



## EEOC to Employers: Requiring H.S. Diploma May Violate Disabilities Act

In an "informal discussion letter" [posted](#) on the commission's website on December 2, EEOC Office of Legal Counsel staff members asserted that under ADA standards, a qualification 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 the position in question and consistent with business necessity." A qualification standard, the letter notes, is "job-related" or "consistent with business necessity" if it accurately measures the applicant's ability to perform the job's fundamental duties. Thus, the letter reads:



If an employer adopts a high school diploma requirement for a job, and that requirement "screens out" an individual who is unable to graduate because of a learning disability that meets the ADA's definition of "disability," the employer may not apply the standard unless it can demonstrate that the diploma requirement is job related and consistent with business necessity. The employer will not be able to make this showing, for example, if the functions in question can easily be performed by someone who does not have a diploma.

Moreover, the agency advises employers to carefully follow procedures when disqualifying job applicants, as to avoid the risk of violating ADA restrictions:

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.

The commission's recommendation, which does not enforce any particular law, sounds an alarm bell among employment-law professionals, who say the disclosure could place undue pressure on businesses. One such professional, Maria Greco Danaher, a lawyer with the law firm Ogletree Deakins, which represents and counsels businesses in employment-related matters, warned that even though the recommendation does not have the force of law or regulation, the EEOC letter should be "worthy of notice" for employers. In a recent blog post, she [noted](#),



Written by [Brian Koenig](#) on January 3, 2012

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While an employer is not required to "prefer" a learning disabled applicant over other applicants with more extensive qualifications, it is clear that the EEOC is informing employers that disabled individuals cannot be excluded from consideration for employment based upon artificial barriers in the form of inflexible qualification standards.

Mary Theresa Metzler, a lawyer with Ballard Spahr, went one a step further, [warning](#) that there may be an "unintended and unfortunate" repercussion from the EEOC's disclosure: "There will be less incentive for the general public to obtain a high school diploma if many employers eliminate that requirement for job applicants in their workplace."

The EEOC disputed the allegation: "No, we don't think the regulation would discourage people from obtaining high school diplomas," said Peggy Mastroianni, legal counsel for the agency. "People are aware that they need all the education they can get."

Metzler further deduced that the guidance could incite a flurry of EEOC-induced claims against employers, while encouraging applicants who fail to meet job requirements to take legal action against employers who disqualify them. "The EEOC may be inclined to test its view on the high school diploma requirement and its impact on the disabled in a court case," she advised. "While such a requirement is routinely included by many employers, a deeper analysis may demonstrate that a lesser educational requirement might suffice."

Likewise, Jim Stergios of the *Boston Globe* [indicated](#) in a blog post Monday that prohibiting such "milestone" job requirements could hatch an array of unfortunate repercussions, such as:

Perhaps the inclusion in the workplace of disabled individuals who may either sense a barrier or who are excluded because of the requirement; an unhelpful signal to those who are struggling in high school that the effort may not be necessary; and an entirely new industry for lawyers to expand into.



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