

POLICY STATEMENT

Job Qualification Testing

Can an employer lawfully require its employees and applicants for jobs to take a hearing test and screen out those who fail to pass? Does an employee or applicant who has a hearing loss have the right to use hearing aids while taking such a test?

Hearing loss is a disability within the meaning of the Americans with Disabilities Act (ADA). This statute, as amended in 2008, clarifies that the use of hearing aids does not cause individuals with hearing loss to lose their rights under the law. The ADA prohibits an employer from applying a job qualification standard that screens out or tends to screen out disabled persons.

However, an employer can require employees and applicants to pass a hearing test if the employer can demonstrate that the requisite level of hearing proficiency is job related and a business necessity. This showing can be made for a number of different jobs, but it is often asserted where performance of the job may result in a direct threat to the safety of the employee or other people. Jobs in law enforcement and fire fighting are examples where employers have successfully met this standard.

The question of whether the ADA provides employees and applicants with the right to use hearing aids while taking a hearing test remains unsettled under the law. For example, the Department of Justice in carrying out its ADA enforcement responsibilities has maintained that individuals must be evaluated on a case-by-case basis, both for those who use hearing aids and those who do not. Consistent with this guidance, many state and local police officers as well as guards at nuclear facilities may use hearing aids during hearing tests. However, in recent court cases, it was concluded that employers may lawfully bar individuals from using hearing aids while being tested.

It should be noted that aside from the rights of employees and applicants to use hearing aids during testing, individuals with hearing loss have a responsibility to suggest reasonable accommodations that would enable the employee or applicant to meet a hearing proficiency job qualification standard. For example, a school bus driver with hearing loss showed that installation of a mirror to view students at the back of the bus and use of an aide at busy times would enable her to monitor students while driving safely.

However, for many law enforcement positions, for example, such as police officers on patrol, a reasonable accommodation may not be available in all circumstances. It is imperative that individuals holding or seeking these types of jobs have the right to be evaluated with hearing aids. They have no other way to demonstrate their capability to perform these jobs.



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It is the position of Hearing Loss Association of America that employees and applicants who use hearing aids must be tested with their hearing aids when determining their qualifications for jobs where a level of hearing proficiency is a legitimate criterion. Although there have been no court cases beyond the use of hearing aids, it is our position that employees with cochlear implants or other implantable devices should be tested with the implants on.

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For further information, contact Advocacy@hearingloss.org