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PREPARING FOR ADA:

INTERVIEWING JOB APPLICANTS

By: Matt W. Zeigler, Esq.

The Employment Title of the Americans with Disabilities Act of 1990 (ADA) became effective on July 26, 1992 for employers with 25 or more employees. In reviewing the volumes of materials already written regarding what employers should or should not do in considering hiring the disabled, I found a valuable resource that may be helpful those of us who will be faced with hiring an applicant with a disability.

Following this short introduction is a Checklist for questions and considerations to you to review prior to hiring an individual with a disability. This is reprinted for your use. The Food News has received permission from the author to reprint this Checklist.

CHECKLIST

INTERVIEWING JOB APPLICANTS UNDER THE ADA

1. Are there any functions of the job the applicant is not presently able to safely perform? Yes No
 - a. If so, is this an essential function of the job? Yes No
 - b. Am I sure it is an essential function based particularly on the fact that employees in the position are actually required to perform the function in question? Yes No
 - c. Would removing the function fundamentally alter the position? Yes No
 - d. Describe the essential function(s) that the applicant is not able to perform.

2. Why have I determined that the applicant is unable to perform the essential function(s) of the job?

- a. Is there a significant risk or high probability of substantial harm to the applicant or to others if the individual performs the particular functions of the job in question? Yes No

b. In determining whether there is a significant risk or high probability of substantial harm to the applicant or to others, have I considered:

- the duration of the risk? Yes No
- the nature and severity of the potential harm? Yes No
- the likelihood that the potential harm will occur? Yes No
- the imminence of the potential harm? Yes No

c. What is the objective evidence of this substantial harm, whether from the applicant or the opinions of medical doctors, rehabilitation counselors, physical therapists, or others? (Describe)

d. If the applicant has a mental or emotional disability, what specific behavior on the part of the individual would post a direct threat to the health and/or safety of himself/herself or others? (Describe)

e. Are there any other reasons that are job-related and consistent with business necessity as to why the applicant cannot perform the essential function(s) of the job? (Describe)

3. Have I discussed with the applicant why his/her problem would limit his/her ability to perform the essential function(s) of the job; or create a high probability of substantial harm to himself/herself or to others? (Describe)

4. Have I:

a. analyzed the particular job involved to determine its purpose and essential function(s)? Yes No

b. consulted and discussed with the individual the precise job-related limitations; and how those limitations could be overcome with a reasonable accommodation? Yes No

c. consulted with the individual to identify potential accommodations and assess the effectiveness each would have in enabling the applicant to perform the essential function(s)? Yes No

d. considered the preferences of the individual to be accommodated; and selected and implemented the accommodation most appropriate both for the individual and the company? Yes No

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5. What accommodations did the applicant suggest? (Describe)

6. What accommodations did I explore with the applicant? (Describe)

7. Have I considered technical assistance in helping to determine how to accommodate the particular individual, such as from the EEOC, rehabilitation agencies, or disability organizations?

Yes No

8. Would these accommodations impose an undue hardship?

Yes No

a. In what way would the accommodation be disruptive or alter the nature or operation of the business? (Describe)

b. How much would the accommodation cost?

c. Why would this cost constitute an undue hardship as compared to the employer's budget, either at the facility or the company? (Discuss)

d. If the accommodation is unduly costly, have I determined that all applicable tax credits and agency services or funding have been exhausted;

Yes No

and the applicant has been given an opportunity to pay or provide that portion of the accommodation that is unduly costly?

Yes No

9. Have I reviewed whether there is in fact an impairment that rises to the level of disability by substantially limiting one or more of the applicant's major life activities;

Yes No

or whether there may be a temporary, non-chronic impairment of short duration, which are usually not considered a disability?

Yes No

10. If I am relying on a DOT physical requirement or some other federal regulatory requirement, am I sure the federal mandate actually requires the action?

Yes No

SOURCE: James W. Wimberly, Jr., Commerce Clearing House, Accommodating Disabilities, 5192

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