

The following questions were asked online during the webcast and time did not allow answering during the presentation. These answers are provided by the presenter, as an extension of the webcast, for outreach and training purposes, and do not represent an official position of the Commission.

1. *Service animals versus comfort animals - do we have to allow all comfort animals in federal workplaces? As a federal employee requesting a comfort animal? As a public individual wanting to bring a comfort animal into a federal office?*

While U.S. Department of Justice regulations under Titles II and III of the ADA provide for allowing only service animals but not comfort animals into public accommodations and state/local government program offices, the EEOC has not addressed whether this distinction also applies to the employment setting under Title I of the ADA (and for federal workplaces, under section 501 of the Rehabilitation Act). Therefore, private and government employers should evaluate an applicant or employee's accommodation request to bring either a service animal or a comfort animal into the workplace as the employer would evaluate any other accommodation request. This is addressed in more detail on slides 17-25 of the webcast powerpoint, and pages 13-16 of the accompanying transcript of the presentation.

2. *What about healthcare workers who will be tasked with manually transferring sick and elderly patients? If they can't perform the transfer in a safe manner within the documented essential functions this would put patients and potentially co-workers in peril for injury.*

As with any accommodation, the employer must determine if it would pose an undue hardship. An accommodation could pose an undue hardship if it results in significant difficulty or disruption, which could include impacts on proper and safe discharge of duties. Your question appears to have been raised in connection with the cases we discussed during the webcast regarding accommodating lifting restrictions by use of manual or motorized lifting devices. Each situation warrants individual consideration in light of the restrictions, job duties, and workplace setting, but more information relating specifically to the type of example you raise can be found in this EEOC publication:

Q & A about Health Care Workers and the ADA,
https://www.eeoc.gov/facts/health_care_workers.html.

3. *What is the best way to handle a situation whereby an employee has begun to self-isolate and exhibits depression? The employee says she's "fine" but is acting out of the ordinary. The manager is afraid of showing concern in fear of being accused of perceived disability.*

It is not clear from the question whether or not there are performance issues resulting from the out-of-the-ordinary behavior, or what the employer seeks to do beyond the inquiry already made. Note that it is not considered a disability-related inquiry to ask, for example, "generally about an employee's well being (e.g., How are you?)," asking an employee who looks tired or ill if s/he is feeling okay, asking an employee who is

sneezing or coughing whether s/he has a cold or allergies, or asking how an employee is doing following the death of a loved one or the end of a marriage/relationship.” *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA*, at question 1, <https://www.eeoc.gov/policy/docs/guidance-inquiries.html>. Moreover, an employer is always free without asking any medical questions to ask the employee how the job is going, to provide the employee with performance feedback, and to ask if the employee if any assistance or changes are desired. However, the ADA strictly limits the circumstances under which an employer may ask questions about disability or require medical examinations of employees. Such medical questions and exams are generally permitted only where the employer has a reasonable belief, based on objective evidence, that a particular employee will be unable to perform essential job functions or will pose a direct threat because of a medical condition. Whether or not this standard is met will depend on the job duties, the individual’s performance, and the consequences of the behaviors you have observed. If the employee’s behavior does not create this reasonable belief that job performance or safety is at issue, then do not make a medical inquiry. At the same time, if the employee is having trouble performing essential job functions, or doing so safely, do not immediately assume that a disability is the reason. Poor job performance is often unrelated to a medical condition and, when this is the case, it should be handled in accordance with your existing policies concerning performance (e.g., informal discussions with the employee, verbal or written warnings, or termination where necessary). On the other hand, if you have information that reasonably causes you to conclude that the problem is related to a medical condition, then medical questions, and perhaps even a medical examination, may be appropriate.

4. *Can we require that a newly hired employee go through a medical exam because he/she had a significant mental health issue that prevented the performance of all duties during an internship prior to the job offer?*

In the situation you describe, you may wish to consider whether, rather than a medical exam, it would be appropriate simply to initiate an interactive process regarding whether any accommodations are needed and feasible to enable the employee to perform the essential functions of the new position. *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA*, at questions 40-41, <https://www.eeoc.gov/policy/docs/accommodation.html>.

Otherwise, with respect to a medical exam, the rule is that disability-related inquiries and medical exams must be job related and consistent with business necessity, and how that applies depends on the particular stage of the employment relationship. First, at the application stage, before a job offer is made, disability-related inquiries or medical exams are not permitted (with some limited exceptions, per question 9 below), but an employer can probe whether and how any applicant will be able to perform the job duties, including asking the applicant to specifically explain why any past performance problems would not arise if hired for the current position. Second, once a job offer is made but *before* the employee starts work, disability-related inquiries and medical exams are permissible only if all employees entering the same type of job are also

required to undergo a post-offer, pre-employment medical exam. Third, once an employee begins work, the circumstances under which the ADA permits a medical exam are limited. However, if the individual went right from the internship to being an employee, with no “post-offer, pre-employment” stage, and the disability-related performance issues during the internship were very recent, the employer may be able to meet the inquiries/exam standard for current employees, even though it is harder to meet. *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the ADA*, at question 5 (outlining when an exam of a current employee is permitted), <https://www.eeoc.gov/policy/docs/guidance-inquiries.html>.

