

Disability Identity and Navigating the Hiring Process

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1. Overview of the ADA Provisions on medical inquiries
2. Discussion of Disability Identity and disclosure

Protections From Discrimination Under The ADA

- Discrimination based on disability is prohibited in the employment relationship, which includes:
 - Job application procedures,
 - Hiring / Firing,
 - Benefits and Compensation,
 - Advancement,
 - Training,
 - Any Terms, Conditions, or Privileges of Employment
- Application Examples: improper questions or medical exams, refusal to make reasonable accommodations to application process, administration of tests which screen out applicants with disabilities.

Disability and Medical Inquiries

The Phases of Employment

- What an employer can and cannot ask depends on the stage of the employment relationship as defined in the ADA:
 - **Pre-Offer:** Application and interview.
 - **Post-Offer:** After the employer extends a conditional job offer, but before a person starts work.
 - **During Employment:** After employment begins.

Disclosure of Disability

- An employee or applicant is not required to mention that they have a disability unless or until they need a reasonable accommodation.
- If they need an accommodation during the application phase, then the individual will need to mention the disability.

Disability-Related Inquiry and Medical Exam Defined

- The U.S. Equal Employment Opportunity Commission (EEOC) defines:
 - **“Disability-Related Question”** is a question that is likely to elicit information about a disability.
 - **“Medical Examination”** is “a procedure or test that seeks information about an individual's physical or mental impairments or health.”
 - **Tests for Current Use of Illegal Drugs** are **not medical examinations** and can be given at any stage of the employment process

Pre-Offer: Permissible Question for Applicants

- Permissible Question:

Are you able to do the essential functions of the job with or without a reasonable accommodation?

- People with disabilities can answer yes to this question (without indicating “with” or “without” an accommodation).
- Any further questioning by the employer may elicit improper information concerning the existence of a disability.

Pre-Offer: What Employers Can Ask and Do

- State the physical requirements of a job and ask if an applicant can satisfy these requirements (with or without a reasonable accommodation).
- Ask about performance of specific job functions.
- Ask someone to describe or demonstrate how they would do a job.
- Ask about the ability to meet attendance requirements of previous jobs or the job being discussed.

Post-Offer: What Employers Can Ask and Do

After an applicant is given a conditional job offer, but before he or she starts work -

- An employer may ask disability-related questions
- An employer may also conduct medical examinations, *regardless of whether they are related to the job*, as long as the employer does so for all entering employees in the same job category.

During Employment: Disability-Related Information and Medical Exams

- An employer “may require a medical examination (and/or inquiry) of an employee that is **job-related and consistent with business necessity.**”
- An employer “may make inquiries into the ability of an employee to perform job-related functions.”

Job Related and Consistent with Business Necessity

- A disability-related inquiry or medical examination of an employee may be "job-related and consistent with business necessity" when an 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.
 - Periodic medical examinations and other monitoring under specific circumstances may be Job Related and Consistent with Business Necessity.
 - A follow-up on a request for reasonable accommodation for a hidden disability may also be Job Related and Consistent with Business Necessity.

Welcome to NDRN Talk Town –

hosted by Cheryl

What you can't see can't hurt you, or can they?

Hidden Disabilities

Are they Good, Bad, or Ugly ??

Questions ? (First from the Host)

- If you have a question – please go ahead and enter it into the chat box
- We will begin taking your questions shortly

Resource

- EEOC public meeting transcript from 2011 re employment of people with mental disabilities:

<https://www.eeoc.gov/meetings/24083/transcript>

Additional resources

Questions and Answers: Enforcement Guidance on Disability Related Inquiries and Medical Examinations Under the Americans with Disabilities Act:

<https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>

Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA:

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>

Job Accommodation Network:

<https://askjan.org/topics/medexinq.cfm>