qualified for the position. If an applicant with a disability is not the person who can best perform the job,



the business may still choose the most qualified person without fear of an ADA violation. The EEOC further stresses that the informal discussion letter is not “a new interpretation of the law.” Its intention was to apply current standards upheld by the ADA and EEOC regulations. Such letters are meant to aid in companies observing laws. Though the recent letter focused on a high school diploma requirement, it was attempting to explain taking the ADA into consideration when any requirement for a position may exclude a person with a disability. This is not the first time that requiring a high school diploma has been examined as a potential violation of employment discrimination law. In 1971, the Supreme Court ruled that the requirement was discriminatory because of its negative impact on African Americans who had lower high school diploma rates than whites in certain geographical areas and because it did not pertain to the job in question and was not a business necessity. The Supreme Court’s interpretation has since been cited by courts and the EEOC, as well as Congress, with the Civil Rights Act of 1991. In 2003, the EEOC sued on behalf of a nursing assistant fired from a residential care facility after the business began requiring a high school diploma for persons in such a position. She had been employed for several years and had been unable to earn a GED due to a disability. The employer refused when the woman’s GED instructors offered to find another way to assess the worker’s ability to handle job functions. The employer eventually settled the case with the EEOC.