

## Take care when defining educational job requirements

### Question:

Are there any risks or issues associated with broad educational job requirements, such as requiring a high school diploma for all positions within an organization?

### Analysis:

Yes.

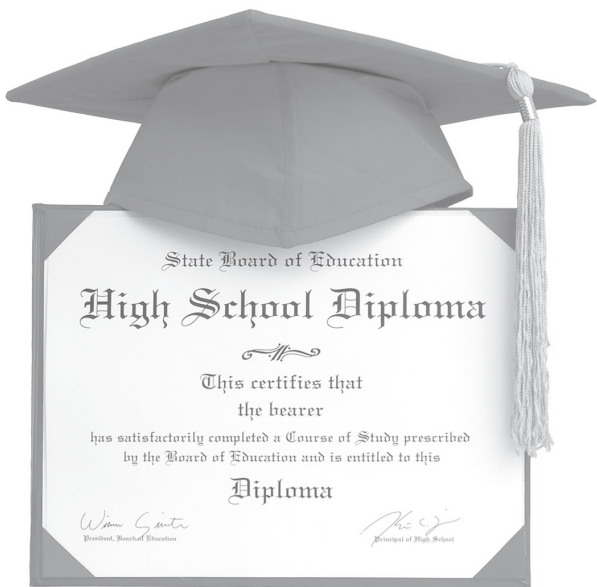
Many employers may be inclined to adopt the traditional approach of requiring a high school diploma or some other minimum educational qualification as a standard requirement for all positions within their organizations. Such educational requirements are often included in the job description for all positions—whether it is for custodial staff or for an executive employee. However, companies would be well-advised to revisit these broad educational requirements because such requirements could create legal and regulatory risks for an employer if they are not tailored to the specific duties of a particular position.

The Equal Employment Opportunity Commission (EEOC) has taken the position that a high school diploma requirement is discriminatory under Title VII of the Civil Rights Act if it has a disparate impact on a protected group and is not job related and consistent with business necessity.

The EEOC's position dates back to a Supreme Court decision from 1971 in *Griggs v. Duke Power Co.*,<sup>1</sup> where a public utility company “adopted a high school diploma requirement for all positions in four of its five departments without ‘meaningful study’ of such a requirement’s ‘relationship to job-performance ability,’ based on the untested belief that doing so would ‘improve the overall quality of the work force.’”<sup>2</sup>

<sup>1</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

<sup>2</sup> *ADA & Title VII: High School Diploma Requirement and Disparate Impact*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (June 11, 2012), [https://www.eeoc.gov/eeoc/foia/letters/2012/ada\\_title\\_vii\\_diploma\\_disparate\\_impact.html](https://www.eeoc.gov/eeoc/foia/letters/2012/ada_title_vii_diploma_disparate_impact.html).



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The Court held that the employer's high school diploma requirement for all positions "was unlawful because it had a disparate impact on African Americans, who had high school diploma rates far lower than Whites in the relevant geographical area, and because the requirement was not job related and consistent with business necessity" since it did not necessarily pertain to applicants' ability to perform the essential functions of the job.<sup>3</sup>

The EEOC has also taken the position that if a high school diploma requirement "screens out" an individual who is unable to graduate because of a learning disability under the Americans with Disabilities Act (ADA), the employer "may not apply the standard unless it can demonstrate that the diploma requirement is job related and consistent with business necessity."<sup>4</sup> The EEOC addressed this application of the ADA to a high school diploma requirement in a suit it brought on behalf of an employee with an intellectual disability. In *EEOC v. Northwest Community Action of Wyoming*,<sup>5</sup> the plaintiff was fired from her job as a nursing assistant in a residential care facility after the "employer adopted a requirement that nursing assistants must have high school diplomas. [The plaintiff] had worked successfully in the position for four years and had tried several times to obtain her GED,"<sup>6</sup> but did not succeed because of her disability. "Her GED instructors offered to work with the employer to find an alternative way to assess the employee's ability to do the job, but the employer refused."<sup>7</sup> In this case, the EEOC argued that "the employee's ability to do the job could have easily been assessed by alternative means, namely by considering the fact that she had performed the job successfully for four years before the requirement was adopted. The employer settled the case with the EEOC in early 2003."<sup>8</sup>

Thus, in order to avoid discrimination claims, employers should review the educational requirements for each of the various positions within their organization and ensure that any minimum requirement is related to the specific duties and essential functions of a particular position.

<sup>3</sup> *Id.*

<sup>4</sup> ADA: Qualification Standards; Disparate Impact, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Nov. 17, 2011), [https://www.eeoc.gov/eeoc/foia/letters/2011/ada\\_qualification\\_standards.html](https://www.eeoc.gov/eeoc/foia/letters/2011/ada_qualification_standards.html).

<sup>5</sup> *EEOC v. Northwest Community Action of Wyoming, Inc. d/b/a NOWCAP Services*, No. 02 CV 031 D (D. Wyo.).

<sup>6</sup> *What You Should Know:*

Questions and Answers about the EEOC and High School Diploma Requirements, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, [https://www.eeoc.gov/eeoc/newsroom/wysk/high\\_school\\_ada.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/high_school_ada.cfm).

<sup>7</sup> ADA & Title VII: High School Diploma Requirement and Disparate Impact, *supra* note 2.

<sup>8</sup> *Id.*

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