

HR COMPLIANCE OVERVIEW



Employer Best Practices for Medical Examinations and Inquiries Under the ADA

The Americans with Disabilities Act (ADA) restricts the actions an employer may take with respect to employees with disabilities. Among the ADA's restrictions are limitations on an employer's ability to require employees and applicants to undergo medical examinations or answer questions regarding medical conditions.

The ADA is enforced by the U.S. Equal Employment Opportunity Commission (EEOC). Failure to comply with the ADA's requirements can result in significant penalties to the employer. Therefore, it is important for employers to familiarize themselves with the ADA's rules regarding medical examinations and inquiries.

This Compliance Overview provides an overview of the ADA's requirements regarding medical examinations and inquiries, as well as a summary of best practices employers may use when requesting that employees and applicants undergo medical examinations or answer questions about their medical conditions.

LINKS AND RESOURCES

- EEOC [Overview](#) of Employer Responsibilities under the ADA
- EEOC [Enforcement Guidance](#) on Disability-related Inquiries and Medical Examinations of Employees under the ADA

Highlights

Some best practices employers may implement to ensure compliance with the ADA's requirements regarding medical examinations and inquiries include:

- Drafting clear, consistent written employment policies;
- Training managers and supervisors;
- Ensuring proper documentation;
- Evaluating whether to require an examination to be conducted by the employer's choice of provider; and
- Maintaining confidentiality.





Overview of Medical Examinations and Inquiries Under the ADA

Under the ADA, employers with **15 or more employees** are limited in their ability to require applicants and employees to undergo medical examinations or ask questions regarding an individual's disability. These restrictions vary depending on whether the disability-related inquiry or medical examination occurs prior to an employment offer, after a conditional job offer is made or during employment, as follows:

- **Pre-offer**—At the pre-offer stage, the ADA prohibits employers from making any disability-related inquiries or requiring applicants to undergo any medical examinations, even if they are related to the job. However, employers may inquire about an applicant's ability to perform specific job functions as long as such inquiries do not elicit disability-related information;
- **Post-conditional offer**—Employers may require a medical examination or make disability-related inquiries after an offer of employment has been made and prior to the commencement of employment, only if everyone who will be working in the job category must also take the examination. In addition, employers may condition the job offer on the results of the examination; however, if the applicant is not hired because the examination reveals a disability, employers must be able to show that the reasons for exclusion are job-related and consistent with business necessity and that no reasonable accommodation would have made it possible to for the applicant to perform the essential job functions; and
- **During employment**—After the commencement of employment, employers may generally only require a medical examination or make disability-related inquiries if the employer can prove that these requirements are job-related and consistent with business necessity.

Under the ADA, "**job-related and consistent with business necessity**" means the employer has a reasonable belief, based on objective evidence, that an employee's ability to perform essential job functions will be impaired by a medical condition, or an employee will pose a direct threat due to a medical condition.

Permitted Inquiries and Examinations

Certain inquiries and medical examinations are allowed even if they are not job-related and consistent with business necessity, including:

- **Voluntary wellness and health screening programs**—Employers may conduct voluntary medical examinations and activities, including voluntary medical histories and disability-related inquiries, as part of voluntary wellness and health screening programs, as long as any medical records are kept confidential and separate from personnel files. These programs may include blood pressure screening, cholesterol testing, glaucoma testing and cancer detection screening;
- **Public safety positions**—Employers may generally conduct narrowly tailored periodic exams for employees in high-risk roles (e.g., police officers or firefighters). However, if an employer decides to terminate or take other adverse action against an employee with a disability based on the results of a medical examination, it must show that the employee is unable to perform the essential functions of their job or poses a direct threat that cannot be eliminated or reduced by reasonable accommodation;
- **Federal mandates**—Employers may make inquiries or conduct medical examinations required by other federal laws or regulations (e.g., OSHA or Department of Transportation medical certifications for truck drivers); and

HR COMPLIANCE OVERVIEW



- **Affirmative action**—Employers may allow employees to voluntarily self-identify as having a disability for affirmative action purposes (if the employer is subject to a federal, state or local law requiring affirmative action for individuals with disabilities).

Disability-related Inquiries

Disability-related inquiries are questions (or a series of questions) that are likely to elicit information about a disability.

Examples of disability-related inquiries include:

- Asking an employee whether they have or ever had a disability or how they became disabled, or inquiring about the nature or severity of an employee’s disability;
- Asking an employee to provide medical documentation regarding their disability;
- Asking an employee’s co-worker, family member, doctor or another person about the employee’s disability;
- Asking about an employee’s genetic information;
- Asking about an employee’s prior workers’ compensation history;
- Asking an employee whether they are currently taking any prescription drugs or medications or whether they have taken any such drugs or medications in the past, or monitoring an employee’s taking of such drugs or medications; and
- Asking an employee a broad question about their impairments that is likely to elicit information about a disability.

