

Questions and Answers About Blindness and Vision Impairments in the Workplace and the Americans with Disabilities Act

INTRODUCTION

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination on the basis of disability. Title I of the ADA makes it unlawful for any employer to discriminate against a qualified applicant or employee because of a disability in any aspect of employment. The ADA covers employers with 15 or more employees, including state and local governments. Section 501 of the Rehabilitation Act provides the same protections for federal government employees and applicants. In addition, most states have their own laws prohibiting employment discrimination on the basis of disability. Some of these state laws may apply to smaller employers and provide protections in addition to those available under the ADA.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA. This is part of a series of question-and-answer documents addressing particular disabilities in the workplace.⁽¹⁾ It explains how the ADA might apply to job applicants and employees with vision impairments. In particular, this document discusses:

- when a vision impairment is a disability under the ADA;
- under what circumstances an employer may ask an applicant or employee questions about a vision impairment;
- what types of reasonable accommodations employees with visual disabilities may need; and,
- how an employer can prevent harassment of employees with visual disabilities or any other disability.

GENERAL INFORMATION ABOUT VISION IMPAIRMENTS

Estimates vary as to the number of Americans who are blind and visually impaired. According to one estimate, approximately 10 million people in the United States are blind or visually impaired.⁽²⁾ Other estimates indicate that one million adults older than the age of 40 are blind, and 2.4 million are visually impaired.⁽³⁾ Over the next 30 years, as the baby-boomer generation ages, the number of adults with vision impairments is expected to double.⁽⁴⁾ Recent figures also indicate that only 46% of working-age adults with vision impairments and 32% of legally blind working-age adults are employed.⁽⁵⁾

The Centers for Disease Control and Prevention (CDC) define "vision impairment" to mean that a person's eyesight cannot be corrected to a "normal level."⁽⁶⁾ Vision impairment may result in a loss of visual acuity, where an individual does not see objects as clearly as the average person, and/or in a loss of visual field, meaning that an individual cannot see as wide an area as the average person without moving the eyes or turning the head. There are varying degrees of vision impairments, and the terms used to describe them are not always consistent. The CDC and the World Health Organization define low vision as a visual acuity between 20/70 and 20/400 with the best possible correction, or a visual field of 20 degrees or less.⁽⁷⁾ Blindness is described as a visual acuity worse than 20/400 with the best possible correction, or a visual field of 10 degrees or less. In the United States, the term "legally blind," means a visual acuity of 20/200 or worse with the best possible correction, or a visual field of 20 degrees or less. Although there are varying degrees of vision impairments, the visual problems an individual faces cannot be described simply by the numbers; some people can see better than others with the same visual acuity.⁽⁸⁾

There are many possible causes for vision impairment, including damage to the eye and the failure of the brain to interpret messages from the eyes correctly. The most common causes of vision impairment in American adults are: diabetic retinopathy,⁽⁹⁾ age-related macular degeneration,⁽¹⁰⁾ cataracts,⁽¹¹⁾ and glaucoma.⁽¹²⁾ Additionally, many individuals have monocular vision - perfect or nearly perfect vision in one

eye, but little or no vision in the other. Vision impairment can occur at any time in life, but as a person's age increases, so does the likelihood that he or she will have some form of vision impairment. [\(13\)](#)

Persons with vision impairments successfully perform a wide range of jobs and can be dependable workers. Yet, many employers still automatically exclude them from certain positions based on generalizations about vision impairments and false assumptions that it would be too expensive, or perhaps even too dangerous, to employ them. Thus, employers may erroneously assume that any accommodation that would allow a person with a vision impairment to do her job would be too costly. Employers also may have liability concerns related to the fear of accidents and/or injuries.

1. When is a vision impairment a disability under the ADA?

A vision impairment is a disability if: (1) it substantially limits a major life activity; (2) it was substantially limiting in the past (i.e., if an individual has a "record of" a substantially limiting impairment); or (3) an employer "regards" or treats an individual as having a substantially limiting vision impairment. Major life activities are those basic activities, including seeing, that an average person can perform with little or no difficulty.

Whether a vision impairment actually substantially limits a major life activity depends on how significant the visual loss is. While a person who has no sight at all is obviously substantially limited in seeing, the assessment of most vision impairments requires a more individualized approach. Although mitigating measures that the individual uses, such as corrective lenses and compensatory strategies that the body has developed, must be taken into account, they do not automatically exclude someone from coverage under the first part of the ADA's definition of "disability."

Example 1: An individual with a vision impairment wears eyeglasses, but they improve his poor vision only slightly. Even with eyeglasses, he cannot drive and needs strong magnification to read standard-sized print. This individual is substantially limited in seeing.

