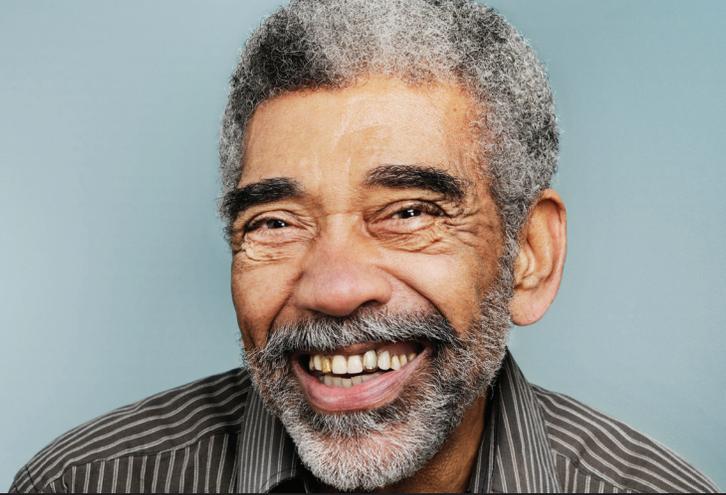


# DISABILITY & AGING RIGHTS



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## DISCRIMINATION

# Disability-Related Inquiries and Medical Examinations Under the ADA

People with disabilities, including older adults with physical, cognitive, sensory or mental impairments, have rights under the Americans with Disabilities Act (ADA), including in employment. Sometimes employers ask job applicants and employees questions about their disabilities or ask them to undergo medical examinations. For many people, their disabilities are not apparent and they want to keep this information private. This fact sheet will explain the legal rights of people with disabilities and the responsibilities of employers when it comes to disability-related inquiries and medical examinations.

### Pre-employment inquiries

When someone is applying for a job, the ADA prohibits employers from asking disability-related questions before a conditional offer of employment. This includes questions that directly ask about disability, as well as questions that could result in a person revealing a disability. Questions are limited to those that relate to an applicant's ability to perform essential job functions.

#### Examples of pre-employment questions that are prohibited:

- Do you have a disability?
- Have you ever filed for workers' compensation?
- What prescription drugs are you taking?
- Have you ever been treated for mental health problems?
- How many sick days did you take in the last year?

#### Examples of pre-employment questions that are permitted:

- Can you perform the functions of this job with or without a reasonable accommodation?
- Please describe or demonstrate how you would perform these functions.
- Can you meet the attendance requirements of the job?
- Do you have the required license to perform this job?

### Medical examinations

#### Before making a conditional job offer:

An employer may not make any medical inquiry or conduct any medical examination. However, a test for the illegal use of drugs is not considered a medical examination under the ADA. Therefore, employers may conduct drug tests of applicants or employees and make employment decisions based on the results. Employers do not have to demonstrate that the testing is job-related or a business necessity. Physical agility and physical fitness tests, and polygraph examinations, are not considered medical examinations under the ADA.

#### After making a conditional job offer:

Before a person starts work, an employer may make unrestricted medical inquiries, but may not refuse to hire a person with a disability based on results of such inquiries, unless the reason for rejection is job-related. All applicants at that employment level must go through the same examination, regardless of whether they have a disability. For example, an employer could not ask only a person with cerebral palsy to undergo a medical examination, unless every applicant at that particular employment level is required to submit to an examination.



**After employment:** Any medical examination or inquiry required of a current employee must be job-related and justified by business necessity. Exceptions are voluntary examinations conducted as part of employee health programs and examinations required by other federal laws. For example, an outbreak of spinal meningitis has arisen. Because this is extremely contagious and poses serious health consequences, a hospital would be justified in having all of its employees tested.

## Disability-related inquiries and medical examinations related to leave

**May an employer ask an employee to provide a doctor's note or other explanation when the employee has used sick leave?**

Yes. An employer is entitled to know why an employee is requesting sick leave. An employer, therefore, may ask an employee to provide a doctor's note or other explanation, as long as it has a policy or practice of requiring all employees to do so.

**May an employer ask disability-related questions or require a medical examination when an employee who has been on leave for a medical condition wants to return to work?**

Yes, if an employer has a reasonable belief that an employee's present ability to perform essential functions will be impaired by a medical condition or that he or she will pose a direct threat because of a medical condition. Any inquiries or examinations, however, must be limited in scope to what is needed to determine whether the employee is able to work.

## Confidentiality of information obtained from disability-related inquiries and medical examinations

If an employer obtains disability-related information from an inquiry or medical examination, the employer has a responsibility to keep that information confidential. In fact, the employer is required to keep that disability-related information in a file separate from the person's personnel file and treat it as a confidential medical record. ■

## For more information:

EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA):

[www.eeoc.gov/policy/docs/guidance-inquiries.html](http://www.eeoc.gov/policy/docs/guidance-inquiries.html)

[www.eeoc.gov/policy/docs/qanda-inquiries.html](http://www.eeoc.gov/policy/docs/qanda-inquiries.html)



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