However, employers may ask:

- About an employee’s general well-being;
- About nondisability-related impairments;
- Whether an employee can perform job functions;
- Whether an employee has been drinking;
- About an employee’s current illegal use of drugs;
- A pregnant employee how they are feeling or when their baby is due; and
- An employee to provide the name and telephone number of a person to contact in case of a medical emergency.

Medical Examinations

Medical examinations are procedures or tests that seek information about an individual’s physical or mental impairments or health. In determining whether a test or procedure is a medical examination, the following factors should be considered:

- Whether the test is administered by a health care professional;
- Whether the test is interpreted by a health care professional;
- Whether the test is designed to reveal an impairment or physical or mental health;
- Whether the test is invasive;
- Whether the test measures an employee’s performance of a task or measures their physiological responses to performing the task;
- Whether the test is normally given in a medical setting; and
- Whether medical equipment is used.

HR COMPLIANCE OVERVIEW



Medical examinations include but are not limited to vision tests; blood, urine and breath analyses; blood pressure screening and cholesterol testing; nerve conduction tests; range-of-motion tests; pulmonary function tests; psychological tests; and diagnostic procedures such as X-rays, CT scans and MRIs.

However, there are procedures and tests employers may require that generally are **not** considered medical examinations, including:

- Tests to determine the current illegal use of drugs;
- Physical agility tests and physical fitness tests;
- Tests that evaluate an employee's ability to read labels or distinguish objects as part of a demonstration of the ability to perform actual job functions;
- Psychological tests that measure personality traits such as honesty, preferences and habits; and
- Polygraph examinations.

Enforcement and Penalties

Individuals alleging violations of the ADA may initiate an action against an employer by filing a charge of discrimination with the EEOC. If there is a local or state law similar to the ADA, individuals may be required to file a charge with the state or local agency that enforces the law, and the EEOC may work with the agency to investigate and resolve the charge. Under the ADA, individuals have **180 days** from the date the alleged violation took place to file a charge with the EEOC. The filing deadline is extended to **300 days** if a state or local agency enforces a state or local law similar to the ADA. Individuals must file an EEOC charge before they may file a lawsuit in federal court.

If a court determines that an employer violated the ADA, the employer may be subject to injunctive relief, back pay, reinstatement or front pay, compensatory and punitive damages, and attorney fees and costs.

Employer Best Practices for Medical Examinations and Inquiries

To avoid costly litigation and claims, employers may implement the following best practices regarding medical examinations and disability-related inquiries for applicants and employees.

Review Existing Employment Policies and Procedures

To ensure that an employer and its agents remain compliant with the ADA's restrictions on medical examinations and inquiries, employers should establish clear, fair and consistent policies regarding medical examinations and disability-related inquiries. While employers may have a standalone policy regarding medical examinations and inquiries, guidelines regarding these employer practices will generally be found in a number of different employment policies. Some of the key policies and procedures employers may consider reviewing include:

Reasonable Accommodation Policies

The ADA requires employers to provide reasonable accommodations for an applicant's or employee's known disability, unless doing so would impose an undue hardship on the employer. In determining whether to provide an accommodation, employers may request additional medical information only to the extent necessary to confirm the existence of a disability and its limitations. As a best practice, reasonable accommodation practices should ensure that any disability-related inquiries and medical examinations are narrowly tailored and only applicable when the disability or the need for the accommodation is not known or obvious.

Sick Leave and Return-to-work Policies

HR COMPLIANCE OVERVIEW



Employers may generally request a doctor's note or other explanation to substantiate the employee's use of sick leave. However, employers should ensure that such practice is applied consistently to all employees, whether or not they have a disability under the ADA. Employers should note that different requirements may apply under other federal leave laws, such as the Family and Medical Leave Act, and under state and local laws. Therefore, employers should carefully consider all applicable leave laws prior to making any requests.

Further, employers may make disability-related inquiries or require a medical examination when an employee who has been on leave for a medical condition is returning to work if the employer has a reasonable belief that an employee's present ability to perform essential job functions will be impaired or they will pose a threat due to their condition. However, these inquiries or examinations must be limited in scope to the information needed to assess the employee's ability to work.

Fitness-for-Duty Examination Procedures

Periodically, employers may develop concerns about an existing employee's ability to safely perform their job duties due to a medical condition. This may occur when an employer knows about an employee's medical condition, has observed performance problems and reasonably can attribute the problems to the employee's medical condition. In these circumstances, it may be job-related and consistent with business necessity for an employer to make a disability-related inquiry or require a medical examination, which may be referred to as a fitness-for-duty examination. However, employers must ensure that their procedures for requesting medical information are narrowly tailored to the specific job functions or potential direct threat at issue and do not elicit extraneous medical information. Additionally, employers should ensure that their practices are applied consistently across all employees and do not discriminate on the basis of any other trait protected under federal law, such as age, race, national origin, religion or sex.

