



## EEOC ISSUES GUIDANCE REGARDING JOB APPLICANTS WITH DISABILITIES

(October 20, 2003)

On October 16, 2003 the U.S. Equal Employment Opportunity Commission (EEOC) released a guidance memorandum on how the Americans with Disabilities Act (ADA) protects job applicants with disabilities.

The guidance covers employers' responsibilities under the ADA in the entire hiring process. The new guidance takes the often-confusing ADA provisions and regulations and presents them in an easy-to-understand question and answer format with concrete illustrations of several key issues such as:

- **The employer's duty to make "reasonable accommodations" in the interview and application process.** A disabled applicant has the right to changes in the application or interview process if such changes are reasonable under the circumstances and are necessary to allow the applicant to apply or interview for the position.
- **The employer's, and not the applicant's, right to decide which reasonable accommodation to use.** As with accommodations during employment, the employer, and not the applicant, may select from the available reasonable accommodations. As an example, the EEOC says that if a blind applicant asks that a written exam be read to him, the employer may instead offer an audio taped version of the test as a reasonable accommodation.
- **What can and cannot be asked in the application process.** Employers generally *cannot* ask applicants generally whether they would need reasonable accommodation to perform the job. However, if the employer knows the applicant has a disability because it is obvious or because the applicant says so, then the employer may ask whether the applicant would need a reasonable accommodation to perform a specific job task. The employer may also ask the applicant to describe or demonstrate how he or she would perform the job with or without reasonable accommodation.
- **When a disability makes the person unqualified for the position.** An employer can refuse to hire a disabled applicant only if the disability poses a *significant* risk of harm to that person or to others, and even then must seek appropriate information to assess the level of risk and nature of the harm. An employer may not refuse to hire based on some increased

risk of harm, speculation about future risk, or generalizations about the disability.

These are just some of the examples offered and explained in the new EEOC guidance memorandum. The full text, entitled *Job Applicants and the Americans with Disabilities Act*, can be found at <http://www.eeoc.gov/facts/jobapplicant.html>. We will be discussing this new guidance, and other new developments at our upcoming [seminar](#).

This E-Update was authored by [Matthew Schenck](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney (619.237.5200).

## Workplace Law Update 2004

### Paul, Plevin, Sullivan & Connaughton LLP Annual Employment Law Update

Come join us for an interactive workshop that will focus on how new laws, initiatives and court decisions will impact your company's day-to-day employment practices and what you need to do to get ready for 2004.

- WHEN:** November 6, 2003, 8:00 a.m. - 12:00 p.m.
- WHERE:** Hyatt Regency La Jolla  
3777 La Jolla Village Drive  
San Diego, CA 92122  
Registration and Continental Breakfast: 8:00-8:30 a.m.  
Seminar: 8:30-12:00 p.m.
- REGISTER:** Either register [online](#) or by phone ((619) 237-5200). Advance registration is strongly suggested because seating is limited. Click [here](#) to download a copy of our flyer.
- COST:** \$135.00 includes breakfast, seminar materials and parking and can be paid in advance or at the door.

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