

# JAN

Job Accommodation Network

Practical Solutions • Workplace Success

## Effective Accommodation Practices (EAP) Series

### Pre-Offer, Disability-Related Questions: Dos and Don'ts

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## JAN'S EAP SERIES

### PRE-OFFER, DISABILITY-RELATED QUESTIONS: DOS AND DON'TS

Title I of the Americans with Disabilities Act (ADA) limits an employer's ability to ask disability-related questions or to require medical examinations at three stages of employment: pre-job offer, post-job offer, and during employment. This publication provides information regarding the limitations on disability-related questions at the pre-offer stage. This stage includes job applications and job interviews.

#### **What is a disability-related question?**

A disability-related question is a question that is likely to elicit information about a disability. On the other hand, if there are many possible answers to a question and only some of those answers would contain disability-related information, that question is not disability-related.

#### **What questions can employers ask at the pre-offer stage?**

In general, employers cannot ask disability-related questions at the pre-offer stage. This means that employers cannot directly ask whether an applicant has a particular disability. It also means that employers cannot ask questions that are closely related to disability.

#### **Why does the ADA prohibit pre-offer disability-related questions?**

In the past, some employment applications and interviewers requested information about an applicant's physical and/or mental condition. This information was often used to exclude applicants with disabilities before their ability to perform the job was even evaluated. As a result, Congress established a process within the ADA to isolate an employer's consideration of an applicant's non-medical qualifications from any consideration of the applicant's medical condition.

For additional information, visit Pre-employment Disability-Related Inquiries and Medical Exams (EEOC guidance) at <http://www.eeoc.gov/policy/docs/preemp.html>.

The following are some examples of permissible and impermissible pre-job offer questions under the ADA:

<b>Job Performance</b>	
<b>DO</b>	<b>DON'T</b>
-Are you able to perform the essential function of the job you are seeking, with or without accommodations?	-Do you have any physical or mental impairment that would keep you from performing the job you seek? -What physical or mental impairments do you have that would affect your job performance?
<b>Attendance Requirements</b>	
<b>DO</b>	<b>DON'T</b>
-Can you meet our attendance requirements? -How many days were you absent from your last job? -How many Mondays or Fridays were you absent last year on leave other than approved vacation leave?	-How many days were you sick during your last job?
<b>History of Injury</b>	
<b>DO</b>	<b>DON'T</b>
-How did you break your leg?	-Do you break bones easily? -Do you expect the leg to heal normally?
<b>Drug Use</b>	
<b>DO</b>	<b>DON'T</b>
-Are you currently using illegal drugs?	-What medications are you currently taking?
-Have you ever used illegal drugs?	-How often did you use illegal drugs in the past? -Have you ever been addicted to drugs? -Have you ever been treated for drug addiction? -Have you ever been treated for drug abuse?
<b>Alcohol Use</b>	
<b>DO</b>	<b>DON'T</b>
-Do you drink alcohol? -Have you ever been arrested for driving under the influence of alcohol?	-How much alcohol do you drink? -Have you ever participated in an alcohol rehabilitation program?

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