Employment Issues for People with Hearing Loss

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Hearing Loss and the ADA

ADA provides **equal opportunity** to employment for people with disabilities

- Applies to places with 15 or more employees
- Individuals with hearing loss must show that they are substantially limited in the major life activity of “hearing.”
- Appropriate reasonable accommodations should be provided on request, after self-identification, unless provision creates an undue burden for the employer
ADA AA

• Prior to ADA AA, which went into effect in 2009:
  o The use of hearing aids and other assistive devices were seen to correct the deficiency (like eyeglasses) and enable individuals with hearing loss to function “normally.”
  o With the use of mitigating measures hearing loss may not have been considered a “disability.”

• Under ADA AA
  o A determination of disability cannot take into consideration mitigating measures such as hearing aids or cochlear implants.
Getting a Job

• Pre-employment interview
  – ADA prohibits disability related inquiries and medical examinations prior to a job offer
  – Employer can ask whether the potential employee can do the job

• After the Job Offer is made
  – If all applicants receive the same treatment:
    • Employers may make disability-related inquiries
    • Employers may require medical exams
After Employment Begins

An employer may make disability-related inquiries and require medical examination if:

• The inquiries are job related
• They are consistent with business necessity
Responsibilities

**Employee**

- Must be qualified to do the job
- Have a basic understand of the kinds of accommodations that are appropriate

**Employer**

- Provide the accommodation a reasonable time after being notified, unless providing it would constitute an undue burden
Case Example 1: Ms. K
Reasonable Accommodations

• Ms. K, a 56 year old woman with lifelong hearing loss in both ears, uses hearing aids.

• She worked in a public school system for 14 years as a library assistant.

• Ms. K was transferred to the classroom as a substitute teacher. She submitted a request for an accommodation or a return to her prior duties.

• She did not know what accommodation to request.
Case Example 1: Ms. K
Reasonable Accommodations

• Acknowledging her hearing loss as a disability under the ADA, and after “much review” of her situation, the school system offered the following:
  – In the copying room, remove your hearing aids or wear noise protection earmuffs to avoid damaging your hearing.
  – In the classroom, remove your hearing aids or use earmuffs.
  – In case of an emergency requiring evacuation of the building or a lockdown, a particular [named] colleague will alert you and assist you.
Case Example 2: Mr. P
Medical Qualification Testing

• Mr. P notified ATF of his hearing loss, was permitted to be tested with and without his hearing aid.
• He was disqualified after he failed the hearing test **without** his hearing aid. No mention made of the **test he passed with** his hearing aid.
• Mr. P requested reconsideration of his rejection accordance with OPM regulations (5 CFR §339.306).
• The case is ongoing.
Case Example 3: Mr. Carione
Termination of Employment

- Deputy Inspector Daniel Carione, a NYC police officer since 1989, obtain a hearing aid for his right ear, which he started using in early 2009.
- In 2009, an NYPD MD recommended Mr. Carione be “involuntarily retired” on the basis of disability. No testing or other assessment was made of his ability to perform the essential functions of his job.
Case Example 3: Mr. Carione
Termination of Employment

• Mr. Carione’s employment was terminated in 2011.
• In 2015, NYPD finally offered a settlement, right before the case was scheduled to be heard in court
  – Mr. Carione was reinstated with back pay
  – New York City will reassess its hearing aid policy and consider testing officers with hearing aids
  – In the meantime, all officers who use hearing aids can be tested with their hearing aids
Hearing Loss in the Workplace: Rights and Obligations

HLAA has found:

• 25 years after the enactment of the ADA, many employers lack knowledge about reasonable accommodations.

• Employers badly need information and education about accommodations that would enable employees with hearing loss to become productive members of their team.
Hearing Loss in the Workplace: Rights and Obligations

*HLAA has found:*

- 25 years after the enactment of the ADA, employees often do not know
  - what they are entitled to have in the workplace
  - what accommodations will work for them
  - how or when to ask for accommodations
- Employees need a better understanding of their rights and responsibilities
Resources

• US Department of Justice
  – www.ada.gov
  – www.ada.gov/effective-communication

• US Equal Employment Opportunity Commission

• Job Accommodation Network
  – https://askjan.org