Mitigating measures do not include devices, reasonable accommodations, or compensatory strategies that simply compensate for the fact that an individual is substantially limited in seeing. For example, a totally blind person still meets the ADA's first definition of "disability" even if she can move about freely with the use of a white cane or service animal, can work with assistive technology or a reader, and can use her hearing to do what others can do using sight (e.g., cross a street).

Individuals with monocular vision also may meet the ADA's first definition of disability. [\(14\)](#)

Example 2: An individual lost all of his sight in one eye as the result of an accident several years ago. He has learned some compensatory strategies, such as turning his head slightly to adjust for his loss of visual field and using shadows, highlights, and other visual cues to judge longer distances. However, he has loss of both peripheral vision and stereopsis (the ability to combine two retinal images into one that people with vision in both eyes accomplish easily). The loss of peripheral vision means that he is limited in seeing people or objects on his blind side and must position himself accordingly in meetings, theaters, or while walking down the street. Because he cannot see people approaching or standing on that side, he must rely on his hearing to detect that someone is near him and then must turn his head to see the person. The loss of stereopsis means that he has difficulty judging distances within a six-foot range, and thus cannot use his vision to guide him in reaching for objects or putting objects down on a table or other surface. Because of his lack of stereopsis, he must rely on memory or the sense of touch rather than vision to guide him in picking up and placing objects such as tools, pots and pans, books and pens. Similarly, he must rely on memory and tactile clues to negotiate stairs and stepping on and off curbs. All such tasks are more difficult for him because of his loss of vision and take him longer to perform than they take the average person. This individual still is substantially limited in seeing, despite the use of compensatory strategies such as using hearing, touch, or memory to substitute for his lack of vision in one eye.

Some individuals with monocular vision have learned to compensate visually (e.g., by turning their head or using "monocular cues," such as shadows and highlights, to judge distances) effectively enough that they no longer are substantially limited. These individuals (as well as many others), however, still may meet one of the ADA's other definitions of disability.

A person who has a record of an impairment that substantially limited a major life activity in the past or who is regarded by his employer as having such an impairment also has a disability and, therefore, is covered by the ADA. Although the second part of the definition -- having a record of a substantially limiting impairment

-- does not apply frequently to individuals with vision impairments, examples of when it might apply would include situations in which someone's vision has been corrected surgically, or when an individual with monocular vision that was once substantially limiting has developed compensatory strategies over time.

Being "regarded as" substantially limited in seeing is a more common basis for coverage.

Example 3: As part of the hiring process for a manufacturing position, an employer requires a physical exam, including a vision test. An applicant with monocular vision fails the vision test, which requires a minimum of 20/40 vision in the better eye with correction, and no less than 20/100 vision in the weaker eye. The physician who conducted the physical examination recommends to the human resources department that the applicant not be hired, indicating in a notation on the application: "Failed vision test; essentially blind in one eye and lacks depth perception; recommend against hiring for any manufacturing work." In accordance with its typical practice of deferring to the recommendation of the employer's doctor, the human resources department withdraws its offer of employment to the applicant, never assessing whether she can in fact perform the essential functions of the job. If the doctor's statement that the applicant should not be hired for "any manufacturing work" meant that the applicant was unsuitable for manufacturing work generally and not just for a particular job in the employer's plant, the employer will have regarded the applicant as substantially limited in working in a class of jobs.

OBTAINING AND USING MEDICAL INFORMATION

Job Applicants

Before an Offer of Employment is Made

The ADA limits the medical information that an employer may seek from a job applicant. An employer may not require a job applicant to submit to a medical examination or ask about an applicant's disability before making a job offer. This means, for example, that an employer may not:

- ask about any medical procedures an applicant has had related to her vision (e.g., whether the applicant ever has had eye surgery);
- inquire as to whether the applicant uses any prescription medications, including medications for conditions related to the eye; and
- ask whether an applicant has any condition that may have caused a vision impairment (e.g., whether the applicant has diabetes if the employer suspects that the applicant has retinopathy).

An employer, however, may ask all applicants if they will need a reasonable accommodation for the application process. For example, an employer may include on an application contact information for the person who will handle accommodation requests. Additionally, an employer may ask all applicants whether they can meet job-related requirements and may conduct non-medical tests that require the use of vision and that measure the applicant's ability to perform job-related functions.

Example 4: An employer who runs a warehouse may ask all applicants if they can read the labels on products so that they can be stocked in the appropriate places, or may ask each applicant to demonstrate that he or she can perform this function.

