

JAN

Job Accommodation Network

Practical Solutions • Workplace Success

Accommodation and Compliance Series

Medical Inquiry in Response to an Accommodation Request

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A service of the U.S. Department of Labor's Office of Disability Employment Policy

Preface

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Authored by Linda Carter Batiste, J.D. Updated 10/14/2011.

JAN'S ACCOMMODATION AND COMPLIANCE SERIES

JAN's Accommodation and Compliance Series is designed to help employers determine effective accommodations and comply with title I of the Americans with Disabilities Act (ADA). Each publication in the series addresses a specific medical condition or topic and provides information about the condition or topic, ADA information, accommodation ideas, and resources for additional information.

The Accommodation and Compliance Series is a starting point in the accommodation process and may not address every situation. Accommodations should be made on a case by case basis, considering each employee's individual limitations and accommodation needs. Employers are encouraged to contact JAN to discuss specific situations in more detail.

For information on assistive technology and other accommodation ideas, visit JAN's Searchable Online Accommodation Resource (SOAR) at <http://AskJAN.org/soar>.

MEDICAL INQUIRY IN RESPONSE TO AN ACCOMMODATION REQUEST

Title I of the ADA limits an employer's ability to make disability-related inquiries or to require medical examinations at three stages of employment: pre-job offer, post-job offer, and during employment. This publication provides information regarding the limitations on medical inquiries and examinations during employment, specifically when an employee requests a reasonable accommodation.

Disability-related inquiries and examinations of employees must be "job-related and consistent with business necessity." According to the Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcing the ADA, a medical inquiry or examination is job-related and consistent with business necessity when:

- an employer has a reasonable belief, based on objective evidence, that an employee's ability to perform essential job functions will be impaired by a medical condition, or
- an employer has a reasonable belief, based on objective evidence, that an employee will pose a direct threat due to a medical condition, or
- an employee asks for a reasonable accommodation and the employee's disability or need for accommodation is not known or obvious, or
- required in positions that affect public safety, such as police and fire fighters.

For additional information, visit: Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA) <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.

Although the ADA limits the scope of medical inquiries, it does not include forms for requesting medical information. The following pages discuss the scope of medical

inquiry allowed in response to an accommodation request and provide a sample medical inquiry form that can be used as a starting point when an employee requests a reasonable accommodation.

Please note that the information contained in this publication is to be used as a guide only and is not legal advice. If legal advice is needed, contact a legal service. Much of the information contained in this publication is from guidance provided by the EEOC available at <http://www.eeoc.gov>.

SCOPE OF MEDICAL INQUIRY IN RESPONSE TO AN ACCOMMODATION REQUEST

When an employee requests an accommodation and the disability or need for accommodation is not obvious, an employer may require that the employee provide medical documentation to establish that the employee has an ADA disability and needs the requested accommodation.

A. Determining whether an employee has a disability.

1. What is the definition of disability?

Under the ADA, a person has a disability if he/she 1) has a physical or mental impairment that substantially limits one or more major life activities, 2) has a record of such an impairment, or 3) is regarded as having such an impairment. Only people in the first or second categories are entitled to reasonable accommodation.

Note: In September 2008, the ADA's definition of disability was amended. One of the changes was making the substantially limited standard an easier one to meet. In March 2011, the EEOC released regulations further explaining the new standard. These regulations became final in May 2011. For more information regarding the amendments to the definition of disability, see <http://AskJAN.org/bulletins/adaaa1.htm>.

2. Can employers request medical documentation?

To determine whether a particular employee has a disability, an employer may request medical documentation that shows whether the employee has an impairment and whether that impairment substantially limits one or more major life activities.

An employer may require that the documentation about the disability and limitations come from an appropriate health care or rehabilitation professional. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

3. What is an impairment?

The first step in determining whether an employee has a disability is to determine whether the employee has a physical or mental impairment. A physical impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine. A mental or psychological disorder includes conditions such as intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

4. What are major life activities?

Major life activities include functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

These lists are not exhaustive lists; they are representative of the types of activities that are major life activities.

5. How does an employer determine whether an impairment substantially limits a major life activity?

If the employee has an impairment, the next step is to determine whether that impairment substantially limits the employee in one or more major life activities. When examining whether an impairment substantially limits a major life activity:

- Compare the employee to most people in the general population.
- Remember that the impairment need not prevent, or significantly or severely restrict, the employee from performing a major life activity.
- Consider the limitations as if the condition is in an active state.
- Ignore the ameliorative effects of mitigating measures.

For more information, see How to Determine Whether a Person Has a Disability under the Americans with Disabilities Act Amendments Act (ADAAA) at <http://AskJAN.org/corner/vol05iss04.htm>

6. What are mitigating measures?

Mitigating measures include things such as medication, medical supplies, equipment, hearing aids, mobility devices, the use of assistive technology, reasonable accommodations or auxiliary aids or services, prosthetics, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, and physical therapy. Mitigating measures do not include ordinary eyeglasses or contact lenses.

B. Determining whether an accommodation is needed.

Under the ADA, an employee is entitled to an accommodation only when the accommodation is needed because of the employee's disability; employers are not obligated to provide accommodations that an employee requests for some other reason. Therefore, an employer can ask for medical documentation to show that the requested accommodation is needed because of the employee's disability.

Keep in mind, the limitations that need accommodating do not have to be the same ones that established disability. Once it is determined that an employee has a disability, he/she is entitled to accommodations for any limitations resulting from the disability.

For more information, visit: Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, EEOC at <http://www.eeoc.gov/policy/docs/accommodation.html>.

