

HIRING EMPLOYEES & THE ADA

Richard R. Solie, JD, Profile Evaluations, Inc.

As we all know the mandates of the Americans with Disabilities Act of 1990 (ADA) has affected the call taking operations of all PSAP's. Here I would like to talk about another set of mandates which also covers ALL PSAP's, namely the employment provisions of the law. Because of the magnitude of the employment provisions in the ADA I will cover just some of the basics of the employee selection process. As a starting place it must be noted that the employment provisions of the ADA cover ALL PSAP's without regard to the number of employees in the agency. My discussion here will not cover the provisions of any State laws that are usually similar to the ADA and cover for the most part similar subjects.

In order to set the stage for our discussion, let's look at a situation that occurred in a PSAP not long ago during their pre-employment selection process. The PSAP advertised the job and received applications from a number of candidates. Based on a review of the applications, several candidates were invited to a preliminary interview with the PSAP manager. One of these candidates turned out to be a speech and hearing impaired individual who communicated only through ASL (American Sign Language). In order to conduct the interview, a sign language interpreter was brought in to assist. During the course of the interview the manager described the essential functions of the job and based on this description the candidate self-eliminated herself from further consideration. Prior to the interview, the candidate felt, based on her experience, that there was a need for an individual to handle TTY initiated calls only. On this point let's think about this candidate and her environment: 1) she was aware that the PSAP must answer all TTY initiated calls, 2) based on her personal experience she was of the opinion that there was a position in the PSAP solely responsible for answering such calls. In other words, she assumed there must be a large number of such calls based on the number of individuals she knew who used TTY's. After the manager fully described the essential functions of the job she realized that there were several essential functions that she could not perform with or without "reasonable accommodation". Needless to say this experience was one filled with anxiety for both the manager and the candidate. It turned out well for all concerned, however, the whole situation could have been easily avoided. So how do you avoid this type of situation from occurring in your PSAP?

For starters, the first thing you need to do is conduct a JOB ANALYSIS of the position in order to determine the essential functions of the job and the essential knowledge, skills, abilities, personal characteristics and physical abilities required to successfully perform the essential functions. The outcome of this process is a definition of the job in terms of its essential functions and requirements including proper selection criteria and new hire training criteria. You then need to take this information and use it to write a detailed JOB DESCRIPTION of the position, which you then provide to ALL candidates for the position.

A well-written Job Description enables you to "display" the job to candidates desiring to apply for the job. For purposes of the situation described above, if the candidate had been provided with such a Job Description she would have seen that the job was much broader than just responding to TTY initiated calls to the PSAP and probably would have self-eliminated herself prior to the preliminary interview. So the first step for PSAP managers is to define the job and then provide a copy of that description to each potential candidate for the position.

In addition to the Job Description, ALL candidates should be advised about the FORMAT of the selection process. A letter should be sent to all candidates meeting the minimum requirements for the position advising them of the format of selection process (i.e., the physical accessibility of the

testing site, the physical aspects of the testing process, etc). Under the ADA, both the employer and the candidate have rights and responsibilities when requests for “reasonable accommodation” are made in the selection process.

The employer has a right to notify candidates of the format of the selection process as well as define the conditions under which candidates can request “reasonable accommodations”. Candidates need to follow the procedure set out by the employer (such as a note from a doctor, etc.) in order to secure the desired accommodation or one agreed upon between the candidate and the employer. The net effect of this procedure is the ability of the employer to make decisions on the basis of real facts and not conjecture or assumption.

Please remember, the need for “reasonable accommodation” does not mean a need to reduce or eliminate any or all of your selection standards. The same selection standards should be applied to ALL candidates, with or without “reasonable accommodation”. For example, a PSAP with a CAD system need not remove the need for a typing test IF it is determined through Job Analysis that it is an essential function of the job. If a candidate is unable to meet the typing requirement, with or without “reasonable accommodation”, they would not be considered “qualified” for the position.

In most PSAP’s after the preliminaries (application, testing, etc.) are completed candidates “passing” these steps move on to the final interview phase of the selection process. As with earlier phases of the selection process there cannot be any questions of the candidate regarding known or perceived disabilities. The topics to be covered in the interview must be job related and deal ONLY with the candidate’s ability to meet the requirements of the job with or without “reasonable accommodation”.

When making the final hiring decision it is important to document the reasons WHY a candidate was selected. Just as important is the need to define the reasons WHY other candidates were not selected. The reasons must all be based on job-related elements and not related to biases, prejudices or so forth.

The employee selection process has become much more challenging for all employers but the key to keeping out of “trouble” is PREPARATION and CONSISTENCY. If you have a realistic, up-to-date Job Description, display the Job Description to all potential candidates and advise all candidates of the format of your selection process and their right to reasonable accommodation if needed, you should be in a good position to conduct a fair and legally acceptable selection process.