5. *Pregnancy bedrest is a disability? I thought if "issue" was temporary, not considered a disability.*

Under the ADA, pregnancy itself is not (and has never been) a disability. However, a pregnancy-related medical condition may be an impairment that substantially limits a major life activity, entitling a qualified employee to reasonable accommodation absent undue hardship. Examples of pregnancy-related impairments include anemia, sciatica, preeclampsia, gestational diabetes, or depression. Consider whether the impairment, if left untreated, would “substantially limit” one or more major life activities (e.g., lifting, standing, sitting, walking, reaching, bending, eating, sleeping, or concentrating, or major bodily functions such as digestive, genitourinary, bowel, bladder, neurological, circulatory, or cardiovascular functions). **A condition does not have to be permanent or severe, or result in a high degree of functional limitation, to be “substantially limiting.”** It may qualify by, for example, making activities more difficult, uncomfortable, or time-consuming to perform compared to the way that most people perform them. If the symptoms come and go, what matters is how limiting they would be when present. Under the changes to the ADA made by Congress when it passed the ADA Amendments Act of 2008 (effective January 1, 2009), even an impairment lasting fewer than six months can be substantially limiting. 29 CFR section 1630.2(j)(1)(ix). Common examples of reasonable accommodation for pregnancy-related impairments include altered break and work schedules (e.g., breaks to rest or use the restroom), permission to sit or stand, ergonomic office furniture, shift changes, elimination of marginal job functions, and permission to work from home.

Note: Under the Pregnancy Discrimination Act, even absent a medical condition, a pregnant employee’s protections against disparate treatment may entitle her to accommodations if the employer gives accommodations to employees who have similar limitations not caused by pregnancy.

EEOC resources for more information on this topic:

Legal Rights for Pregnant Workers Under Federal Law,
www.eeoc.gov/eeoc/publications/pregnant_workers.cfm

Enforcement Guidance on Pregnancy Discrimination and Related Issues,
www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm

Fact Sheet for Small Businesses: Pregnancy Discrimination

www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm

Helping Patients Deal with Pregnancy-Related Limitations and Restrictions at Work

www.eeoc.gov/eeoc/publications/pregnancy_health_providers.cfm

- 6. If someone has been a teleworker for 10+ yrs and the employer now wants them to go into an office that is over 50+ miles away could they deny/fire them for not wanting to transfer to the other office? To add to that, they have multiple medical conditions which could be confirmed by the doctors as a reason to need to remain working from home, in addition to exposure to multiple people in an office could increase their potential to become infected with any type of bacteria/infections which in their case leads to significant problems including death. If a note is provided with these situations, could they fire them for not transferring?*

It is not clear from your question whether or not the 10-year history of telework was permitted as a reasonable accommodation or simply as an employer benefit unrelated to disability. If the latter, the employee would need to request reasonable accommodation for a disability in order to put the employer on notice of a disability-related need for telework. Once requested, assuming the employee has a disability and medically needs telework, the answer to your question still depends on the reasons for the employer's change in the previously-approved telework arrangement and also whether it would pose an undue hardship to continue to allow telework for the position in question. While the fact that the position had previously been performed remotely for many years is relevant, so too would be any changed circumstances, such as changes in the employee's performance, in the nature of the duties, or the impact on the workplace.

- 7. If a manager sees that an employee has excessive absenteeism and the employee doesn't ask for an accommodation, is it a good practice in your opinion to inform the employee if their absenteeism is caused by a medical condition, then they should contact leave administration? This way if the employee never does so, then it strengthens the employer's position even more should corrective action and even termination later occurs?*

This is neither required nor prohibited by the ADA. As a practical matter, it would be helpful to an employee to know about available options, since it would be in an employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur. If the employee never puts the employer on notice that the absences are related to a medical condition, it is too late for the employee to do so after excessive absences have accrued warranting termination. *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA*, at question 36, <https://www.eeoc.gov/policy/docs/accommodation.html>.

8. *We use a 3rd party company to manage our FMLA. Employees are supposed to report their absences related to their FMLA to the 3rd party. We have an employee, who is approved for an intermittent leave and is constantly tardy. She states it is related to her pregnancy, but isn't reporting it to 3rd party. She has been disciplined, but still continues to be tardy and not report it. At what point can we term?*

While the EEOC enforces Title I (employment provisions) of the ADA, the U.S. Department of Labor enforces the FMLA. Therefore, DOL would be in the best position to advise you about the rights and obligations arising in this situation. Their web page with guidance and fact sheets on FMLA compliance is at this

link: <https://www.dol.gov/whd/fmla/>.

9. *Hello: My co-worker and I have differing views. Can you help? We have an applicant who, during their 1st job interview, appeared to have trouble hearing. The applicant said, on the job application, that they can perform the job with or without accommodation. The applicant has someone call us to make interview appointments. In the 2nd interview, my co-worker wants to tell the applicant that she can tell that the applicant has a hearing issue and then ask what accommodations she needs. I want my co-worker to ask the applicant if she would need accommodations in which to perform the essential functions of the job. Therefore not getting ourselves into a 'regarded as' type of situation. Thank you for your thoughts!*

The EEOC's *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations*, <https://www.eeoc.gov/policy/docs/preemp.html>, includes a question-and-answer addressing this situation. The answer explains that “[w]hen an employer could reasonably believe that an applicant will need reasonable accommodation to perform the functions of the job, the employer may ask that applicant certain limited questions.” More detailed information and examples follows in the remainder of the answer, setting forth what can and cannot be asked.