2. Are there ever situations in which an employer may ask about an applicant's visual disability before making a job offer?

Yes. If a disability is obvious (or if an applicant discloses that she has a visual disability) and an employer reasonably believes the applicant will require a reasonable accommodation to perform the job, the employer may ask whether the applicant will need a reasonable accommodation and, if so, what type.

Example 5: A woman appears with her guide dog for an interview for a job as a school principal. The position requires significant reading. Because her vision impairment is obvious, the employer may ask her if an accommodation will be needed to perform functions that involve reading and, if so, what type.

An employer also may ask a person with a non-obvious vision impairment who requests a reasonable accommodation for the application process to provide documentation demonstrating that the condition is a disability and that the accommodation is necessary. (For more information about an employer's right to

request reasonable documentation, see Question 12, below.)

After an Offer of Employment is Made

3. May an employer ask about an applicant's vision impairments or conduct medical examinations to test vision after making a job offer?

Yes. Once the employer has made a job offer, it may ask questions about the applicant's health (including questions about whether the applicant has a visual disability) and may ask for, or require, a medical examination, as long as all applicants for the same type of position are treated the same (i.e., all applicants are asked the same questions and are subject to the same examination). The job offer must be "real," meaning that the employer has obtained and evaluated all non-medical information that was reasonably available before making the offer.

If an employer learns from a post-offer inquiry or medical examination that an applicant has a vision impairment, it may ask medically related follow-up questions or may conduct medically-related examinations. An employer may not withdraw an offer from a person whose vision impairment is a disability, however, unless it can demonstrate that the applicant is unable to perform the essential functions of the position, with or without a reasonable accommodation, or that the applicant will pose a direct threat to safety. (For more information on "direct threat," see Question 15, below.)

Example 6: A county sheriff with monocular vision applied for a position with the state police as a criminal investigator. He was highly qualified for the job and was conditionally offered a position pending qualification under the state police department's medical criteria for criminal investigators. The doctor who conducted the medical examination of the applicant determined that because of his monocular vision he did not meet the state's standards, and the conditional offer of employment was withdrawn. The state police department did not violate the ADA by requiring the medical exam. However, if the applicant's monocular vision is a disability, the department must be prepared to show that the applicant was unable to do the essential functions of the job, with or without a reasonable accommodation, or that he would have posed a direct threat if he had been hired.

Employees

4. When may an employer ask an employee questions or require a medical examination related to the employee's vision impairment?

The ADA strictly limits the circumstances under which an employer may ask questions about an employee's medical condition or require the employee to undergo a medical examination. Generally, an employer may ask an employee for medical information if the employer has reason to believe that: (1) there is a medical explanation for some change in the employee's job performance; or (2) the employee's medical condition may pose a direct threat to safety. (For other situations in which an employer may ask about an employee's vision impairments, see Question 5, below).

Example 7: A data entry clerk has recently been making numerous errors when entering information into the employer's computer system. For example, he seems to be confusing the numbers 1, 7, and 9. The clerk's supervisor also has begun to see the clerk rubbing his eyes frequently and looking more closely at both his computer screen and printed materials. The employer has a reasonable belief based on objective evidence that the clerk's performance problems are related to a medical condition (i.e., an eye problem) and, therefore, may ask for medical information.

Poor job performance, however, often is unrelated to a medical condition and, therefore, should generally be handled in accordance with an employer's existing policies concerning performance.

Example 8: A receptionist, with a known degenerative eye condition, has not been answering all the calls that come in to the office in her usual friendly manner. The employer may counsel the receptionist about how she answers the phone, but may not ask her questions about her eye condition unless there is evidence that this may be the reason for her changed demeanor.

5. Are there other instances when an employer may ask an employee about a vision impairment?

Yes. An employer may ask an employee with a non-obvious vision impairment who has requested a reasonable accommodation for documentation demonstrating that he has a disability and needs the accommodation. (See Question 12, below).

In addition, an employer may ask an employee with a vision impairment to justify the use of sick leave by providing a doctor's note or other explanation, as long as it requires all employees to do so.

Example 9: An employer's leave policy requires all employees who are absent because of a medical appointment to submit a note from their doctor verifying the appointment. An employee who uses sick leave for an ophthalmological examination must submit a note to this effect from her doctor in accordance with the policy. However, the employer may not require that the note include information about the results of the examination, or a statement about the employee's diagnosis or treatment (if any).

