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DISCRIMINATION BASED ON A DISABILITY WHILE INTERVIEWING

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In 2017, there were over 26,838 claims of discrimination made to the Equal Employment Opportunity Commission. Did you know if you fall under a protected class such as a disability that the employer you are working with has to make every effort to make a reasonable accommodation for you? This week, we will dive into an in-depth discussion about discrimination as it relates to interviewing.

To start, if you do have a disability, and perhaps need an accommodation for your job interview, the American with Disabilities Act does require an employer to provide you with a reasonable accommodation. You may ask well what is a reasonable accommodation. As an example, a reasonable accommodation could be one extra time to take an assessment, interviewing on a first floor in lieu of a second floor if you are not able to climb stairs and there is no elevator. A reasonable accommodation may also be required to enable you to perform a job, have access to your workplace and or enjoy the privileges and benefits that are made to employees without a disability. To be clear an employer cannot refuse to consider you because you may require a reasonable accommodation to perform and or compete for a position.

You may ask yourself, can an employer refuse to hire me if I request an accommodation because it may be too expensive? The answer to that question does not have to provide a specific accommodation if it could cause an 'undue hardship' requiring significant expense. As an example from the reference above. If the employer does not have an elevator in a two-story building, the employer could have your office or cubicle on the first floor instead of the second, if they were to extend an offer of employment. If the employer had to install an elevator that was in the hundreds of thousands of dollars, that could be extended an undue burden to the employer. If the requested accommodation causes an undue hardship, the employer still would be required to provide another accommodation that does not. The bottom line, an employer cannot refuse to provide an accommodation solely because it entails some costs whether that be financial or administrative.

What are some examples of "reasonable accommodations" that may be needed during the hiring process? Reasonable accommodation can take many forms. Ones that may be needed during the hiring process include (but are not limited to):

- Provide written materials in accessible formats, such as large print, Braille,
- Provide Readers or Sign Language Interpreters
- Ensure that recruitment, interviews, tests, and other components of the application process are held in accessible locations
- Provide or modify equipment or devices
- Adjust or modify the application policies and procedures

As an example, Suzy is blind and applies for a job as a customer service representative. Suzy could perform this job with assistive technology, such as a program that reads information on the screen. If the company wishes to have Suzy demonstrate his ability to use the computer, it must provide appropriate assistive technology as a reasonable accommodation.

Another example may be an employer requires job applicants to line up outside its facility to apply for a job, a process that could take several hours. Dave has multiple sclerosis and that makes him unable to tolerate exposure to temperatures in the 90's. Dave, therefore, requests that he be allowed to wait indoors where it is air-conditioned until the human resources department is ready to take his application. The employer would need to modify its hiring procedure to accommodate Dave.

A disability also includes Learning Disabilities. To accommodate a learning disability, one may need to be allowed extra time to take assessments, have things explained in a different way, may read the interview questions and write them out versus having someone speak them.

Another example may be for someone that is blind may not be able to read a written test, but can take the test if it is written in Braille, or if someone is able to read the interview questions to that person.

If you have a disability, and you are interviewing and in the official hiring process, do you know when you will need to inform your potential employer of any potential accommodation?

It is recommended that you let the employer and or human resources team know as soon as possible that you may need an accommodation so they may schedule and or plan accordingly. You may request an accommodation either in writing which is preferred as there is then proof and or orally. Keep in mind, your potential employer may need to discuss with you the accommodation request to ensure they absolutely understand the specific request. It is also important to know, that the employer may offer you a different accommodation than what you originally requested. An employer may also request documentation from a Licensed Counselor, Physician and or any medical provider as they will need to outline what accommodation may need to be made.

Discussing disability with your potential new employer may be confusing, and below are some guidelines. The American Disability Act does not allow for employers to ask questions that potentially reveal the existence of a disability before extending a job offer or also known as the pre-offer period. This prohibition covers written questionnaires and inquiries made during interviews, as well as medical examinations. However, such questions and medical examinations are permitted after extending a job offer but before the individual begins work as an example, the post-offer period.

Examples of prohibited questions during the interview period include:

- Do you have a heart condition?
- Do you have asthma or any other difficulties breathing that require an inhaler?
- Do you have any reason such as a disability which may interfere with your ability to perform the potential position?
- Do you have cancer or have you ever had cancer?
- Have you been in the hospital in the last month or went to the emergency room?
- Have you ever filed a lawsuit against your former employer for an injury or illness?
- Do you have a sensitivity to bright lights and certain smells?
- How many days were you sick last year in with your last employer?
- Have you ever filed for workers' compensation? Have you ever been injured on the job?
- Have you ever been treated for mental health problems like depression?
- What prescription drugs are you currently taking?
- Are you currently undergoing infertility treatments?

Your potential response to answer all of these questions is very simple. The question you are asking is not necessary nor does it demonstrate my ability to successfully complete and or fulfill the requirements of this position. This question or any question as it relates to my origin is not indicative of my job performance.

A great resource if you have more questions related to pregnancy discrimination is to visit www.eeoc.gov. The site has more information and other resources for you to review. When it comes to interviewing and job searching, research and understand your rights as a potential candidate and potential employee. If someone is asking you these questions now and treating you differently, how would they treat you if you were to be offered a full-time position?

Let me be clear on one final item, you must not rely on the information on this website as an alternative to legal advice from your attorney or other professional legal services provider. If you have any specific questions about any legal matter you should consult your attorney or other professional legal services, provider. You should never delay seeking legal advice, disregard legal advice, or commence or discontinue any legal action because of information on this website.