



DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS OF EMPLOYEES AND APPLICANTS

How does the ADA apply to questions or tests by employers about medical issues?

Title I of the Americans with Disabilities Act (ADA) and the implementing regulations adopted by the Equal Employment Opportunity Commission (EEOC) include guidelines that govern medical inquiries and examinations by employers. The ADA imposes different limits on an employer's ability to make medical inquiries and conduct medical examinations at three different stages: (1) during the application process prior to being offered a job; (2) after a person is offered a job but prior to being hired; and (3) during employment. The ADA also addresses the employers' duty to maintain the confidentiality of medical information.

When I am interviewing for a job, can an employer ask me questions relating to my disability?

No. The ADA generally prohibits employers from making medical inquiries in written job applications, job interviews, or during background or reference checks. This prohibition on medical inquiries applies even if the inquiry would be related to the job.

What is a medical inquiry?

A medical inquiry is a question about an individual's health or disabilities. These types of inquiries include:

- ◆ asking whether you have been treated for specific condition or disease;
- ◆ asking whether you have been hospitalized and, if so, for what;

- ◆ asking whether there is any health-related reason that would prevent you from performing the job;
- ◆ asking how often you were was out sick on previous jobs;
- ◆ asking if you are taking prescribed medications;
- ◆ asking if you have been treated for substance abuse;
- ◆ asking if you have ever filed a claim for workers' compensation.

When I am interviewing for a job, can the employer ask me how much sick time or other leave time he thinks I will need?

No. The employer, though, can tell you the number of hours that you will be expected to work and the leave time that is available and ask whether you will be able to work the required hours.

Does the ADA allow employers to ask any questions during a job interview that might indirectly relate to disability?

An employer may ask about information that he needs to assess a job applicant's qualifications and to assure health and safety on the job. So, during the application process, an employer can ask questions about an applicant's ability to perform *specific* job functions *if* they are *essential* to the job. For example:

- ◆ An employer who is interviewing for a job that requires long-distance driving *cannot* ask an applicant with one arm how his disability would affect his ability to perform that job. The employer, however, *can* ask whether the applicant has a valid driver's license, inquire about his accident record, and ask whether he can drive long distances with or without reasonable accommodations.
- ◆ An employer can describe the physical requirements of the job (such as the amount of lifting required) and then ask the applicant whether he can perform those requirements with or without reasonable accommodations.
- ◆ An employer can ask whether the applicant currently uses illegal drugs.

When I am interviewing for a job, can an employer require me to undergo a medical examination?

No.

What is a medical examination?

Medical examinations are procedures or tests that usually are administered by a health care professional in a medical setting and seek information about an individual's mental or physical health or impairments. Medical examinations include vision tests, blood tests, and diagnostic tests such as X-rays or MRIs. Tests that generally are not considered "medical examinations" include blood and urine tests to determine the current use of illegal drugs; polygraph examinations; and physical agility or fitness tests (though these types of tests are subject to other limits under the ADA). As for personality tests, at least one federal appellate court has held that they are medical examinations and, therefore, an employer probably cannot ask a job applicant to take one.

An employer has offered me a job on the condition that I undergo and pass a medical examination to determine if I can perform the job. Is that legal under the ADA?

Maybe. An employer can make a job offer to an applicant conditional on the satisfactory outcome of a medical examination and inquiry *only* if the examinations or inquiries are required for all entering employees within the job category.

A medical examination or inquiry at the conditional job offer stage need not be job-related or consistent with business necessity. However, any examination or inquiry that screens out or tends to screen out people with disabilities can violate the ADA unless it is job-related and consistent with business necessity.

After I am hired, when can my employer require me to take a medical examination or ask me questions about my health?

It depends. Once a person is hired and begins work, an employer can require her to undergo a medical examination and can make medical inquiries only to the extent that such examinations or inquiries are job-related and consistent with business necessity. A medical examination or inquiry of an employee may be appropriate, for example, if:

- ◆ there is some evidence that the employee is having a problem relating to job performance or safety;
- ◆ it is necessary to determine if the employee who performs a physically demanding job is fit for duty;
- ◆ it is necessary to comply with medical standards established by federal law.