Finally, medical information about a vision impairment may be collected and an eye examination may be conducted as part of an employer's voluntary wellness program. For example, an employer may offer a voluntary annual screening for glaucoma so that employees can promptly obtain treatment where necessary. A wellness program is voluntary if an employee is neither required to participate, nor penalized for non-participation. [\(15\)](#)

Keeping Medical Information Confidential

An employer must keep all medical information separate from general personnel files and treat it as a separate, confidential medical record. Issues regarding confidentiality more frequently arise in regard to non-obvious conditions; however, even if the impairment is obvious, information about it must be kept confidential.

Example 10: Most of the paralegals in a large firm have outdated computer monitors. A paralegal who is on medication for a disability that causes vision problems requests, and is given, a new monitor with a special program that allows her to see the screen better. If the other paralegals ask why she has a new screen and they do not, the employer may not divulge any information about her impairment, including the fact that the monitor is a reasonable accommodation.

6. Are there any exceptions to the ADA's confidentiality requirements that might justify disclosing information about an employee's vision impairment?

Yes. Information that is otherwise confidential under the ADA may be disclosed:

- to supervisors and managers who need the information in order to provide a reasonable accommodation or to meet the employee's work restrictions;
- to first aid and safety personnel if the employee would need emergency treatment or other assistance in the event of an emergency (e.g., in case of a fire), because of his vision impairment;
- to officials who are investigating compliance with the ADA and similar state or local laws;
- to state workers' compensation offices or workers' compensation insurance carriers in accordance with state workers' compensation laws; or
- for insurance purposes.

ACCOMMODATING INDIVIDUALS WITH VISUAL DISABILITIES

An accommodation is any modification or adjustment to a job or work environment that will permit a qualified individual with a disability to apply for a job, to perform a job's essential functions (i.e., fundamental duties), or to enjoy equal benefits and privileges of employment. Under the ADA, employers must provide reasonable accommodations to the known physical or mental limitations of persons with disabilities. Generally, an individual with a disability must request a reasonable accommodation before an employer will have an obligation to provide one. Once an accommodation has been requested, an employer should engage in an interactive process to determine whether an individual has a disability that requires an accommodation and, if so, must make a reasonable effort to determine the appropriate accommodation. Accommodations vary depending on the needs of the person with the disability.

7. What types of reasonable accommodations may people with visual disabilities need?

People with visual disabilities may need one or more of the following accommodations:

- Assistive technology, including:

- A closed circuit television system (CCTV) for reading printed materials
 - An external computer screen magnifier
 - Cassette or digital recorders
 - Software that will read information on the computer screen
 - An optical scanner that can create documents in electronic form from printed ones
- Written materials in an accessible format, such as in large print, Braille, audio cassette, or computer disk
- Modification of employer policies to allow use of a guide dog in the workplace
- Modification of an employment test
- A reader
- A driver or payment for the cost of transportation to enable performance of essential functions
- An accessible website
- Modified training or training in the use of assistive technology

Example 11: An employer has decided to upgrade its computer programs. In order to teach its staff about the new systems, it has set up five "hands-on" training classes in which groups of employees will be shown how to execute various functions using the new software and then will have an opportunity to complete a series of exercises using those functions with guidance from the instructor. Most of the demonstrations and exercises will involve use of a computer mouse to execute functions. A blind employee who uses a screen reading program is unable to use a computer mouse effectively and will require individualized instruction that will enable her to learn how to perform necessary functions using keyboard commands.

- A modified work schedule

Example 12: A blind employee does not have easy access to public transportation and must rely on paratransit service to get to work most mornings. He asks that, on days when his ride to work arrives after the employer's usual 8:30 a.m. start time, he be allowed to work later in the evening to make up the time rather than being required to take annual leave or face discipline for tardiness. The employer must grant this accommodation as long as it would not result in undue hardship.

- Time off, in the form of accrued paid leave or unpaid leave if paid leave has been exhausted or is unavailable

Example 13: An employer provides a total of three weeks of leave (sick and annual leave) per employee each year. An employee with a degenerative eye condition has, over time, lost most of her vision and has decided to start using a guide dog. Training the guide dog will require her to attend a six-week residential program. Although the six weeks of leave that are needed exceed the amount of leave provided to each employee, the employer must provide additional unpaid leave as a reasonable accommodation, absent undue hardship. The same rule would apply if the employee needs time off for treatment related to a visual disability.

- Reassignment to a vacant position

Example 14: A city police officer is shot and blinded during an attempt to stop a robbery. He no longer is able to perform his job as a police officer, but he is qualified for a vacant 9-1-1 emergency operator position. The job pays less than a police officer, but it is the closest vacant position in terms of pay, status, and benefits for which the officer is qualified. The city must reassign the officer to the 9-1-1 emergency operator position as a reasonable accommodation.

