*The U.S. Equal Employment Opportunity Commission*

*EEOC Office of Legal Counsel staff members wrote the following informal discussion letter in response to an inquiry from a member of the public. This letter is intended to provide an informal discussion of the noted issue and does not constitute an official opinion of the Commission.*

**ADA/Drivers License/Essential Functions/Reasonable Accommodation**

June 21, 2006

Dear :

This is in response to your letter dated May 9, 2006, in which you asked us to review a draft “driving accommodation guideline” to be used by your Human Resources office when processing applications for [Division] employment. The draft guideline states that the [Division] will require an individual to have a valid driver’s license when it “has determined that driving is an essential or non-essential function of the particular job classification or position.” In cases where driving is a non-essential function, the guideline indicates that the [Division] will provide reasonable accommodation to a person who does not have a driver’s license because of a disability. Specifically, the [Division] will make an exception to the driving requirement and it may reassign the driving duties to others. The guideline concludes by instructing individuals that requests for reasonable accommodation should be directed to the Human Resources Manager.

Under the Americans with Disabilities Act (ADA), an employer may impose qualification standards that are job-related and consistent with business necessity. 29 C.F.R. §1630.10. As explained in the appendix to the ADA regulations, “the purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job.” 29 C.F.R. pt. 1630 app. §1630.10. A job requirement that is related to an individual’s ability to perform an essential function of the job would be consistent with business necessity. However, a selection criterion that excludes a person because of a disability but “does not concern an essential function of the job would not be consistent with business necessity.”

Thus, the [Division] may require that individuals have a valid driver’s license for a particular position if driving is an essential function of that position. The guideline is incorrect in stating that it will impose this requirement when driving is a non-essential function of a particular classification or position.

The guideline does not explain how the [Division] will determine if driving is an essential or non-essential function of a specific job. If [the Division] incorrectly identifies driving as an essential function for a particular position and excludes an individual whose disability makes driving impossible, it may violate the ADA.

In determining whether driving is an essential function, the [Division] should evaluate each position taking into account the factors listed in 29 C.F.R. §1630.2(n) and any others that may be relevant. It is important that the [Division] carefully evaluate each position, and not just each job classification, to determine if driving really is required for a specific position. It is possible that persons with the same job classification or title might nonetheless perform different essential functions. Thus, driving may be an essential function for one person in a job classification but not another. When determining whether any function is essential, the ADA looks to a specific position and not simply a classification or job title.

Furthermore, it is important to determine whether driving is the objective to be accomplished or an incidental means for accomplishing the true objective. For example, driving could be an essential function for a person whose job requires that he deliver water pipes. This is especially true where others load and unload the pipes and this individual’s function is simply to drive the truck to make the delivery.

But, driving may not be an essential function for an engineer who must inspect pipes around the district. Engineers generally may drive themselves, but the essential function is to inspect the pipes. Driving is incidental to this job function -- the means to get to the site where pipes need to be inspected. The critical function is using one’s experience, skills, and expertise to inspect pipes, evaluate the need for repairs or replacements, to bring in other skilled workers if necessary, and to order appropriate repairs or replacements.

In many areas, an engineer who cannot drive due to a disability may be able to take public transportation, taxis, or use a car service to get to locations where pipes need to be inspected. If a team of engineers or other employees always make inspections together, then it might not be a problem to exempt a particular engineer from driving since other employees would be available to drive to the site. All reasonable accommodations need to be evaluated in terms of their effectiveness in enabling an individual to perform the essential functions of the position and whether they would cause an undue hardship.

Clearly, lack of public transportation to get to a site would rule out that accommodation. Even if public transportation was possible, it would be an undue hardship if it would take so long to get to and from a site that the engineer was unable to do an inspection in a timely manner or to meet production standards imposed on all engineers conducting inspections. If an engineer must take heavy or dangerous equipment to do an inspection, then use of public transportation or even taxis may not be feasible. However, the fact that the [Division] might incur certain costs, for example if it allowed the engineer to use a car service, would not be an undue hardship unless the [Division] could show that it constituted a “significant” expense. The [Division] could exclude an individual whose disability made it impossible for him to drive from a job that involves conducting inspections, but only after the agency determines that possible reasonable accommodations would either not allow performance of the essential function (i.e., the inspections) or would constitute an undue hardship.

Training is a key component for ensuring that guidelines are accurately implemented. Many employees tend to read guidelines literally, and will only do what is specified in the guidelines. To illustrate, your guideline suggests that where driving is a non-essential function then those duties may be reassigned to others. 29 C.F.R. pt. 1630 app. §1630.2(o) (redistribution of non-essential functions is a form of reasonable accommodation). But, there may be other accommodations that would work better. For example, if driving is a non-essential function because it is only the incidental means to accomplishing a certain task, an employee with a disability might still be able to perform the main task by using alternative forms of transportation. The Human Resources staff should be able to think broadly about all accommodations that could work, rather than focusing on only one type.

Finally, your letter states that this guideline will be used with applicants. To the extent that a job announcement, based on this guideline, incorrectly conveys that a driver’s license is required (i.e., driving is not an essential function of the position being advertised and therefore requiring a driver’s license would not be consistent with business necessity) the announcement would be misleading and could result in qualified individuals with disabilities failing to apply for a job or being inappropriately screened out by your Human Resources staff or managers. Supervisors conducting interviews for this position could screen out a qualified individual with a disability based on the incorrect assessment that driving is an essential function and/or no reasonable accommodation is possible. Employers that wish to make a categorical statement that driving is an essential function and therefore a driver’s license is required for the job should be sure that is true for each position advertised.

I hope this information is helpful. Contrary to what you may have understood, this letter is not an official opinion of the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC does not provide official approval or endorse an employer’s policies but instead offers technical assistance concerning issues raised in a policy.

If you would care to discuss this issue further, please feel free to contact me at (202) 663-4676.

Sincerely,

/s/

Sharon Rennert  
Senior Attorney Advisor

*This page was last modified on April 27, 2007.*