If I ask for a reasonable accommodation from my employer, can he ask me to provide medical information or force me to take a medical examination?

Perhaps. Employers are entitled to obtain medical information about an employee who has requested a reasonable accommodation to determine whether the accommodation is necessary and appropriate. Also, in some cases, an employer can require the employee to be examined by a health care provider chosen by the employer if the employee does not provide sufficient documentation requested by the employer. However, the employer usually cannot ask the employee to undergo a medical examination when the disability or medical condition for which the accommodation is sought is known or obvious to the employer.

Can my employer ask about the medications I am taking?

No, except that employers may be able to ask employees who work in positions of public safety about their use of medications that may affect their ability to perform essential job functions so as to result in a direct threat.

Can an employer ask for disability-related information or require a medical examination when I return to work from sick leave?

If an employer has a reasonable belief that your present ability to perform the essential functions of the job will be impaired by a medical condition or will pose a direct threat, it can make medical inquiries or require a medical examination to address the question of whether you are able to perform your job.

Can my employer fire me if I refuse to answer questions or undergo a medical examination?

It would be a violation of the ADA for an employer to fire you if you refuse to respond to a medical inquiry or undergo a medical examination that is prohibited. It would not be a violation of the ADA to fire you if you refused to respond to a medical inquiry or undergo a medical examination that is permitted by the ADA.

For example, an employer can ask an employee who is having performance issues that may be related to an illness or disability to undergo a medical examination. If an employee refuses to do so, the employer can discipline the employee just as it would any other employee who has similar performance problems.

My employer says it is developing an emergency evacuation procedure and has asked me whether, in the event of evacuation, I will require assistance due to a disability or medical condition. Is this legal?

Yes, if the employer: (1) explains the purpose of the inquiry; (2) surveys all of its employees to determine if they need help in an emergency; and (3) makes clear that whether you choose to provide information on your disability is voluntary. In addition, the employer may ask employees with known disabilities whether they will need assistance in the event of an emergency, regardless of whether it surveys all employees.

Can my employer share my medical information with other people?

No. The ADA has very strong confidentiality protections. The ADA requires employers to maintain the results of any medical examinations or inquiries in medical files that are separate and apart from employees' personnel records and to treat all information from those examinations and inquiries as confidential. An employer can disclose this information only: (1) to supervisors and managers if they must be made aware of necessary restrictions on and accommodations for the employee; (2) to first aid and safety personnel if the employee has a disability that might require emergency treatment or assistance in the event of evacuation; and (3) to government officials investigating compliance with the ADA.

Where can I get more information?

The Title I statutory and regulatory standards for disability-related inquiries and examinations can be found at 42 U.S.C. § 12112(d) and 29 C.F.R. §§ 1630.11, 1630.13, and 1630.14. In addition, the EEOC's Title I Technical Assistance Manual includes additional information about these issues. The EEOC also has three publications that specifically explore these issues in more detail: (1) *Enforcement Guidance: Preemployment/ Disability Related Questions and Medical Examinations*; (2) *Enforcement Guidance: Disability Related Inquiries and Medical Examinations of Employees under the ADA*; and (3) *Questions and Answers on the EEOC's Enforcement Guidance on Disability Related Inquiries and Medical Examinations*. These documents are all available on the EEOC's website, <http://www.eeoc.gov>.

Who should I contact for help?

If you need more information or help, please contact the Intake Unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD) or intake@disabilityrightspa.org.

Contact Information

If you need more information or need help, please contact the intake unit of Disability Rights Pennsylvania (DRP) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@disabilityrightspa.org.

The mission of Disability Rights Pennsylvania is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, Disability Rights Pennsylvania cannot provide individual services to every person with advocacy and legal issues. Disability Rights Pennsylvania prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

IMPORTANT: This publication is for general informational purposes only. This publication is not intended, nor should be construed, to create an attorney-client relationship between Disability Rights Pennsylvania and any person. Nothing in this publication should be considered to be legal advice.

PLEASE NOTE: For information in alternative formats or a language other than English, contact Disability Rights Pennsylvania at 800-692-7443 Ext. 400, TDD: 877-375-7139 or intake@disabilityrightspa.org.

© FEBRUARY 2018. DISABILITY RIGHTS PENNSYLVANIA.