Although these represent some examples of the types of accommodations commonly requested by applicants or employees with visual disabilities, other employees may need different changes or adjustments. ⁽¹⁶⁾ Further, although a particular accommodation may work for one person, an employer should not assume that the same accommodation will work for another person with the same apparent visual disability.

8. What kinds of reasonable accommodations are related to the "benefits and privileges" of

employment?

Reasonable accommodations related to the "benefits and privileges" of employment include accommodations that are necessary to provide individuals with disabilities access to facilities or portions of facilities to which all employees are granted access (e.g., employee break rooms and cafeterias), access to information communicated in the workplace, and the opportunity to participate in employer-sponsored training and social events.

Example 15: An employer offers employees opportunities to accept six-month assignments to jobs outside of their work group or department. The temporary assignments are considered valuable training opportunities that can lead to employee advancement. An employee with a visual disability, who has worked successfully in her current position with only slight modifications to her computer equipment, requests a temporary assignment to a position that will involve considerably more reading and asks that a part-time reader be provided. The employer may not deny the temporary assignment because of the need to make a reasonable accommodation, but must provide a reader or some other effective accommodation if this would not result in undue hardship.

Example 16: An employer typically posts job openings on bulletin boards. An employee with a visual disability requests that electronic notices of all job postings be emailed to him so that he will have timely notice of the postings. Unless this would result in undue hardship, the employer must provide this accommodation.

Example 17: An employer holds a retirement party for a long-time employee. The event includes a dinner and various presentations by the employee's co-workers and company management. A formal program is printed for the event, and an employee with a visual disability requests a copy of the program in large print. The employer must provide this accommodation, absent undue hardship.

9. How does a person with a vision impairment request an accommodation?

The request for a reasonable accommodation must be communicated to the employer. However, no magic words (e.g., "reasonable accommodation" or "ADA") are needed. The request may be made in plain English, orally, or in writing, and it may come from the applicant/employee or from a family member, friend, or other representative.

Example 18: A blind man calls regarding a job opening he heard advertised on the radio. The employer explains that part of the application process is a written exam and part is an in-person interview. The man simply says that he will need some help with the exam because of his impairment. This is a request for a reasonable accommodation.

Example 19: While an employee has been out on extended medical leave for her diabetes, her visual disability has gradually gotten worse. When she returns to work, she presents a note from her doctor stating that she will need "some assistance" in order to perform the essential functions of the job. This is a request for a reasonable accommodation.

10. Does an employer have to grant every request for a reasonable accommodation?

No. An employer does not have to provide a reasonable accommodation if doing so would be an undue hardship. Undue hardship means that providing the reasonable accommodation would result in significant difficulty or expense.

In determining whether the provision of a particular accommodation would result in undue hardship, an employer should consider not only the cost of the accommodation in relationship to its own resources, but also other resources that may be available in the form of tax incentives or funding from third parties. For example, there are federal tax credits and deductions to help offset the cost of accommodations, [\(17\)](#) and some states may offer similar incentives. Additionally, applicants or employees who are clients of a state's vocational rehabilitation system may be eligible for funding to pay for workplace accommodations. If a requested accommodation is too difficult or expensive, an employer must determine whether there is another easier or less costly accommodation that would meet the employee's needs.

An employer does not have to remove an essential job function (i.e., a fundamental job duty), lower production standards, excuse violations of conduct rules that are job-related and consistent with business necessity, or provide employees with personal use items, such as eyeglasses or other devices that are used both on and off the job.

11. Does an employer have to provide the specific reasonable accommodation the person wants?

No. The employer may choose among different reasonable accommodations as long as the chosen accommodation is effective. Therefore, as part of the interactive process, the employer may offer more than one suggestion for a reasonable accommodation. Where two possible reasonable accommodations exist, and one costs more or is more burdensome than the other, the employer may choose the less expensive or less burdensome option as long as it is effective. Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide. The preference of the person with the disability should be given primary consideration.

Example 20: An editor for a publishing company has a visual disability and needs magnification to read text. She asks the company to hire a full-time reader for her. The employer is able to purchase a computer program that will magnify text on the screen and speak the words to her. If this is cheaper and easier for the employer to do, and allows the editor to do her work just as effectively, then it may be provided as a reasonable accommodation.

Example 21: A blind job applicant requests a reader for an employment test. The employer requires the applicant to take the test in Braille instead, although he has told the employer he is not proficient in Braille. In this situation, because providing the test in Braille is not an effective accommodation, the employer must provide a reader unless to do so would be an undue hardship.

12. May an employer ask for documentation when a person requests a reasonable accommodation because of a vision impairment?

