

## FREQUENTLY ASKED QUESTIONS

### *Considerations During Employment*

**Q: 1 *Can I inquire about an employee's disability or require a medical examination during employment?***

Once an individual has been hired and has commenced employment, an employer may only require medical examinations or make disability-related inquiries if "such examination or inquiry is shown to be job-related and consistent with business necessity." This limitation applies to all employees, not just those with disabilities. Generally, this standard will be met if the medical exam or inquiry is no broader or intrusive than necessary and:

- There is evidence that the employee is unable to perform his or her job duties;
- There is evidence indicating the employee may pose a direct threat to his or her safety or the safety of others; or
- The medical exam or inquiry is made as a follow up to an employee's request for reasonable accommodation in situations when the individual's disability or need for accommodation is not known or obvious.

Employers should keep in mind that inquiries regarding an employee's use of prescription medication constitute disability-related inquiries that are subject to the limitations above.

**Q: 2 *What is a reasonable accommodation and what are my obligations in providing them?***

Covered employers have an affirmative obligation, absent undue hardship, to provide reasonable accommodations to qualified individuals with disabilities during all stages of employment. Under Title I of the ADA, "reasonable accommodation" generally means any modification or adjustment made to a job or work environment to allow a qualified employee with a disability to perform the essential functions of the job or to enjoy equal benefits and privileges of employment.

**Q: 3 *As an employer, when is my duty to consider and provide reasonable accommodations triggered?***

Under Title I of the ADA, covered employers have a duty to consider reasonable accommodations for disabilities which are known or of which they are aware. Generally, employees are responsible for requesting a reasonable accommodation from the employer. To request an accommodation, the employee need not use any sort of "magic language" or specifically reference the ADA, "reasonable accommodation," or "disability." Instead, a request for accommodation is sufficient if the request notifies the employer that the employee needs an adjustment or change at work for a reason related to a medical condition.

The request for accommodation need not be in writing. Additionally, depending on the circumstances, a family member, health professional, or other representative may make the request for reasonable accommodation on behalf of the employee. Although it generally is the employee's responsibility to notify his or her employer of a need for accommodation, employers may ask an employee about his or her need for accommodation if the employee has a known disability and the employer reasonably believes that the employee may need an accommodation.

**Q: 4 *What steps should I take after receiving a request for reasonable accommodation or confirming an employee may need an accommodation?***

Once an employee makes a request for an accommodation, this triggers initiation of what is known as the informal, "interactive process." Mainly, this means that the covered employer and employee should meet and work together to discuss potential options for accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. In many circumstances, the employee who has requested the accommodation will suggest an

appropriate accommodation. If an employee's disability or need for accommodation is not known or obvious, the employer may make disability-related inquiries and seek documentation from the employee's health care provider or similar professional regarding the employee's disability and accommodation needs before engaging in the interactive process.

**Q: 5 *What types of reasonable accommodations must I consider providing?***

Pursuant to Title I of the ADA, types of reasonable accommodations that should be considered include, but are not limited to, the following:

- Making existing facilities readily accessible and usable.
- Job restructuring, such as redistributing marginal, non-essential job functions or altering when or how a job function is performed. To the extent an employer eliminates certain marginal functions that the employee is unable to perform, the employer may replace such functions with other marginal functions that the employee can perform.
- Leave, part-time, or modified work schedules. Employers are not obligated to provide additional paid leave but reasonable accommodations may include leave flexibility and unpaid leave, and following leave, an employer generally must return the employee to the same position the employee held prior to the leave.
- Reassignment to a vacant position, which is an accommodation of "last resort" to be considered only if there are no effective accommodations that will allow the employee to perform the essential functions of his or her current position.
- Acquisition or modifications of equipment or devices.
- Appropriate adjustment or modifications of examinations, training materials, or policies.
- The provision of qualified readers or interpreters.
- Other similar accommodations.

**Q: 6 *Are any requests for accommodations considered unreasonable?***

Yes. Specifically, an employer is not required to eliminate an essential function of the job as an accommodation. Furthermore, employers generally are not required to lower production/performance standards, whether qualitative or quantitative, as an accommodation, assuming the employer applies the standard uniformly and such standards pertain to essential job functions. This includes using the same evaluation criteria for employees, regardless of whether they have a disability. Finally, employers are not required to provide accommodations that would impose undue hardship on the employer. Similarly, ADA protections do not apply in situations where the employee would pose a direct threat, meaning a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.

**Q: 7 *Are my obligations limited to the ADA?***

In addition to potential protections under the ADA, employees who are injured, disabled, or become ill while employed may also have rights, including the right to leave, under other laws. For example, the Family and Medical Leave Act ("FMLA") entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Moreover, workers' compensation is a form of insurance that provides financial assistance, medical care and other benefits for employees who are injured or disabled on the job. When addressing issues under the ADA, including requests for reasonable accommodation, employers should also make sure to consider any obligations they may have under the FMLA, state workers' compensation laws, or any other law due to the overlap in protections provided under these laws.

For additional questions about the ADA, visit [ada.gov](http://ada.gov), [Askearn.org](http://Askearn.org), [askjan.org](http://askjan.org), or contact an attorney.