

Killer Question on Job Application: Who's to Blame?

Hopefully, you know to avoid questions on your job applications about applicants' "disabilities" or "medical procedures." And hold your loophole – you won't avoid liability by using an outside recruiting firm to hand out the application. There's only one standard when it comes to medical inquiries ... the legal one.

Case in Point: Barbara Katz applied at a New York City investment firm for executive assistant positions. Katz received a paper job application from an outside recruiting agency that was hired by the investment firm.

The application required Katz to list her medical history, including "all disabilities, procedures or operations." Katz called the recruitment agency and told the recruiter she was a breast cancer survivor and that the question was "improper."

Katz subsequently answered the question by writing, "There is nothing in my medical history that would interfere with my ability to perform my job responsibilities." She was interviewed twice but didn't get the job.

Katz sued the recruitment agency for disability discrimination under the American's with Disabilities Act (ADA), as well as the state and city anti-discrimination laws. The recruitment agency defended itself by arguing that the application was the investment company's document--not theirs. They were only a "staffing agency" and not the true "employer."

For its part, the investment firm claimed to have no ADA liability because it did not meet the 15-employee threshold for compliance.

What happened next ... and what lessons can be learned?

The court ruled that, yes, the investment firm was too small for ADA compliance. However, the recruitment agency could not wiggle out of liability so easily.

The court sent the case to trial, saying, "The ADA prohibits such pre-offer inquiries regardless of whether the recruiting agency was Katz's employer or prospective employer."

Employment agencies are "covered entities" under the ADA and, as such, are prohibited from making disability-related inquiries. Furthermore, under the ADA, an applicant whose cancer is in remission is considered disabled and, thus, protected under the ADA. ([*Katz v. Addecco USA Inc.*](#), S.D.N.Y., 1/10/12)

3 Lessons Learned...Without Going to Court

1. Review your current employment application. It may be old and out of legal compliance. Maybe it asks illegal questions about things like disabilities, marital status or age. Read every question like you were a member of a jury.

2. Don't do other's dirty work. The court seemed annoyed at the "not-my-fault" finger pointing. If you are a

search firm or staffing agency and you use a client's job application, consider it yours.

3. If the federal laws don't nail you, state and local laws can. In this case, the court recognized all potential violations of state and city laws. Make sure you know all of yours.