Sometimes. When a person's vision impairment is not obvious, the employer may ask the person to provide reasonable documentation about how the condition limits major life activities (i.e., whether the person has a disability) and why a reasonable accommodation is needed. The request for documentation must be reasonable. An employer may not ask for information about conditions unrelated to the one for which accommodation has been requested or more information than is necessary for the employer to determine whether an accommodation is needed.

Example 22: A customer service representative with a non-obvious vision impairment requests a larger computer monitor. The employee's ophthalmologist provides a letter describing the employee's impairment and its limitations. The letter explains that the employee cannot drive and can read standard-sized print but only very slowly, for short periods of time, and with considerable effort. The condition is not expected to deteriorate further, but no improvement is expected either. The ophthalmologist concludes that providing some kind of magnification device for the computer or a larger monitor would be helpful. The employee has provided sufficient documentation that his eye condition is an ADA disability and that he needs a reasonable accommodation. The employer may not request further documentation, such as the results of all the tests conducted to diagnose the condition.

13. May an employer be required to provide more than one reasonable accommodation for the same person with a disability?

Yes. Certain individuals with visual disabilities may require only one reasonable accommodation, while others may need more than one. Additionally, because the obligation to provide reasonable accommodation is ongoing, an employer may have to provide a different reasonable accommodation when an employee's needs related to a visual disability or the nature of a job change.

Example 23: An employee who is blind has assistive technology for his computer that works with the employer's network and enables him to send and receive email messages easily. When the employer upgrades computer equipment for all employees, it must provide new or updated assistive technology so that the blind employee will be integrated into the new networks, absent undue hardship.

Example 24: An employee with retinitis pigmentosa, a degenerative eye condition that results, over time, in total or near total blindness, has been able to read printed materials related to her job with a magnifier and some adjustments to the lighting in her work area. When she is no longer able to do this, she asks for a reader. Absent undue hardship, the employer must provide a reader or some other effective accommodation.

14. Is an employer required to provide a reasonable accommodation for a vision impairment that alone does not rise to the level of a disability but results from an underlying disability?

Yes. An employer must accommodate a vision impairment that results from another disability even if the

vision impairment is not itself substantially limiting.

Example 25: An applicant with insulin-dependent diabetes has developed a vision impairment. He wants to apply for a job as a hotel concierge. One part of the application process is a written test. Even if his vision problems alone do not rise to the level of a substantial limitation, the employer is required to make accommodations for this employee because his vision impairment results from his diabetes, which is a disability. Accordingly, the employer might allow this applicant more time to take the written portion of the test if that would accommodate his limitation.

SAFETY CONCERNS

15. When may an employer exclude someone with a vision impairment because of concerns that the individual will pose a safety risk?

When it comes to safety concerns, an employer should be careful not to act on the basis of myths, fears, or stereotypes about vision impairments. Instead, the employer must evaluate each individual's knowledge, skills, and experience, as well as how the impairment affects his or her ability to perform a particular job safely. In other words, in order to exclude someone whose vision impairment is a disability under the ADA from a job for safety reasons, an employer must determine that a "direct threat" exists. A "direct threat" is a significant risk of substantial harm to an individual with a disability or to others that cannot be reduced or eliminated through reasonable accommodation. ⁽¹⁸⁾ This assessment must be based on objective, factual evidence that takes into account the nature of the risk, the severity of the potential harm, the likelihood that the harm will occur, and the imminence of the harm, as well as the availability of any reasonable accommodation that might reduce or eliminate the risk.

Example 26: An assembly line worker has lost much of his vision, but because he has held his job for more than ten years, he can effectively perform the job's functions using a combination of his remaining limited vision and touch. The employer's normal practice is to flash an alarm light when there is an assembly line malfunction that could cause injuries to workers. Rather than discharging the employee because he no longer is able to see the flashing light and may therefore be in harm's way, the employer should consider installing an audio alarm to accommodate him.

Example 27: A blind sous-chef who began working as a line cook and has worked in restaurants for 15 years in positions of increasing levels of responsibility applies for a job at a newly opened restaurant. Although it initially takes him slightly more time than other workers to learn the layout of the kitchen, once he does so he is able to move about easily and safely. The combination of his experience, his use of touch to perform some tasks that other workers perform visually, and a few simple accommodations, such as Braille labels on oven controls, enables him to use all kitchen equipment and to supervise kitchen staff. The restaurant may not refuse to hire this chef on the ground that he cannot work safely in a busy kitchen.

