

Best Practices for Manufacturers Managing Employee Medical Inquiries Under the ADA

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For the manufacturing industry, managing employee injury and illness presents unique challenges. Manufacturing work often involves physically taxing or potentially dangerous activities. Use of heavy tools or machinery, repetitive motion, and exposure to hazards such as chemicals, extreme heat, and work at heights can lead to costly employee injury or illness, as well as exacerbate existing health conditions. Unsurprisingly, the industry maintains a strong focus on safety and risk management.

Manufacturing employers commonly adopt programmatic approaches to manage such risks in their workforce. Manufacturers often consider adopting best practices to ensure safety-driven programs and policies align with the Americans with Disabilities Act (ADA). These programs or policies include annual medical examinations or post-injury requests for comprehensive medical information that, by their very nature, make medical inquiries of employees. The ADA limits when and how employers may make medical inquiries and conduct medical examinations of current employees.

By establishing best practices, employers achieve the dual objectives of avoiding work-related injuries and making medical inquiries when permitted by the ADA.

When Are Medical Examinations and Inquiries of Current Employees Permissible?

The ADA permits medical examinations and disability-related inquiries of existing employees when they are “*job-related and consistent with business necessity*.” Medical exams and inquiries required or necessitated by federal law or regulation (*i.e.*, Occupational Safety and Health Administration, Department of Transportation, and so on) and periodic exams of employees working in certain positions affecting public safety that are narrowly tailored to address specific job-related concerns are permissible. Outside that context, medical examinations and inquiries of current employees are permitted in only four other circumstances:

1. When an employee requests reasonable accommodation for a disability;
2. As part of a voluntary wellness program;
3. When objective evidence indicates an employee’s ability to perform essential job functions is impaired by a medical condition; or
4. When objective evidence suggests an employee may pose a direct threat to their own or others’ health or safety due to a medical condition.

When Are Medical Exams and Inquiries Job-Related and Consistent with Business Necessity?

For manufacturers, periodic medical examinations to ensure employees remain able to perform safety-sensitive jobs may be desirable as a means of avoiding workplace injuries and preventing risks to the safety of the employee and others. To be permitted under the ADA, however, such examinations need to fit into one of the four circumstances listed above and be narrowly tailored to be job-related and consistent with business necessity.

Employers must have specific grounds before they may direct an existing employee to undergo a medical examination or disclose medical information due to concerns about performance or safety. This means the employer must have a *reasonable belief* (not based on speculation, but on *objective evidence*, such as failing performance) that an employee is not presently able to perform essential job functions because of a medical condition or that a medical condition causes the employee to pose a significant risk of substantial harm to their own or others' health or safety that cannot be eliminated or reduced by reasonable accommodation.

How does this work in practice? Consider as an example the case of packer at a manufacturing plant whose job requires operating a forklift and heavy industrial equipment. Within the span of several days, the packer experiences multiple unexplained dizzy spells and has to take repeated breaks to recover. In this case, the employer's belief that the packer's ability to operate heavy equipment may be impaired by a medical condition or may cause a direct threat to the employee's or others' safety can be seen as reasonable given the objective observation of the dizzy spells. If so, the employer may inquire about the packer's dizzy spells and, if necessary, ask the packer to undergo a medical examination focused on the medical condition at issue, avoiding a broad request.

In other situations, the link between a medical condition and performance or safety may not be as readily apparent. The condition may have occurred in the past or its impact on current performance may not be immediately clear. Whether the manufacturer could, for example, justify seeking medical information about the packer's past colon surgery, absent a request for accommodation by the packer for that condition, would require closer scrutiny to evaluate whether the ADA permits such a medical inquiry. Each such situation is reviewed carefully on its own facts to determine whether conducting a medical examination or making a medical inquiry would be permitted by the ADA.

Takeaways for Manufacturers

Determining when the ADA permits a medical examination requires the active involvement of trained human resources staff. Manufacturers that have established the parameters of a medical examination protocol beforehand can give medical providers solid guidelines and routinely discuss issues with HR. Keep in mind that medical professionals may have limited, if any, training in ADA requirements. Providing training on the ADA to HR professionals and in-house medical staff is critical to ensuring their well-intentioned risk management efforts do not stray beyond the boundaries of permissible medical inquiries under the ADA.

Further, an employee's treating healthcare provider is often in a good position to evaluate an employee's ability to perform job duties effectively and safely. Employers can incorporate requests for information from the treating provider into the process, following ADA parameters. If an independent medical exam is deemed necessary, manufacturers must ensure that it is conducted at the employer's expense.

Finally, it is a best practice to base a decision to conduct a medical examination on an *individualized assessment*, rather than blanket rules requiring medical examinations (other than as required by federal law or regulation) or medical screening triggered by particular medical conditions or events.

Please contact a Jackson Lewis attorney with any questions.

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