

Is your Sick Leave Policy Too Intrusive Under The ADA?

A federal court recently applied the Americans with Disabilities Act (ADA) to a sick leave policy containing rules common to many workplaces. The court concluded that the policy was too intrusive when it was applied to employees who weren't in safety-sensitive positions or suspected of abusing sick leave. Although the courts governing Colorado employers haven't faced this issue yet, the case shows us how our courts may rule.

The employer's sick leave policy required employees to phone in before the start of their shift if they were unable to work because of illness and to describe the nature of their illness. It also required them to complete and sign a sick form upon returning to work attesting that they were too sick to work during their absence and restating the nature of their illness. A doctor's certificate was required for absences of certain lengths, certifying that the employee was unable to work during the period of absence, explaining the nature of his illness, and verifying that the employee was fit to return to work.

The court found that the parts of the policy requiring either the employee or his doctor to provide a diagnosis or describe the nature of the illness constituted a "medical inquiry" subject to the ADA because the information could reveal a disability. As a result, those inquiries would be lawful under the ADA only if they were job-related and consistent with business necessity.

According to the court, requiring all employees to provide a diagnosis when phoning in an absence was too broad a policy because it isn't reasonable to suspect that all employees are potential sick leave abusers. The court did approve of requiring diagnoses from employees on the employer's sick leave control list. The sick leave control list consisted of employees who took six absences without a doctor's certification in one year or who had a suspicious pattern of sick leave.

The court also approved the employer's requirement that bus drivers who called in sick because of safety concerns provide diagnoses. The danger that may be posed by an unfit bus operator is obvious and undisputed.

The court summarized the inquiries that couldn't be made of employees who aren't in a safety-sensitive position or on the sick leave control list:

- The employer may require employees to call in before an absence.
- The employer may not require employees to describe the nature of their illness.
- The employer may require employees to submit sick forms upon their return from an absence due to sickness. It may not require employees to state the nature of their illness, however.
- The employers may require a doctor's certificate for absences of specified lengths stating the employee was incapable of working during his absence and is now fit to resume work. But it may not require the doctor to describe the nature of the illness or treatment.

What This Means For Counties

Counties should realize that requiring diagnoses of illness from employees who take sick leave is a medical inquiry under the ADA, and it should only be done when it's consistent with business necessity; when the inquiry serves a legitimate goal and when the requirement is imposed only on classes of employees for whom the inquiry is justified. Any information should be protected on a strict "need to know" basis.

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