



What are 4 key things an employer should know about ADA Compliance

- 1 How and When to Conduct ADA Compliant Medical Inquiries
- 2 What is a Reasonable Accommodation
- 3 How to Engage in Interactive Discussions
- 4 Follow up on effectiveness

ADA COMPLIANT MEDICAL INQUIRIES – UPFRONT

What is an Employer Allowed to Ask to Determine Whether the Employee has an ADA qualifying condition?

Employer is entitled to sufficient supporting documentation. This means the documentation describes:

- The nature, severity, and duration of the employee's impairment; and
- The activity or activities which the impairment limits; and
- Substantiates why the requested accommodation is needed.

ADA COMPLIANT MEDICAL INQUIRIES – UPFRONT


If the Employer does not provide Sufficient Documentation, What Follow-Up Information can the Employer Require?

Overarching Rules of Inquiry:
 -- Job-Related and Consistent with Business Necessity
 Job-related = Essential Job Functions

-- Can't contact the employee's treating provider without authorization to do so (or employee presence at clarification inquiry)

DEFINING ESSENTIAL JOB FUNCTIONS

Five questions to help decide whether a function is an essential function:




1. Does the position exist specifically to perform this function?
2. Is the function highly specialized?
3. Are there a limited number of employees among whom the function can be distributed?
4. Would the job be fundamentally altered if you were to remove the function in question?
5. What happens if the function is not performed?

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DETERMINE POTENTIAL REASONABLE ACCOMMODATIONS

Employers have an obligation to provide reasonable accommodation to help employees perform essential functions of the job



Examples of reasonable accommodations:

- Modified work schedules
- Providing equipment
- Reassignment to vacant position
- Shift of non-essential duties to coworker
- Finally, "Leave of Absence" can also be considered reasonable accommodation

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ENGAGE IN THE INTERACTIVE PROCESS

Meet with employee to discuss possible accommodations and understand issues
 Goal is to find an accommodation that works for the employer and allows the employee to perform the essential functions of the job. Consult with the employee's medical provider to help understand the employee's limitations and possible accommodations.

Approach each request with an open mind

Medical Documentation – Employer is entitled to reasonable documentation of the employee's disability and need for accommodation from a health care provider, unless the disability and need are obvious

Discuss restrictions on what the employee can or cannot do – Use the job description for their position

Consider accommodations outside of the employee's job (e.g., transfer to an equivalent open position) if accommodations are not available at the current job

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EFFECTIVENESS – FREQUENT FOLLOW UP

Remember, an accommodation must be REASONABLE AND EFFECTIVE.

An EFFECTIVE ACCOMMODATION is one that helps the employee perform the essential functions of his or her job.

Therefore, it is critical to follow up with the employee's supervisor and the employee to determine whether the accommodation you have provided is EFFECTIVE.

If it's not – start the interactive process again to determine if you can identify an alternative or additional reasonable accommodation that will be EFFECTIVE.

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CRITICAL ADA "RISK MANAGEMENT" MINDSET

The process followed in exploring potential reasonable accommodations is equally as important as the decision to accommodate

Certainty lies in the process of exploring reasonable accommodations, not in the results

The interactive process is the best way to ensure options are considered and the employee is heard

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CONSIDERATIONS WHEN UNABLE TO ACCOMMODATE

An Interactive Discussion is recommended *prior to rejecting the request* to help identify alternative accommodations.

Communicate next steps to the Employee (i.e., remain on disability leave, termination of employment, etc..)

Remember the "Accommodation of Last Resort" according to the EEOC:
Reassignment to a vacant position for which the individual is qualified

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QUESTIONS??

THANK YOU!

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