

Hearing Loss And The Americans With Disabilities Act

The Equal Employment Opportunity Commission's (EEOC) publication, "Questions and Answers about Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act (ADA)," addresses an issue that impacts many organizations. It has been estimated that at least 30 million people in the U.S. have some type of "hearing difficulty." While a significant number of those individuals are 65 and older and may be retired many of those with hearing losses are in the workforce. It's a common impairment. Remember also that ADA protections apply to most workplaces (i.e., those with 15 or more employees). Some states laws may provide additional protections. A few of the key points from the EEOC guidance are discussed below.

1. When is a hearing impairment considered substantially limiting such that it is a protected disability under the ADA?

Such determinations, as with much of the ADA, must be done on an individualized, case-by-case basis.

Example: An individual has a moderate impairment and difficulty hearing conversations. She frequently asks speakers to talk more slowly, more loudly, or to repeat themselves. She's protected.

2. Is someone with a hearing aid or cochlear implant protected?

Maybe. Such mitigating measures must be considered in determining whether a disability exists. However, someone who uses such measures may still be protected if the condition is not completely corrected and substantial limitations still exist.

Example: An employee uses a hearing aid and is able to hear loud conversations or those very close to him. Even with the hearing aid he's still substantially limited and is protected.

Note also that sign language and lip reading are not considered mitigating measures as they don't improve hearing.

3. Could someone be protected under the ADA if he had a serious, substantially limiting hearing loss that has been dramatically improved with hearing aids?

Yes, as he could be considered to have a "record of" a substantially limiting disability.

4. Could an individual have a protected disability even though an impairment is not substantially limiting but an employer thinks it might be?

Yes.

Example: A security guard applying for a position has a mild hearing loss and uses a hearing aid to correct it. A potential employer believes that this is a problem because the guard may not be able to respond appropriately to noises or communicate effectively in emergencies and declines to hire him. The employer has "regarded the applicant as substantially limited" so the applicant would be protected.

5. What hearing related questions may be asked of an applicant?

Prior to an employment offer, managers may not ask questions about an applicant's medical condition or require her to take a medical exam. Therefore questions such as whether the applicant has: ever taken a test that revealed a hearing loss, wears or has worn an assistive device, or has any loss due to an accident or injury, are prohibited. However, all applicants could be asked if they require reasonable accommodations (e.g., sign language interpreter, more test time) in a job application or on an application form. Additionally, if the hearing impairment is obvious and an employer believes an accommodation might be needed he can ask what type of accommodation would be required.

After an employment offer is made but before work is begun an employer can ask about an applicant's health and hearing and may require medical exams as long as it does so for all applicants in similar positions.

6. What questions can you ask an employee who you believe is having performance problems because of hearing loss?

Not many unless you have a reasonable belief, based on objective evidence, that the employee's medical condition has caused the problems or might pose a direct threat to himself or others.

Example: An employee who has a moderate hearing impairment was promoted from a clerical position to a sales assistant position which involved many more phone conversations. She has been an excellent employee in the past but is making many mistakes on customers' phone orders. Her manager could ask her if she is having trouble hearing the customers and if so what kind of accommodation she might need.

However, it's important to remember that performance problems must relate to the hearing impairment.

Example: An employee with a serious hearing impairment has received poor performance evaluations. She's been late a lot, made many mistakes in her written work, and has missed most project deadlines. It's not likely that her hearing is the cause of the performance. Rather this should be handled as any corrective action issue would be addressed.

Note also, that an employee maybe be asked for reasonable documentation if he requests an accommodation for a hearing disability and that disability is not obvious. Disability related questions and medical exams may also be used as part as a voluntary wellness program.

7. What kinds of accommodations might someone with a hearing disability require?

Accommodations could include: a sign language interpreter, a TTY, text phone or captioned phone, a headset, appropriate emergency notifications (e.g., blinking lights for fire alarms), using written memos and notes more frequently, being able to work away from noisy areas, assistive software, assistive listening devices, altering non-essential job functions, or reassignment to a vacant position. An employer does not need to provide the accommodation that an individual wants just one that is effective.

8. What types of accommodations aren't required?

An employer is not required to provide accommodations that create undue hardships (i.e., very difficult or expensive). Companies also do not need to remove an essential job function, lower production standards, or excuse conduct violations that are job-related and consistent with business necessity. Employers are not required to provide personal use items (e.g., hearing aids) that can be used on and off the job.

9. What else should you worry about?

It's easy to focus on a hearing impaired employee's need for an accommodation in his or her work and forget about other areas where the ADA will come into play. Organizations also need to ensure that reasonable accommodations apply to all the "benefits and privileges" of employment. This would include ensuring that the employee can effectively participate in meetings, training, social events, award ceremonies and have an opportunity to advance.

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