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*The U.S. Equal Employment
Opportunity Commission*

QUESTIONS AND ANSWERS: ENFORCEMENT GUIDANCE ON DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS OF EMPLOYEES UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

INTRODUCTION

What does this Guidance address?

- The [Guidance](#) explains the ADA's rules concerning when employers may and may not obtain medical information about their employees.

Why did the EEOC issue this Guidance?

- In October 1995, the EEOC issued enforcement guidance explaining the ADA's rules concerning when an employer may and may not make disability-related inquiries and require medical examinations of **applicants**. Since that time, we have had many inquiries from EEOC investigators and attorneys in the field, employers, and employees about how the law applies with respect to **people who are already working**. This Guidance is intended to answer some of the most frequently-asked questions we have received.

To whom does the Guidance apply?

- The Guidance applies to private and to state and local government employers with fifteen or more employees. Federal sector employers are also covered by the Guidance, as the result of the 1992 amendments to the Rehabilitation Act.

- The ADA's requirements regarding disability-related inquiries and medical examinations apply to *all* of the employees of a covered employer, whether or not they have disabilities.

IN GENERAL

Are the rules about when an employer may make disability-related inquiries and require medical examinations the same for employees and applicants? (Introduction)

(For more information about this and other issues discussed in these Questions and Answers, please consult the referenced question numbers from the Guidance.)

- No. The ADA limits an employer's ability to make disability-related inquiries or require medical examinations at three stages: **pre-offer**, **post-offer**, and **during employment**. The rules concerning disability-related inquiries and medical examinations are different at each stage.
 - At the first stage (**prior to an offer of employment**), an employer may not ask any disability-related questions or require any medical examinations, even if they are related to the job.
 - At the second stage (**after an applicant is given a conditional job offer, but before he or she starts work**), an employer may ask disability-related questions and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category.
 - At the third stage (**after employment begins**), an employer may make disability-related inquiries and require medical examinations only if they are **job-related and consistent with business necessity**.

What is a "disability-related inquiry"? (Question 1)

- A "disability-related inquiry" is a question that is likely to elicit information about a disability, such as asking employees about: whether they have or ever had a disability; the kinds of prescription medications they are taking; and, the results of any genetic tests they have had.
- Disability-related inquiries also include asking an employee's co-worker, family member, or doctor about the employee's disability.
- Questions that are *not* likely to elicit information about a disability are always permitted, and they include asking employees about their general well-being; whether they can perform job functions; and about their current illegal use of drugs.

What is a "medical examination"? (Question 2)

- A "medical examination" is a procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual's physical or mental impairments or health. Medical examinations include vision tests; blood, urine, and breath analyses; blood pressure screening and cholesterol testing; and diagnostic procedures, such as x-rays, CAT scans, and MRIs.

Are there any procedures or tests employers may require that would not be considered medical examinations? (Question 2)

- Yes. There are a number of procedures and tests that employers may require that are not considered medical examinations, including: blood and urine tests to determine the current illegal use of drugs; physical agility and physical fitness tests; and polygraph examinations.

JOB RELATED AND CONSISTENT WITH BUSINESS NECESSITY

When may an employer ask an employee a disability-related question or require an employee to submit to a medical examination? (Question 5)

- Generally, an employer only may seek information about an employee's medical condition when it is **job related and consistent with business necessity**. This means that the employer must have a reasonable belief based on objective evidence that:
 - an employee will be unable to perform the essential functions his or her job because of a medical condition; or,
 - the employee will pose a direct threat because of a medical condition.
- Employers also may obtain medical information about an employee when the employee has requested a **reasonable accommodation** and his or her disability or need for accommodation is not obvious.
- In addition, employers can obtain medical information about employees when they:
 - are required to do so by another **federal law or regulation** (e.g., DOT medical certification requirements for interstate truck drivers); **(Question 21)**
 - offer **voluntary** programs aimed at identifying and treating common health problems, such as high blood pressure and cholesterol; **(Question 22)**
 - are undertaking **affirmative action** because of a federal, state, or local law that requires affirmative action for individuals with disabilities or voluntarily using the information they obtain to benefit individuals with disabilities. **(Question 23)**

What should an employer do if it learns about an employee's medical condition from someone else? (Question 6)

- First, the employer should determine whether the information learned is **reliable**. The employer should consider how well the person providing the information knows the individual, the seriousness of the medical condition, and how the person learned the information.
- The employer should then determine whether the information gives rise to a reasonable belief that the employee in question will be unable to perform the essential functions of his or her job because of the medical condition or will pose a direct threat because of the condition.

