

PUBLICATION

We Don't Need No Education: EEOC Says High School Diplomas Can't Always be Required

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The United States Equal Employment Opportunity Commission (EEOC) recently published guidance addressing whether employers violate the Americans with Disabilities Act (ADA) when they require a high school diploma for certain jobs. This guidance was issued in response to a November 2011 letter, in which the EEOC stated that such a requirement may violate the ADA if it screens out individuals who cannot obtain a diploma on account of a learning disability, unless the employer can demonstrate that a diploma is both job-related and consistent with business necessity.

In that earlier letter, the EEOC stated that an employer that adopts a high school diploma requirement for a job, and that requirement "screens out" individuals who cannot graduate because of a learning disability, the employer may not use a diploma as a minimum job requirement unless it can demonstrate that a diploma is both job-related and consistent with business necessity. Where the job functions could otherwise easily be performed by someone who does not have a diploma, an employer's insistence on a high school diploma would be unlawful.

The November 2011 letter went on to explain that, even if the diploma requirement was job-related and consistent with business necessity, the employer could still be found liable under the ADA if it failed to consider whether such a learning disabled applicant could perform the essential functions of the job applied for with reasonable accommodation. Under such circumstances, the EEOC suggested that employers consider relevant work history and/or allowing the applicant to demonstrate an ability to do the job's essential functions during the application process.

In its more recent guidance, the EEOC reiterated that:

- While the law does not prohibit an employer from requiring that a job applicant have earned a high school diploma, the employer may have to allow an individual who says that a learning or other disability prevented him/her from obtaining high school diploma to demonstrate qualification for the job another way;
- The ADA only protects people whose disability made it impossible for them to obtain a diploma. It would not protect someone who simply decided not to get a high school diploma; and
- Where the employer is choosing from among multiple applicants, it may still choose the most qualified applicant and need not prefer the applicant with a disability over someone who could perform the job better.

A copy of this recent guidance is available on the EEOC's [website](#).

On review, Baker Donelson believes it wise for employers to review their list of minimum job qualifications for entry-level positions to ensure that high school diploma or other educational requirements are highly defensible. Even then, hiring managers should be informed that the EEOC believes they are obliged to adopt a flexible approach to interviewing individuals who contend that a disability prevented them from earning a diploma. For advice on how to draft and implement defensible job descriptions and interview candidates for vacant positions, please feel free to reach out to any of our nearly 60 attorneys dedicated specifically to Labor

& Employment issues, located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.