

INTERNSHIPS AND THE LAW

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Disability Issues in Internships and Postdoctoral Fellowships



A great deal of confusion has arisen among interns/postdoctoral residents and their sites/programs as to what constitutes disability, as defined by the Rehabilitation and Americans with

Disabilities Acts; and what, if any, obligation an internship/program site has to provide reasonable accommodation to an applicant or an intern/postdoc after selection. This article will present some guidelines for resolving these issues.

Claiming and Proving Disability

- Any applicant/intern/postdoc who wishes to be treated as a disabled person under the above statutes must explicitly claim to be disabled, and must establish that he/she is a qualified disabled person, as defined by the statutes and regulations identified below.
- It is not the responsibility of the internship/program site or any person there to ask if the applicant/intern/postdoc is disabled. Indeed, it is extremely unwise, and perhaps illegal, to ask if someone is disabled before that person raises the issue.
- To establish that he/she is a qualified disabled person, the applicant/intern/postdoc must show he/she—(a) has a physical or mental impairment which substantially limits one or more of his/her *major life activities*; (b) has a record of such impairment; or (c) is regarded as having such an impairment. In order for the person to qualify, the impairment cannot be transitory or temporary; it must be long-term or permanent. The Supreme Court recently limited the scope of the ADA, where it concluded an employee with carpal tunnel syndrome was not entitled to reasonable accommodation because, although her disability limited her activities at work, it did not substantially limit her ability to perform major life activities at home. *Toyota v. Williams*, #00-1089 (January 8, 2002).

- Even when an applicant/intern/postdoc claims he/she is a qualified disabled person, entitled to protection under the Rehabilitation Act or ADA, the internship/program site has no obligation to do so, unless the applicant/intern/postdoc also shows he/she can perform the essential functions of his/her position, with or without reasonable accommodation.
- Where the condition claimed as a disability is largely or completely correctable (e.g., with glasses, hearing aid, or other device; or medication), the internship/program site does not have to consider the person as a qualified disabled person. See *Sutton et al v. United Air Lines, Inc.*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); *Albertsons, Inc. v. Kirkingburg*, 527 U.S. 555 (1999).

When, and to What Extent, Reasonable Accommodation is Required

- The internship/program site is required to reasonably accommodate only those meeting the above definition of a qualified disabled person, and who can perform the essential functions of the job, with or without reasonable accommodation.
- Where the applicant/intern/postdoc has established he/she meets the definition, the internship/program site is required either to reasonably accommodate the applicant/intern/postdoc, or show the requested accommodation would impose an undue hardship, based on the site's size (number of employees, type of facilities, overall budget, composition of work force); and the nature and cost of the accommodation.

Avoiding a Successful Claim of Handicap Discrimination

Where a qualified disabled person is not selected as an intern/postdoc, the internship/program site must be able to show, using objective criteria, one of the following:

- It had legitimate, non-discriminatory reasons for the non-selection, unrelated to the applicant's disability (e.g., those selected were better qualified; or the applicant's references were unfavorable, so long as they were unrelated to the disability); and, if applicable, has treated other similarly-situated non-disabled applicants/interns/postdocs in similar fashion. Please note that requiring candidates for different jobs to perform the same essential functions will not defeat a claim of handicap discrimination, because the definition of essential functions must be directly correlated to the duties of the particular job or internship/postdoc.

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- Reasonable accommodation would have imposed an undue burden on the internship/program site.

- Even with reasonable accommodation, the applicant could not perform the essential functions of the job/internship/postdoc.

References

Rehabilitation Act of 1973, as amended (29 U.S.C. sec. 791 *et seq.*; and Americans with Disabilities Act of 1990 (ADA (42 U.S.C. sec. 12101 *et seq.*; 29 C.F.R. sec. 1630; 1997; *EEOC Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person Is a "Qualified Individual with a Disability" Under the Americans with Disabilities Act of 1990 (ADA)* (February 12, 1997); *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act* (March 1, 1999).

NOTE: Readers are cautioned that this article merely is informational. It does not provide an exhaustive list of references; it is not intended to be exhaustive or definitive in all situations; or to be relied upon without prior consultation with legal counsel.

