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Medical Examinations under ADA

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Medical Examinations under ADA

Reference Number: CTAS-2023

Prior to the passage of the ADA, employers sometimes used medical information to exclude applicants from jobs. Sometimes employers used medical information to discriminate against disabled individuals. The ADA was passed to protect the right of disabled applicants and employees to be judged on merit alone but also to protect the right of employers to ensure job tasks are performed correctly and efficiently.

If an applicant for a job is disabled, an employer may be tempted to ask the applicant to participate in a medical examination. Employers are prohibited from asking any disability related questions or requiring a medical examination prior to making a job offer even if the questions relate to the job. 29 C.F.R. § 1630.13 (a). Under the ADA, an employer may not ask on a job application or in an interview whether or not the applicant is disabled. Suggested interview topics include education, training, and skills needed for the position. An employer may ask the applicant if he/she can perform specific job functions as long as the questions are not phrased in terms of a disability. You can also ask an applicant to describe or demonstrate how, with or without reasonable accommodation, they would perform a job function. 42 U.S.C. § 12112(d)(2).

Do not ask about any physical or mental disability or how the person was disabled, any medication used by the applicant, or the applicant's worker's compensation history.

Job offers can be conditioned upon a physical examination, but only if such an examination is required of all applicants for similar jobs, and only if it is job related and consistent with the employer's business needs. 42 U.S.C. §12112(d)(3). After an applicant is hired, all required medical examinations must be job related. 42 U.S.C. §12112(d)(4)(A). The employer must require medical evaluations of all new employees in the same job category. If an applicant is not hired because of a disability found during the medical evaluation, the employer must show that the reasons for not hiring the person are job related and necessary and that there is no reasonable accommodation applicable to the situation. Voluntary health screenings and medical examinations that are part of an employee health program are acceptable. 42 U.S.C. § 12112(d)(4)(B). The results of all medical examinations are confidential.

Adhering to these ADA requirements should prevent an employer from basing a hiring decision on assumptions about a disability.

Disability-Related Inquiry

Reference Number: CTAS-2024

A disability-related inquiry is a question or series of questions that result in information about a disability. Questions to avoid include—

- Asking if the person has or ever had a disability.
- Asking a person how he/she became disabled and the severity of the disability.
- Asking a person to provide medical documentation about a disability.
- Asking co-workers, family members or friends about an employee's disability.
- Asking about genetic information.
- Asking about worker's compensation claims.
- Asking about drugs and medications currently being taken or taken in the past.
- Asking broad questions about impairments that result in information about a disability.

Any question that does not elicit information about a disability is not prohibited under the ADA. Questions such as—

- Asking about an employee's well being, a cold, a divorce, etc.
- Asking about nondisability-related impairments.
- Asking an employee if he/she can perform the job functions.
- Asking an employee if he/she has been drinking or has been using drugs.
- Asking for contacts/phone numbers in case of a medical emergency.
- Asking a pregnant employee when the baby is due....make sure the employee is pregnant before asking this question.

Medical Examinations Defined

Reference Number: CTAS-2025

A medical examination is any procedure or test that seeks information about a person's health. The guidance on Pre-employment Questions and Medical Examinations lists the following seven factors that can be used to determine if a test is a medical examination.

- Is the test administered by a health care professional?
- Is the test analyzed/interpreted by a health care professional?
- Is the test designed to reveal a physical impairment?
- Is the test invasive?
- Does the test measure employee's performance of a task or the physiological responses to performing the task?
- Is the test normally given in a medical setting?
- Is medical equipment used for the test?

Medical examinations include—

- Vision tests,
- Tests to check for genetic markers,
- Blood pressure screening and cholesterol testing,
- Nerve conduction tests,
- Range-of-motion tests,
- Pulmonary function tests,
- Tests to check for mental disorder or impairment and
- Diagnostic procedures.

Under the ADA the following tests are NOT considered medical examinations:

- Drug tests.
- Physical agility and fitness tests.
- Reading tests to demonstrate the ability to perform job functions.
- Psychological tests that measure personality traits.
- Polygraph examinations.

Under the ADA, current supervisors may not pass on medical information about employees interviewing in a different department or for a different job. Current employees who apply for a new job within the same organization should be treated the same as other applicants for the job.

Job-Related Medical Examinations

Reference Number: CTAS-2026

Employers may request an employee complete a medical examination when the examination is job-related and consistent with business necessity. 29 C.F.R. § 1630.10(a). The employer must have a reasonable belief that the employee's ability to perform their job is being impaired by a medical condition or that the employee poses a direct threat due to a medical condition.

A medical examination is also considered job-related and consistent with business necessity when—

- It is a follow-up to a request for a reasonable accommodation or
- It is a periodic medical examination.

It is important that an employer's belief that a medical condition is affecting an employee's ability to perform essential job functions be based on objective evidence. The Amendments Act added a provision that employers cannot screen out an applicant because of uncorrected vision unless it is job-related and consistent with business necessity. 29 C.F.R. § 1630.10(b).

When considering the reliability of information learned from another person, employers should consider—

- The relationship of the person providing the information to the employee in question.
- The seriousness of the medical condition.

- The motivation of the person providing the information.
- How the person learned the information.
- Any other evidence that may affect the reliability of the information.

FAQ's about Medical Examinations under the ADA

Reference Number: CTAS-2027

1. What happens if an employee refuses to participate in a requested medical examination?

It depends on why the employee was asked to participate in a medical examination. If the employee's job performance is suffering and a medical condition is suspected but the employee refuses the exam, discipline should focus on the employee's performance in accordance with company policy.

2. What happens if an employee requests a reasonable accommodation but provides insufficient documentation from his/her doctor to substantiate the ADA disability?

The employer should explain why the information is insufficient and give the employee a chance to provide the missing information. The employer can contact the employee's doctor (with the employee's consent) to obtain the missing information. As a last resort, the employer can require the employee go to a health care provider of the employer's choice.

Documentation may be insufficient when—

- The health care professional does not have the expertise to analyze the employee's condition.
- The documentation does not specify the limitations due to the disability.
- Any other factors that indicate the information is fraudulent.

Employers are not required to provide a reasonable accommodation until they have sufficient documentation.

3. What happens if an employer believes an employee is a direct threat to other employees and to the organization?

Because the employer is responsible for assessing whether or not an employee poses a direct threat, the employer can have the employee examined by its own health care provider. The health care provider selected should have an expertise in the employee's suspected problem and should be able to provide current information.

Periodic Testing and Monitoring under the ADA

Reference Number: CTAS-2031

Periodic medical monitoring is sometimes required for job positions that deal with public safety. For example, police officers and firefighters may be required to pass an annual medical examination. This is the exception to the rule; in most cases employers can not require periodic medical monitoring.

An employer may require an employee who has completed alcohol rehabilitation to be periodically tested for alcohol if the employer has reasonable belief that the employee will pose a direct threat without testing

Employee Assistance Program (EAP) counselors may ask employees about physical and mental conditions if the EAP counselor does not work for the employee's employer. EAP counselors must keep confidential any information revealed by employees. EAP counselors have no power over employment decisions.

There are other federal laws that require an employer to make disability-related inquiries and that may require employees to complete a medical evaluation. Compliance with these laws does not violate the ADA.

Disability-related inquiries and medical examinations that are part of a voluntary wellness program do not violate the ADA. A wellness program is voluntary if employers do not require participation and do not penalize employees for not participating.

For affirmative action purposes, employers may ask employees to voluntarily self-identify as persons with disabilities.

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