Example 28: An individual with a severe visual disability is hired to work as a line cook. He has difficulty, however, learning the layout of the kitchen and barely avoids bumping into three different co-workers, two of whom were carrying trays of food just removed from the oven and one who was carrying a pot of boiling water. He also has been warned several times about placing his hands too close to open flames and fryers filled with hot oil, but he has failed to do anything to correct these problems. This individual poses a direct threat to his own health and safety and to the health and safety of others.

"OTHER FEDERAL LAWS" DEFENSE

16. May an employer refuse to hire an individual with a visual disability because another federal law requires it to do so?

Yes. There are federal safety laws that may require an employer to exclude individuals with certain kinds of visual disabilities from certain types of jobs. For example, the U.S. Department of Transportation (DOT) has regulations that require a certain level of visual acuity for interstate drivers of commercial motor vehicles weighing more than 10,000 pounds. An employer may defend a claim of discrimination under the ADA on the ground that it was complying with the DOT regulation.

However, an employer may not rely on this defense where the other federal law does not in fact *require* exclusion of the individual with a disability (e.g., where the employer applies federal standards to jobs other

than those to which they are specifically intended to apply).

Example 29: A courier service that uses vans and small trucks weighing less than 10,000 pounds may not use the DOT standards applicable to commercial motor vehicles weighing more than 10,000 pounds to automatically exclude applicants with monocular vision from driver jobs. The employer may exclude a particular applicant with monocular vision only if it can demonstrate that she would pose a direct threat. (See Question 15, above.)

HARASSMENT

Employers are prohibited from harassing or allowing employees with disabilities to be harassed in the workplace. When harassment is brought to an employer's attention, management and/or the supervisor must take steps to stop it.

17. What constitutes illegal harassment under the ADA?

The ADA prohibits unwelcome conduct based on disability that is sufficiently severe or pervasive to create a hostile or abusive work environment. Acts of harassment may include verbal abuse, such as name-calling, behavior such as offensive graphic and written statements, or conduct that is physically threatening or harmful or humiliating. The law does not protect workers with disabilities (or any workers) from merely rude or uncivil conduct. To be actionable, conduct related to an employee's visual disability must be perceived by the affected individual as abusive and must be sufficiently severe or pervasive that a reasonable person would perceive it as hostile and abusive.

Example 30: A grocery store cashier with a visual disability is frequently taunted by his co-workers. They regularly ask him how many fingers they are holding up and take away his white cane and tell him to go find it. This behavior is actionable disability-based harassment.

18. What should employers do to prevent and correct harassment?

Employers should make clear that they will not tolerate harassment based on disability or on any other basis (i.e., race, sex, religion, national origin, or age). This can be done in a number of ways, such as through a written policy, employee handbooks, staff meetings, and periodic training. The employer should emphasize that harassment is prohibited and that employees should promptly report such conduct to a manager or other designated official. Finally, the employer should immediately conduct a thorough investigation of any report of harassment and take swift and appropriate corrective action. For more information on the standards governing harassment under federal EEO laws, see <http://www.eeoc.gov/policy/docs/harassment.html>.

LEGAL ENFORCEMENT

19. What should someone do who believes that his or her rights under the ADA may have been violated?

Any person who believes that his or her employment rights have been violated on the basis of disability and wants to make a claim against an employer, must file a charge of discrimination with the EEOC. A third party also may file a charge on behalf of another person claiming to be aggrieved. For example, a family member or other representative can file a charge on behalf of someone with a vision impairment. (All EEOC offices are accessible, and EEOC provides reasonable accommodations as needed for the charge process.) The charge must be filed by mail or in person with the local EEOC office within 180 days from the date of the alleged violation. The 180-day filing deadline is extended to 300 days if the charge also is covered by a state or local anti-discrimination law.

The EEOC will notify the employer of the charge and may ask for responses and supporting information. Before formal investigation, the EEOC may select the charge for its mediation program, which may prevent a time-consuming investigation of the charge. Participation in mediation is free, voluntary, and confidential.

If the mediation is unsuccessful, the EEOC investigates the charge to determine if there is "reasonable cause" to believe discrimination has occurred. If reasonable cause is found, the EEOC will then try to resolve the charge with the employer. In some cases, where the charge cannot be resolved, the EEOC will file a court action. If the EEOC finds no discrimination, or if an attempt to resolve the charge fails and the EEOC decides not to file suit, it will issue a notice of a "right to sue," which gives the charging party 90 days to file

a court action. A charging party also may request a notice of "right to sue" from the EEOC 180 days after the charge was first filed with the Commission and may then bring suit within 90 days after receiving the notice. For a detailed description of the process, visit our website at http://www.eeoc.gov/charge/overview_charge_filing.html. For issues relating to federal employment, please refer to our website at <http://www.eeoc.gov/facts/fs-fed.html>.