- If the information does give rise to such a reasonable belief, then the employer may make disability-related inquiries or require a medical examination as permitted by the Guidance.

May an employer ask all employees what prescription medications they are taking? (Question 8)

- Generally, no. In limited circumstances, however, employers may be able to ask **employees in positions affecting public safety** about their use of medications that may affect their ability to perform essential functions and **thereby result in a direct threat**.
- For example, an airline could require pilots to report when they are taking medications that may affect their ability to fly. A fire department, however, could not require employees in administrative positions to report their use of medication because it is unlikely that these employees would pose a direct threat as a result of an inability, or impaired ability, to do their jobs.

What may an employer do if it believes that an employee is having performance problems because of a medical condition, but the employee won't answer any questions or go to the doctor? (Question 9)

- The employer may discipline the employee for his or her performance problems just as it would any other employee having similar performance problems.

SCOPE AND MANNER OF INQUIRIES AND EXAMINATIONS

May an employer have an employee who is requesting a reasonable accommodation examined by its own health care provider? (Question 11)

- In some instances, yes. If the employer has explained what type of documentation is needed, and the employee fails to provide it or provides insufficient documentation, the employer may require the employee to see a health care professional of the employer's choice.
- Even where an employee initially provides insufficient documentation, however, the employer should consider asking the employee's health care provider for additional information before requiring an examination by the employer's health care professional. This is because an employee's health care provider frequently is in the best position to provide information about the employee's limitations.

May an employer have an employee who it reasonably believes will pose a direct threat examined by its own health care provider? (Question 12)

- Yes. This is because the employer is responsible for assessing whether an employee poses a direct threat based on a reasonable medical judgment that relies on the **most current medical knowledge and/or best objective evidence**.
- The health care professional the employer chooses should have expertise in the employee's specific medical condition and be able to provide medical information that

allows the employer to determine the effects of the condition on the employee's ability to perform his or her job.

- If the employer's health care professional believes that the employee poses a direct threat, but the employee's own doctor disagrees, the employer should evaluate the conflicting medical information by considering, for example, the area of expertise of each medical professional; the kind of information each provided; and, whether the information provided is consistent with the employer's own observations of or knowledge about the employee.

DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS RELATED TO LEAVE

May an employer request that an employee provide a doctor's note or other explanation when the employee has used sick leave? (Question 15)

- Yes. An employer is entitled to know why an employee is requesting sick leave. An employer, therefore, may ask an employee to provide a doctor's note or other explanation, as long as it has a policy or practice of requiring all employees to do so.

May an employer ask disability-related questions or require a medical examination when an employee who has been on leave for a medical condition wants to return to work? (Question 17)

- Yes, if an employer has a reasonable belief that an employee's **present** ability to perform essential functions will be impaired by a medical condition or that he or she will pose a direct threat because of a medical condition.
- Any inquiries or examination, however, must be limited in scope to what is needed to determine whether the employee is able to work.

PERIODIC MEDICAL EXAMINATIONS AND TESTING

May employers require employees to have periodic medical examinations? (Question 18)

- No, with **very limited exceptions** for employees who work in positions affecting public safety, such as police officers, firefighters, or airline pilots. Even in these limited situations, the examinations must address specific job-related concerns. For example, a police department could periodically conduct vision tests or electrocardiograms because of concerns about conditions that could affect the ability to perform essential job functions and thereby result in a direct threat. A police department could not, however, periodically test its officers to determine whether they are HIV-positive, because a diagnosis of this condition alone would not result in a direct threat.

May employers subject employees to periodic alcohol testing? (Question 19)

- Generally, no. Employers, however, may subject employees who have been in **alcohol rehabilitation programs** to periodic alcohol testing where the employer has a reasonable belief that the employee will pose a direct threat in absence of such testing.

- In determining whether to subject such an employee to periodic alcohol testing, the employer should consider the safety risks associated with the position the employee holds, the consequences of the employee's inability or impaired ability to do his or her job, and the reason(s) why the employer believes that the employee will pose a direct threat.
- Of course, an employer may maintain and enforce rules prohibiting employees from being under the influence of alcohol in the workplace and may conduct alcohol testing for this purpose if it has a reasonable belief that an employee has been drinking during work hours.