

The ADA restricts access to employees' medical information

This Technical Update is the last in a series on Title I of the Americans with Disabilities Act of 1990 (ADA). Title I was designed to protect people with disabilities from employment discrimination.

The ADA strictly limits the circumstances under which employers may ask questions about disability or require medical examinations of employees. Such questions and exams are only permitted where you have a reasonable belief, based on objective evidence that a particular employee will be unable to perform the essential job functions or will pose a direct threat because of a medical condition.

Can I ask for information about an employee's disability if he/she requests an accommodation?

If the need for an accommodation is not obvious, the employer may ask for documentation describing the individual's disability and why the requested accommodation is needed. The request for information should come from a manager at a level above the employee's direct supervisor.

What about performance problems?

If an employee with a disability is having trouble performing essential job functions, or doing so safely, do not immediately assume that the disability is the reason. Poor job performance is often unrelated to a medical condition and, when this is the case, it should be handled according to your existing policies concerning performance.

On the other hand, if a supervisor has information that reasonably caused him or her to conclude that the problem is related to the employee's disability, then medical questions, and perhaps even a medical examination, may be appropriate. For example, a normally reliable employee who is making frequent mistakes tells you that

the medication she has started taking for her lupus makes her lethargic and unable to concentrate. Under these circumstances, you may ask her to get a "fitness for duty" report to answer some questions relating to her medical condition, such as how long the medication can be expected to affect job performance.

What inquiries or exams are allowed?

Certain types of inquiries or examinations are always permitted, even if they disclose some medical information. For example, you may:

- Ask all employees to provide a doctor's note to support a request for leave.
- Ask about an employee's medical condition and conduct medical examinations that are required by another federal law.

Confidentiality

With limited exceptions, county officials and employees must keep confidential any medical information they learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Do not place medical information in regular personnel files. Rather, keep medical information in a separate medical file that is accessible only to designated officials. Medical information stored electronically must be similarly protected (e.g., by storing it on a separate database.)

For more information, contact CTSI at 303-861-0507.

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Technical Updates are available online at: www.ctsi.org

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