



# You be the Judge: Medical Inquiries, Examinations, and the ADA

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# Medical inquiries under the ADA

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- The ADA bars employers from asking about the existence, nature, or severity of a disability and prohibits medical examinations until after a conditional job offer has been made.
- Even after a conditional job offer is made, the ADA provides certain restrictions and safeguards on the scope of medical examinations.

# What is a medical inquiry?

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- Asking whether the person has been treated for a specific condition or disease.
- Asking whether the person has been hospitalized and, if so, for what.
- Asking whether there is any health-related reason would prevent the person from performing the job.
- Asking how often the person was sick in her prior job.
- Asking whether the person is taking any prescription medications.
- Asking whether the person has been treated for substance abuse.
- Asking whether the person has previously filed a worker's compensation claim.

# What is a medical examination?

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- Medical examinations are tests or procedures, usually administered by health care professionals in medical settings, that seek information about an individual's mental or physical health or impairments. Such exams include:
  - Psychological tests
  - Fitness-for-duty tests
  - Drug tests
  - Blood pressure tests
  - Cholesterol screenings

# What is not a medical examination?

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- Blood and urine tests to determine current use of illegal drugs
- Honesty tests
- Physical agility tests
- Fitness tests

# Is a personality test a medical examination?

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- The EEOC has identified 7 factors to determine whether a test is a “medical” exam under the ADA:
  - Is the test administered by a health care professional?
  - Is it interpreted by a health care professional?
  - Is it intended to reveal a physical or mental impairment?
  - Is it invasive?
  - Does it measure a person’s performance of a task or his physiological responses to performing the task?
  - Is it normally given in a medical setting?
  - Was medical equipment used?

# Is a personality test a medical examination?

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- In *Karraker v. Rent-A-Center*, 411 F.3d 831 (7th Cir. 2005), current and former employees alleged that it violated the ADA for Rent-A-Center to require employees seeking management jobs to take the Minnesota Multiphasic Personality Inventory (MMPI).
- The Seventh Circuit held that the MMPI is a test designed to diagnose mental impairments, and had the effect of hurting the job prospects of people with mental illness. It was determined to be an improper medical exam under the ADA.

# Medical inquiries under the ADA

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- The ADA restricts an employer's use of medical examinations and inquiries in three different situations:
  - When an individual applies for a job
  - After s/he has been offered a job
  - After s/he starts working.



# Pre-offer medical inquiries

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- Before a job offer is made, the ADA generally prohibits all disability-related inquiries and medical examinations, even if they are related to the job.
- Employee screening and testing must generally be based on non-medical factors.
- The ADA permits employers to discuss medical issues with job applicants in 3 limited situations:

# Pre-offer medical inquiries

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- An employer may ask an **applicant**:
  - About his or her ability to perform job-related functions, if it asks the same of all applicants for that job.
  - To show how s/he would perform the essential functions of the job for which s/he is applying.
  - If an accommodation is required, where the applicant has an obvious or known disability.

# Post-offer medical inquiries

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- After making a job offer, but before an individual begins work, employers may condition a **job offer** on the results of a medical exam, if:
  - All new employees are given the same medical exam, whether or not they have a disability; *and*
  - The employer keeps the medical information on separate forms in separate medical files, and treats it as a confidential medical record.

# Post-offer medical inquiries – offer withdrawal

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- It is illegal to withdraw a job offer based on information obtained in a medical exam unless it is job-related or necessary for the conduct of the employer's business.
- The offer may be withdrawn if the individual's disability would constitute a "direct threat" to the health and safety of himself or others and no reasonable accommodation is available.
- The employer needs to show that the essential functions cannot be performed with a reasonable accommodation.

# Medical inquiries and examinations – Existing employees

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- Disability-related inquiries and medical exams of current employees must be **“job-related and consistent with business necessity.”**

# Medical inquiries and examinations – Existing employees

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- EEOC, the U.S. agency which enforces the ADA, states that a medical inquiry or exam is job-related and consistent with business necessity when:
  - An employer has a reasonable belief, based on objective evidence, that a medical condition will impair an employee's ability to perform essential job functions, *or*
  - An employer has a reasonable belief, based on objective evidence, that an employee will pose a direct threat to himself or others due to a medical condition, *or*
  - An employee asks for accommodation and his disability or need for accommodation are not known or obvious, *or*
  - Required in positions that affect public safety, such as police officers and fire fighters.

# When can an employers request medical documentation?

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- To determine whether a particular employee has a **disability**, an employer may request medical documents that show if the employee has an impairment and whether that impairment substantially limits a major life activity.
- An employer may require that the documents come from an appropriate health care or rehabilitation professional.
- Examples of appropriate professionals include: doctors (including psychiatrists); psychologists; nurses; physical, occupational, and speech therapists; vocational rehabilitation specialists; and licensed mental health professionals.

# Medical inquiries in response to accommodation request

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- To determine whether a **reasonable accommodation** is appropriate, an employer is entitled to medical documentation from an employee who asks for such an accommodation.
- An employer can sometimes require an employee to be examined by a health care provider if the employee does not provide adequate documentation.
- Generally, a medical examination is not permitted where the need for accommodation is known and obvious.



# Returning from medical leave

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- A medical examination is appropriate if an employer reasonably believes that a medical condition would prevent the employee from performing the essential functions of her job or will pose a direct threat to the employee or to others.
- A fitness-for-duty examination will generally be considered a medical exam.

# What if employee refuses to answer a medical inquiry or to undergo a medical exam ?

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- It is not an ADA violation to fire an employee who refuses to answer a medical inquiry or to undergo a medical exam that is permitted under the ADA.
- An employer is also permitted to discipline an employee for performance-related deficiencies, even if caused by the employee's disability.

# Disclosure of ADA medical information

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- The ADA allows employers to disclose medical information to supervisors who need to know the restrictions on an employee's duties and any accommodations provided.
- Employers may provide an employee's medical information to first aid and safety personnel if necessary to provide emergency treatment.
- Employers also are allowed to disclose medical information to government officials investigating ADA compliance.

# Hypothetical # 1

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Job applicants were given job offers, contingent upon passing a background check and medical exam. During the exams, the employer learned that certain applicants were infected with human immunodeficiency virus (HIV) and rescinded their job offers, citing their failure to disclose their conditions. Is this permitted under the ADA?

*See, Leonel v. American Airlines*, 400 F.3d 702 (9th Cir. 2005); *O'Neal v. City of New Albany*, 293 F.3d 998 (7th Cir. 2002).

# Hypothetical #2

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A company policy required employees returning from sick leave to submit a doctor's note stating the "nature of the absence." The policy requires employees to disclose their underlying medical conditions, and lists migraines, diabetes, and high blood pressure as examples. Is this a medical inquiry under the ADA? Is it permissible?

*EEOC v. Dillard's, Inc.*, 2012 WL 440887 (S.D. Cal., Feb. 9, 2012)

# Hypothetical # 3

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A police officer suffered a traumatic brain injury. Several years later, he used an expletive and walked out of a meeting with colleagues; felt himself “losing control” after being taunted during a traffic stop; engaged in a disruptive argument with a colleague; allegedly struck his estranged wife during an argument; and made such comments as “It doesn't matter how this ends.” The employer wants him to undergo a fitness-for-duty examination. Is this permitted under the ADA?

*Brownfield v. Yakima*, 612 F.3d 1140 (9th Cir. 2010).

# More Information

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