RETALIATION

The ADA prohibits retaliation by an employer against someone who opposes discriminatory employment practices, files a charge of employment discrimination, or testifies or participates in any way in an investigation, proceeding, or litigation. This is true even if the person who files the charge is not a person with a disability. Persons who believe that they have been retaliated against may file a charge of retaliation with the EEOC as described above.

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1. See Questions and Answers About Diabetes in the Workplace and the Americans with Disabilities Act (ADA), <http://www.eeoc.gov/facts/diabetes.html>, Questions and Answers About Epilepsy in the Workplace and the Americans with Disabilities Act (ADA), <http://www.eeoc.gov/facts/epilepsy.html>, Questions and Answers About People with Intellectual Disabilities in the Workplace and the Americans with Disabilities Act, http://www.eeoc.gov/facts/intellectual_disabilities.html, and Questions and Answers About Cancer in the Workplace and the Americans with Disabilities Act (ADA), <http://www.eeoc.gov/facts/cancer.html>.
 2. American Foundation for the Blind (AFB), <http://www.afb.org>.
 3. Vision Problems in the U.S.: Prevalence of Adult Impairment and Age-Related Eye Disease in America (2002), joint report by the National Eye Institute and Prevent Blindness America, <http://www.nei.nih.gov/eyedata/pdf/VPUS.pdf>.
 4. *Id.*
 5. Job Accommodation Network, Work-Site Accommodation Ideas for Individuals with Vision Impairments, citing AFB statistics from 2000, <http://www.jan.wvu.edu/media/Sight.html>.
 6. CDC, National Center on Birth Defects and Developmental Disabilities (NCBDDD), <http://www.cdc.gov/ncbddd/dd/ddvi.htm>.
 7. A person with a visual acuity of 20/70 can see at 20 feet what a person with normal sight can see at 70 feet. A person with a visual acuity of 20/400 can see at 20 feet what a person with normal vision can see at 400 feet. The visual fields normally extend outward over an angle of about 90 degrees on either side of the midline of the face. A normal visual field is about 160-170 degrees horizontally. *Id.*
 8. <http://www.cdc.gov/ncbddd/dd/ddvi.htm>.
 9. Diabetic retinopathy is the term used to describe changes in the blood vessels of the retina due to diabetes, which can cause vision impairments and blindness. Not all people with diabetes develop this condition. See Major Causes of Blindness (National Federation of the Blind 1995), at <http://www.blind.net> (follow "General Information About Blindness" hyperlink; then follow "Major Causes of Blindness" hyperlink).
 10. Macular degeneration refers to the breakdown of the macula, the part of the retina which forms the sharpest view of an object. The disorder, which occurs with age, varies in the speed with which it affects people and often can be corrected with magnifying lenses. *Id.*
 11. Cataracts are opacities and clouding of the lens of the eye that block the passage of light. They can be present at birth but tend to increase with age. They often can be surgically corrected. *Id.*
 12. Glaucoma is a condition characterized by a build-up of the clear fluid in the forward part of the eye that does not drain properly and causes increased pressure inside the eye. If left uncontrolled, the condition can cause damage to the eye that results in blurred vision, a narrow field of vision, and eventually total blindness. Glaucoma can often be successfully controlled with medication, though surgery is sometimes necessary. Glaucoma is responsible for one of every seven or eight cases of blindness. *Id.*
 13. National Center for Health Statistics, U.S. Dept. of Health and Human Services, Summary Health Statistics for U.S. Adults: National Health Interview Survey, 2002, Vital and Health Statistics, Series 10, No. 222 (DHHS Publication No. 2004-1550) (July 2004).

14. See *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999) (While monocular vision "inevitably leads to some loss of horizontal field of vision and depth perception" and "ordinarily" will constitute a disability, the ADA requires individuals to prove, on a case-by-case basis, that their limitations are "substantial.")
 15. See EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA) at Question 22 (July 26, 2000), <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.
 16. See the Job Accommodation Network's Searchable Online Accommodation Resource (SOAR), <http://www.jan.wvu.edu/soar/vision.html>.
 17. See Know the Rules Regarding Tax Incentives for Improving Accessibility for the Disabled (2003), <http://www.irs.gov/businesses/small/article/0,,id=113382,00.html>. For additional information on tax benefits, contact the U.S. Internal Revenue Service at 800-829-3676 (voice) or 800-829-4059 (TDD).
 18. 29 C.F.R. § 1630.2(r).
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