

Q&A concerning Disability Related Inquiries and Reasonable Accommodation Requests under the Americans with Disabilities Act

Introduction to medical inquiries and reasonable accommodation requests under the ADA

In circumstances in which an employee has a medical condition and requires some adjustment to the workplace in order to perform his duties, the law that applies is the Americans with Disabilities Act (ADA). In order to be protected by the ADA, the employee must fit within the legal definition of a handicap person. Moreover, the employee must be able to perform the “essential functions” of the job – that is the core duties that constitute the actual job. However, the law requires an employer to provide “reasonable accommodations” to handicapped employees in order to aid in the performance of the core duties.

In this post-COVID-19 world, employees who have a disability and may be negatively affected by the virus have a right to seek a reasonable accommodation. If an employee does not have a qualifying disability, the employee is not entitled to a reasonable accommodation. For example, the common cold or the flu is not considered a disability, nor a sprained joint, nor minor and non-chronic gastrointestinal disorders, nor is obesity that is not accompanied by evidence of an underlying physiological disorder. Where the ADA does not apply, the union can address needed changes in the terms and conditions of employment through the collective bargaining process.

Question:

What is the definition of handicapped person under disability discrimination law?

Answer:

A “handicapped person” under state law (or disabled person under the ADA) is any person who “(a) [has] a physical or mental impairment which substantially limits one or more major life activities....(b) [has] a record of such impairment; or (c) [is] regarded as having such impairment.” G.L. c. 151B, § 1(16).

Question:

What is the definition of a qualified handicapped person?

Answer:

A “qualified handicapped person” is a handicapped person who can perform the essential functions of a job with or without reasonable accommodation. G.L. c. 151B, §1(17).

Question:

What is the definition of a “reasonable accommodation”?

Answer:

A “reasonable accommodation” is any adjustment or modification to a job (or the way a job is done), employment practice, or work environment that makes it possible for a handicapped individual to perform the essential functions of the position involved and to enjoy equal terms, conditions and benefits of employment. MCAD Guidelines: Employment Discrimination on the Basis of Handicap.

Question:

How must an individual request a reasonable accommodation?

Answer:

When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use “plain English” and need not mention the ADA or use the phrase “reasonable accommodation.” EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA (hereafter EEOC Reasonable Accommodation Guidance).

Question:

What must an employer do after receiving a request for reasonable accommodation?

Answer:

The employer and the individual with a disability should engage in an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual relevant questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed. EEOC Reasonable Accommodation Guidance.

Question:

What is a “disability related inquiry?”

Answer:

A “disability-related inquiry” is a question that is likely to elicit information about a disability, such as asking employees about whether they have or ever had a disability or the kinds of prescription medications they are taking. EEOC Enforcement Guidance on Disability Related Inquiries and Medical Examinations Under the Americans with Disabilities Act.

Question:

Under what conditions may an employer make a disability related inquiry under the Americans with Disabilities Act?

Answer:

The Americans with Disabilities Act expressly prohibits a covered employer from making inquiries of an employee as to whether such employee is an individual with a disability, or as to the nature and severity of the disability, **unless** the inquiry is shown to be job-related and consistent with business necessity. 42 U.S.C.S 12112(d)(4)(A); 29 C.F.R. §§ 1630.13, 14.

Question:

What are some examples of situations in which medical examinations or disability related inquiries are allowed?

Answer:

An employer may inquire of an employee as to whether she has a handicap or disability, and may ask the employee about the nature and extent of the handicap or disability, so long as the inquiry is job-related and consistent with business necessity. In all instances, the purpose of the inquiry must be one of business necessity, and the scope of the inquiry must be limited to job-related functions or otherwise sanctioned by law. 29 C.F.R. § 1630.14(c). Employers may conduct employee medical examinations or make medical inquiries where there is evidence of a job performance or safety problem or examinations to determine current “fitness” to perform a particular job. US Equal Employment Opportunity Commission, Technical Assistance Manual on the Employment Provisions of the ADA S 6.6 (Jan. 1992) (EEOC Technical Assistance Manual).

Question:

May an employer ask an individual for documentation when the individual requests reasonable accommodation?

Answer:

Yes. When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about her disability and functional limitations. The employer is entitled to know that the individual has a covered disability for which she needs a reasonable accommodation. EEOC Reasonable Accommodation Guidance.

An employer is entitled to conduct appropriately focused inquiries (or medical tests) in this context. Medical inquiries related to an employee’s handicap or disability and functional limitations may include consultations with knowledgeable professional sources, such as occupational and physical therapists, and rehabilitation specialists. MCAD Guidelines: Employment Discrimination on the Basis of Handicap.

Question:

Is there a limit to the documentation that an employer may require in the context of a request for reasonable accommodation?

Answer:

Yes. The employer can require reasonable documentation. Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has a disability, as defined by law, that the disability necessitates a reasonable accommodation and documentation that defines the scope of the accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because the records are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation. EEOC Reasonable Accommodation Guidance.

Question:

How does the employee ensure that the employer only has access to reasonable documentation of the disability and need for reasonable accommodation?

Answer:

In requesting documentation, an employer should specify what type of information it is seeking regarding the disability, the functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional. The release should be clear as to what information will be requested. EEOC Reasonable Accommodation Guidance.

Question:

May an employer have an employee who is requesting a reasonable accommodation examined by its own health care provider?

Answer:

In some instances, yes. If the employer has explained what type of documentation is needed, and the employee fails to provide it or provides insufficient documentation, the employer may require the employee to see a health care professional of the employer's choice.

Even where an employee initially provides insufficient documentation, however, the employer should consider asking the employee's health care provider for additional information

before requiring an examination by the employer's health care professional. This is because an employee's health care provider frequently is in the best position to provide information about the employee's limitations.

Question:

Is an employer required to provide the reasonable accommodation that the individual wants?

Answer:

The employer may choose among reasonable accommodations so long as the chosen accommodation is effective. Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1285-86 (11th Cir. 1997). As part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.

Question:

Are there confidentiality protections for medical information gathered in the reasonable accommodation process?

Answer:

Under the ADA, any written information that employers obtain in the course of permissible inquiries shall be collected and maintained on separate forms and maintained in separate medical files and must be treated as a confidential medical record. This information is not maintained in the employer's personnel file. 42 U.S.C.S. 12112(d)(4)(C).

Question:

May an employer inform supervisors about otherwise confidential information?

Answer:

Yes. Notwithstanding the confidentiality requirement, the employer may inform supervisors and managers about necessary restrictions on the work or duties of an employee and necessary accommodations. EEOC Technical Assistance Manual § 6.5.

Question:

Are part-time employees protected by the Americans with Disabilities Act?

Answer:

Yes. So long as the employer is a covered employer, the provisions of the ADA and the state analog apply to part time employees including the right to reasonable accommodation.

