

**ON THE JOB
EMPLOYMENT DISCRIMINATION FAQs:
INFORMATION & CONFIDENTIALITY**

Can an employer ask me for medical or psychiatric information about my disability?

No, under most circumstances. But, there are some important exceptions to this rule:

- After Extending a Conditional Offer of Employment

The employer may require a medical and/or psychiatric examination or ask questions related to your physical or mental disability. The employer is allowed to do this *only if the employer subjects all entering employees in your same job category to the same inquiries or examination, regardless of disability.*

While the inquiries and examination do not need to be related to the job, if an employer uses the results of these inquiries or examinations to screen out an individual because of disability, the employer must prove that the exclusionary criteria are job-related and consistent with business necessity, and cannot be met with reasonable accommodation.

- After Hiring You
 - a. Your employer may ask you to volunteer information about whether you have a disability for affirmative action reporting purposes. It's up to you whether or not you choose to provide this information to your employer.
 - b. An employer may ask about your disability if you request a "reasonable accommodation" to fulfill the duties of the position.
 - c. An employer is allowed to ask for medical or psychiatric information when you are returning to work after being absent for a disability-related reason and the employer wants to know that you are able to return safely to work and perform the requirements of the job.
 - d. An employer may ask about your disability when you are having difficulty with your job *and* your employer has a reasonable basis for believing that a disability is affecting your ability to perform the essential functions of your job or to work without posing a direct threat to you or others.

[This is the current position of the Equal Employment Opportunity Commission (EEOC). Whether it is legal under the Americans with Disabilities Act (ADA) is still being debated.]

Can an employer ask me to see a doctor employed or hired by the employer?

Yes, in all of the above situations, except for the affirmative action situation. When you are asked to see a doctor hired by the employer for reasonable accommodation purposes, any medical examination must be job-related and consistent with business necessity, meaning that the examination is limited to determining the existence of a disability and the need for reasonable accommodation.

Am I responsible to pay the fees to see the employer's doctor?

No. If the employer requires you to go to a doctor of the employer's choice, the employer must pay all costs associated with that doctor's visit.

The employer's doctor wants to talk to my private physician about my medical condition or history. Can they legally do that?

While it is reasonable and legal to do so, your doctor must have your permission before discussing your medical condition or history. You should permit your doctor to discuss only information about your current condition and abilities with the employer's doctor, not your *entire* medical or psychiatric history.

Can an employer ask for specific information about my disability if I ask for reasonable accommodation?

Yes, if your disability and need for reasonable accommodation are not obvious or you have not already provided the employer with enough information to show that you have an ADA disability and need the requested accommodation.

I use a wheelchair, so my disability is obvious. But, my employer is still asking me to provide documentation. Is this legal?

An employer cannot ask for documentation when the disability and the need for reasonable accommodation are obvious or when the employee has already provided sufficient information to establish the existence of an ADA disability and the need for reasonable accommodation.

Exactly what is an employer legally allowed to ask?

The employer may ask you to:

- a. provide medical or psychiatric documentation that you have a disability; and
- b. document why the accommodation you are requesting is needed for your disability or because of your disability.

In requesting documentation, the employer should state the specific information they require about the disability, the resulting functional limitations, and the need for reasonable accommodation.

How much information do I have to give to my employer?

If the employer asks for it, provide narrowly tailored information about your disability and why the accommodation is needed.

Can the employer ask for and obtain my entire medical or psychiatric record?

No. The employer may ask you to sign a limited release, which allows the employer to ask a set of specific questions to your health care professional. If you are asked to show your entire record to your employer, you should consider first asking the employer to explain why this information is needed, and why it is relevant medical information.

My employer is asking for medical or psychiatric information that is irrelevant to my current ability to do my job. What do I do?

If an employer is requesting medical or psychiatric information that you believe is irrelevant to your current ability to do your job, you may refuse to provide the information. If based on your refusal to provide this information the employer does not give you a reasonable accommodation or allow you to return to or remain at your job, you may want to consider filing a complaint with the EEOC.

Does my employer have to keep medical or psychiatric information about me confidential?

Yes. Employers must collect and maintain such information on separate forms and in separate medical files, apart from the usual personnel files. There are limited exceptions to the Americans with Disabilities Act (ADA) confidentiality requirements:

- Supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations;
- First aid and safety personnel may be told if the disability might require emergency treatment;
- Government officials investigating compliance with the ADA must be given relevant information on request;
- Employers may give information to state workers' compensation offices, state second injury funds or workers' compensation insurance carriers in accordance with state workers' compensation laws; and
- Employers may use the information for insurance purposes.

**DUE TO THE GENERAL NATURE OF THE INFORMATION PRESENTED, THIS FACT SHEET
SHOULD NOT BE REGARDED AS LEGAL ADVICE**