Drug and Alcohol Testing Policies

Employers may also consider carefully reviewing their drug and alcohol testing procedures. Under the ADA, drug and alcohol testing are treated differently. Drug testing or inquiries to determine an employee's current illegal use of drugs **are not considered medical examinations or disability-related inquiries** under the ADA. However, past drug addiction is generally considered a disability. Therefore, employers may generally only ask about past addictions or participation in a drug rehabilitation program if the inquiries are job-related and consistent with business necessity.

Therefore, under the ADA, employers may generally enforce drug testing policies used to determine current illegal drug use. However, employers may also consider reviewing other anti-drug policies to ensure that they do not seek information regarding an individual's past illegal drug use.

Alcohol testing is considered a medical examination and, therefore, in order to conduct alcohol testing on employees, employers must show that it is job-related and consistent with business necessity. Some instances in which an employer may conduct alcohol testing include the following:

- Alcohol testing to maintain and enforce rules prohibiting employees from being under the influence of alcohol in the workplace if they have a reasonable belief that an employee is currently under the influence at work; and
- Periodic alcohol testing after an employee returns to work following an alcohol rehabilitation program, but only if the employer has a reasonable belief, based on objective evidence, that the employee will pose a direct threat in the absence of periodic testing. Such testing may be done as part of a "last chance" agreement.

HR COMPLIANCE OVERVIEW



Employers should consider reviewing existing alcohol testing procedures to ensure that any alcohol testing administered is job-related and consistent with business necessity.

Hiring and Recruitment Policies

Employers may also consider reviewing existing hiring and recruitment policies. Periodically, job applications, interview outlines and preemployment screening may include questions that elicit information about an individual's health or medical history. It is important that employers carefully review these policies and procedures to ensure they do not include any disability-related inquiries until a conditional offer is made.

Conduct Training

Employers may also consider training managers and supervisors on their responsibilities and limitations with respect to medical examinations and disability-related inquiries under the ADA. Employers should consider including explanations and examples of lawful and unlawful disability-related inquiries and medical examinations. For example, employers may include specific examples of questions that managers and supervisors may ask employees or applicants. Employers should also ensure managers and supervisors have appropriate channels to escalate concerns regarding whether a disability-related inquiry or medical examination may be implemented. Finally, employers should emphasize the importance of maintaining strict confidentiality with regard to an employee's medical condition.

Evaluate Whether to Require a Particular Provider

Under the ADA, an employer may require an employee to go to a health care professional of the employer's choice under limited circumstances, including when:

- The employee has requested a reasonable accommodation and the employee's own medical documentation is insufficient (e.g., does not specify the existence of an ADA disability or the need for an accommodation, the health care provider does not have the relevant expertise, the information does not specify the functional limitations due to the disability);
- The employer has objective evidence that the employee cannot perform essential job functions or may pose a safety risk; or
- A federal safety regulation requires it.

Employers should carefully consider whether a second opinion from a specific health care provider is appropriate or necessary under the circumstances. Additionally, any examination must be job-related and consistent with business necessity.

Ensure Proper Documentation

In case of future employee claims or disagreements, employers should document their processes in a timely manner when requesting a medical examination or making a disability-related inquiry. The specific documentation may vary depending on the reason for the examination or inquiry. For example, if the request is made due to the employer's belief that an employee cannot perform their job functions or poses a safety risk, the employer should document the specific job functions that may be impaired or the direct threat posed due to the employee's condition. If an employee is requesting medical leave, a reasonable accommodation or to return to work, employers should document all interactions with the employee and requests made to employees and ensure that such exams or inquiries are narrowly tailored to only elicit the information necessary to determine an employee's reasonable accommodation, eligibility for leave, fitness to return to work or any other reason.

HR COMPLIANCE OVERVIEW



Maintain Confidentiality

Under the ADA, employers are required to treat any medical information obtained from a disability-related inquiry or medical examination, as well as any medical information voluntarily disclosed by an employee, as a confidential medical record. Such records should be maintained separately from the employee's personnel file. Employers may only disclose such information in limited circumstances to supervisors, managers, first-aid and safety personnel, and government officials investigating ADA compliance.

Therefore, it is important that employers implement procedures to ensure that any medical information obtained from an employee or applicant is kept strictly confidential in a separate medical record.

Employer Takeaways

Employers that fail to comply with the ADA's restrictions on medical examinations and disability-related inquiries may be subject to costly legal penalties and loss of workplace morale. Therefore, employers should ensure that they understand and are in compliance with all their obligations under the law.