C. Determining effective accommodation options.

If an employee has a disability and needs an accommodation because of the disability, the employer must provide a reasonable accommodation, unless the accommodation poses an undue hardship. In general, an accommodation is any modification or adjustment in the work environment or in the way things are customarily done that enables an employee with a disability to enjoy equal employment opportunities. A modification or adjustment is "reasonable" if it seems reasonable on its face, meaning feasible or plausible. In addition to being reasonable, an accommodation also must be "effective" in meeting the needs of the individual. An accommodation is effective when it enables the employee to perform the essential functions of the job or to enjoy equal access to the benefits and privileges of employment that employees without disabilities enjoy.

In many cases, a reasonable accommodation will be obvious and can be made without difficulty and at little or no cost. Frequently, the individual with a disability can suggest a simple change or adjustment based on his or her life or work experience. An employer should always consult the person with the disability as the first step in considering an accommodation. In many cases the employee will be able to provide accommodation ideas. However, when an employee does not know what accommodations are appropriate, the employee's doctor may be able to provide useful accommodation suggestions.

For more information regarding the accommodation process, visit: The Interactive Process at <http://AskJAN.org/media/interactiveprocessfact.doc>.

In addition, employers can contact JAN for information about any accommodation issue, regardless of whether an employee meets the ADA's definition of disability.

D. Other questions from the employer or comments from the medical provider.

In some cases, an employer may have specific questions related to an employee's accommodation request. For example, if an employee says she has vision problems and is having trouble seeing the computer screen, the employer may need to know whether the employee will benefit from screen magnification or whether she should avoid looking at the computer screen altogether. This type of specific question can be included on the medical inquiry form. In addition, the medical provider may have additional comments that would be useful in the accommodation process and these can be included on the form as well.

E. A note about the Genetic Information Nondiscrimination Act of 2008 (GINA).

When an employer makes a request for health-related information (e.g., to support an employee's request for reasonable accommodation under the ADA or a request for sick leave), it should warn the employee and/or health care provider from whom it requested the information not to provide genetic information. The EEOC suggests language such as the following:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

SAMPLE MEDICAL INQUIRY FORM IN RESPONSE TO AN ACCOMMODATION REQUEST

A. Questions to help determine whether an employee has a disability.

For reasonable accommodation under the ADA, an employee has a disability if he or she has an impairment that substantially limits one or more major life activities or a record of such an impairment. The following questions may help determine whether an employee has a disability:

Does the employee have a physical or mental impairment?

Yes

No

If yes, what is the impairment?

Answer the following question based on what limitations the employee has when his or her condition is in an active state and what limitations the employee would have if no mitigating measures were used. Mitigating measures include things such as medication, medical supplies, equipment, hearing aids, mobility devices, the use of assistive technology, reasonable accommodations or auxiliary aids or services, prosthetics, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, and physical therapy. Mitigating measures do not include ordinary eyeglasses or contact lenses.

Does the impairment substantially limit a major life activity as compared to most people in the general population?

Note: Does not need to significantly or severely restrict to meet this standard. It may be useful in appropriate cases to consider the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

Yes

No

If yes, what major life activity(s) (includes major bodily functions) is/are affected?

- | | | | | |
|--|--|-----------------------------------|-----------------------------------|--|
| <input type="checkbox"/> Bending | <input type="checkbox"/> Hearing | <input type="checkbox"/> Reaching | <input type="checkbox"/> Speaking | <input type="checkbox"/> Other: (describe) |
| <input type="checkbox"/> Breathing | <input type="checkbox"/> Interacting With Others | <input type="checkbox"/> Reading | <input type="checkbox"/> Standing | |
| <input type="checkbox"/> Caring For Self | <input type="checkbox"/> Learning | <input type="checkbox"/> Seeing | <input type="checkbox"/> Thinking | |
| <input type="checkbox"/> Concentrating | <input type="checkbox"/> Lifting | <input type="checkbox"/> Sitting | <input type="checkbox"/> Walking | |
| <input type="checkbox"/> Eating | <input type="checkbox"/> Performing Manual Tasks | <input type="checkbox"/> Sleeping | <input type="checkbox"/> Working | |

Major bodily functions:

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Bladder | <input type="checkbox"/> Digestive | <input type="checkbox"/> Lymphatic | <input type="checkbox"/> Reproductive |
| <input type="checkbox"/> Bowel | <input type="checkbox"/> Endocrine | <input type="checkbox"/> Musculoskeletal | <input type="checkbox"/> Respiratory |
| <input type="checkbox"/> Brain | <input type="checkbox"/> Genitourinary | <input type="checkbox"/> Neurological | <input type="checkbox"/> Special Sense Organs & Skin |
| <input type="checkbox"/> Cardiovascular | <input type="checkbox"/> Hemic | <input type="checkbox"/> Normal Cell Growth | <input type="checkbox"/> Other: (describe) |
| <input type="checkbox"/> Circulatory | <input type="checkbox"/> Immune | <input type="checkbox"/> Operation of an Organ | |

B. Questions to help determine whether an accommodation is needed.

An employee with a disability is entitled to an accommodation only when the accommodation is needed because of the disability. The following questions may help determine whether the requested accommodation is needed because of the disability:

What limitation(s) is interfering with job performance or accessing a benefit of employment?

What job function(s) or benefits of employment is the employee having trouble performing or accessing because of the limitation(s)?

How does the employee's limitation(s) interfere with his/her ability to perform the job function(s) or access a benefit of employment?

C. Questions to help determine effective accommodation options.

If an employee has a disability and needs an accommodation because of the disability, the employer must provide a reasonable accommodation, unless the accommodation poses an undue hardship. The following questions may help determine effective accommodations:

Do you have any suggestions regarding possible accommodations to improve job performance?

If so, what are they?

How would your suggestions improve the employee's job performance?

D. Other questions or comments.

Medical Professional's Signature

Date

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

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