

PFA Tips

Disclosure - How and When to Disclose your Autism

My intention is to give some basic information concerning when and how to disclose a disability to a third party under the Americans with Disabilities Act (“ADA”). This is a brief overview of issues which you may encounter or about which you may have questions. This article is designed for informational purposes only as should not be construed to offer legal advice.

Usage of “disability” in this article

I must acknowledge that this community has claimed more affirming terms for “disability,” but the law has not caught up with changes in terminology. I will be using the words “disability” and “disabled,” because that is how the law treats this subject. While we seek to affirm children as being “specially-abled” or “differently-abled”, they must get used to the term “disability” when seeking their rights under the IDEA, ADA or Section 504. I apologize in advance for any offense this may cause.

About the ADA: What it covers

The ADA became law in 1990 and was designed to assist persons with disabilities by providing access to public facilities, employment and transportation services. Unlike the Individuals with Disabilities Education Act (“IDEA”), the responsibility lies on persons with disabilities to disclose their disabilities and ask for appropriate “reasonable accommodations.” The term “reasonable” is very important, because employers and other organizations are not required to grant every accommodation, but may choose a cheaper or less onerous accommodation. For example, while you may want an iPad as an accommodation, if your cell phone, a calculator, or a pad of paper will help you do your job adequately, you may not get the iPad.

When to Disclose

If you need a reasonable accommodation, you must disclose. Employers and businesses are forbidden by the ADA from asking about disabilities at an interview. So their lawyers

are advising them NOT to ask or assume. One of the definitions of having a disability for purposes of the ADA is being treated as if you have a disability, whether you do or not. This means that a person without a disability may sue under the ADA if she is treated like she has a disability (employer assumes and acts accordingly). So, do not assume that an employer or college knows that you have a disability and will automatically offer or provide reasonable accommodations.

Disclosing to Your Employer

The ADA is designed to provide for reasonable accommodations, which level the playing field at a job. If an employer meets the definition of a “covered employer” (15 or more employees or a state/federal entity), you still must be a “qualified individual”, which means that you must have the necessary skills and qualifications to do the job as advertised/described. If you would struggle to do a job even with an accommodation, then an employer can hire someone more qualified without a disability.

You can disclose a disability to an employer at any time in the hiring or post-hiring process. If you do need a reasonable accommodation, it is wise to disclose by the time you accept an offer of employment. While you may wait until after you start a job to disclose a disability and asking for a reasonable accommodation on the first day or later on is within your rights, this will not foster a positive relationship between you and your employer.



If you have a disability that is evident at an interview, you may want to address it at that time, as a way of showing that you are a qualified individual and discuss the types of simple accommodations that could help you do the job. In other words, that you are not going to be a burden, but rather an asset. Because an employer cannot ask about your disability, that employer may just assume you are not qualified. Many employers have a history or strong company policies for assisting people with disabilities. You may want to research employers for their track record concerning disability friendliness.

While an employer cannot discriminate against or fire you if you can do the job with the reasonable accommodation, an employer may be able to fire you for not doing your job correctly before you disclosed your disability and asked for the reasonable accommodation. If you have not disclosed your disability, you are held to the same standard as any employee without a disability. Therefore, if you have not disclosed your disability and make a mistake that would cause the employer to fire any

continued on page 2

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worker, regardless of disability status, you cannot seek protection by the ADA from being fired for that mistake.

Remember that the ADA's protections do not extend to non-government businesses that have less than 15 employees. This means that many very small businesses are not required to follow the dictates of the ADA, including providing reasonable accommodations.

Disclosing to Your College/ University

If you need accommodations at a college or university, you need to ask for them, which requires disclosing your disability. The sooner this is set in motion (right after acceptance), the better, since each student is different and there are really no "cookie-cutter" accommodations. This means opening a dialog with the appropriate office on campus, usually called Disability Support Services ("DSS").

Typically, DSS will need documentation of your disability, either psychiatric or psychoeducational. Be prepared to furnish documentation and set up a meeting with a DSS staff person to discuss accommodations. Again, the sooner this is done prior to the beginning of a semester, the sooner the necessary accommodations can be worked out and put in place. Waiting until the end of semester, when your grades are bad, will not help anyone (and schools are not required to make grade adjustments for disabilities that they did not know about). Just like with employers, there are limits to accommodations, either as unduly burdensome or which may go back to what constitutes a "qualified" person. For example, schools do not have to waive required classes for a major or degree.

Mandatory Disclosure

State and/or federal law may require disclosure of a disability, when public health or safety is an issue. One example is applying for a driver's license with the Maryland Motor Vehicle Administration ("MVA"). Maryland law requires a person to disclose a disability and any medication treating that disability which may affect the ability to drive when submitting an application for a driver's license. COMAR § 11.17.03.02-1(A)(20) specifically requires an applicant for a driver's license to disclose if he/she has been diagnosed with autism (part of a list of 20 different medical conditions). While you may be able to duck under the radar by not saying anything and hoping no one notices and asks, the subsequent liability in an accident may also result in other consequences with the state, as well as providing a potential negligence claim by the other driver.

How to Disclose a Disability

While you may choose to disclose your specific disability, all you simply need to say is that you have a medical condition which requires a reasonable accommodation. I suggest that you have possible reasonable accommodations ready to suggest, rather than leaving the responsibility to an employer or business to figure out what they need to do for you. You are the most familiar with your disability and limitations, which means that you are in the best position to suggest possible reasonable accommodations. According to the Job Accommodation Network (askjan.org), 50% of accommodations cost less than \$500, 19% cost nothing at all, and more than 80% cost less than \$1000.

Once you have disclosed, an employer or business has the right to ask for proof of your disability. You should be prepared

with documentation from a doctor or other medical professional, so that you can respond immediately, if you are asked. This also shows that you are prepared and organized, which are skills important to employers!

Limits to Reasonable Accommodations

There are limitations to reasonable accommodations that an employer or business provides. An accommodation cannot be "unduly burdensome". This means that an employer cannot be forced to provide an accommodation that drastically upsets the workplace or is very expensive. What is considered unduly burdensome can be different for each employer.

Using Disclosure as an Opportunity to Educate

Disclosing your disability may be a fearful task, since you do not know how others may respond. Think of your disclosure as a means to educate employers and businesses about your disability. Pathfinders for Autism has always stressed educating the public about accommodations for people with autism.

It is possible that an employer, business or other organization may be operating under false assumptions, fear, and bad information. You have the ability to "demystify" autism and make them more comfortable being with people on the autism spectrum. You may want to have some basic information with you that explains what autism is and what it is not. You may pave the way for the next person with autism (or another disability) who walks through the door!

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Additional Resources

Disability Rights Maryland <https://disabilityrightsmd.org/>

The ADA website <https://www.ada.gov/>

The Maryland Department of Disabilities <http://mdod.maryland.gov/Pages/Home.aspx>