



CLIENT ADVISORY

April 2007

Mokena: 19065 Hickory Creek Drive, Suite 220, Mokena, IL 60448 (708) 479-3230
Bloomington: 1003 Martin Luther King Drive Bloomington, IL 61701 (309) 820-6026

On February 27, 2007, the Equal Employment Opportunity Commission (“EEOC”) issued a new question and answer fact sheet to job applicants and employees of the health care industry regarding application of the Americans with Disability Act (“ADA”) employment rules. The EEOC appears to be singling out the health care industry not only because it is “the largest industry in the American economy” but also because, according to the EEOC, it has a high incidence of occupational injury and illness, as well as being mentally and physically stressful. The EEOC stressed that “disability does not mean inability” and that all individuals deserve equal opportunity.

This fact sheet discusses the following topics:

- When someone is an “employee” covered by the ADA (as opposed to an independent contractor);
- When someone is an “individual with a disability” under the ADA;
- How to determine if a health care applicant or employee with a disability is qualified for ADA purposes;
- What types of reasonable accommodations health care workers with disabilities may need and the limitations on a health care employer’s obligation to provide reasonable accommodation;
- How a health care employer should handle safety concerns about applicants and employees; and
- When an employer may ask health care applicants or employee’s questions about their medical conditions or require medical examinations.

The fact sheet also provides numerous scenarios concerning each topic that give examples on how to deal with various situations and fact patterns regarding employees with disabilities. We have provided below a brief summary of the EEOC’s guidance on each topic.

When Someone Is an Employee

The ADA employment rules do not cover independent contractors. The determination of whether an employee is covered by the ADA employment rules is case specific and depends on various factors. A health care provider may be considered an employer or a joint employer of temporary workers who are provided by a temporary agency.

When Someone Is an Individual With A Disability

An individual is defined as having a disability under the ADA when that individual (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of a substantially limiting impairment; or (3) is regarded as having a substantially limiting impairment. An example of a disability is an individual who has been diagnosed with multiple sclerosis that causes chronic, intermittent weakness. Such disability would limit the individual’s ability to walk and stand, preventing a major life activity.

When An Applicant or Employee is Qualified For ADA Purposes

To qualify to perform a job under the ADA, an individual must meet the requisite skill, experience, education, and other job-related requirements to perform the essential functions of the job with or without a reasonable accommodation. An employer must provide reasonable accommodation to allow an employee to complete the functions of the position.

Types of Reasonable Accommodations and an Employer’s Obligation to Provide Accommodations

Reasonable accommodation is any adjustment to a position that allows a qualified applicant or employee with a disability to participate in the job application process, to perform the functions of the position, or to

enjoy the benefits and privileges of employment equal to those enjoyed by employees without disabilities. An employer may ask for supporting documentation after receiving a request for reasonable accommodations. In addition, an employer may choose the least expensive accommodation if one is available. An employer does not have to provide a reasonable accommodation that would cause undue hardship to the operation of the business.

How to Handle Safety Concerns

An employer may exclude an applicant or employee with a disability from certain positions if such person would pose a direct threat to health or safety. Direct threat is “a significant risk of substantial harm to the individual or others in the workplace that cannot be reduced or eliminated through reasonable accommodation.” Elements an employer should consider in determining if an applicant or employee poses a direct threat are: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. A determination whether an employee poses a direct threat to safety must be based on an individualized assessment of the employee’s ability to safely perform the essential functions of the job. An employer may request that an employee, who it believes poses a direct threat, be examined by a health care professional of the employer’s choice (and at the employer’s expense) who has expertise in the employee’s specific condition.

When An Employer May Ask About Medical Conditions Or Require Medical Examinations

The ADA also strictly limits an employer’s access to and use of medical information about applicants and employees. The ADA rules regarding “disability-related inquiries”, medical examinations and the confidentiality of medical information apply to all applicants and employees regardless of whether or not they are individuals with disabilities. Generally, a conditional offer of employment must be made prior to asking an applicant any disability-related inquiries or requiring an applicant to take a medical examination. However, before an employer makes an offer of employment, it may ask the applicant questions about ability to perform job-related functions, and may request that the applicant describe or demonstrate how they will perform such job-related functions.

Medical information of all applicants and employees, including written records and medical information provided orally, must be kept confidential and maintained separately from their personnel files. The employer may discuss medical information only (1) with supervisors or managers in order to meet an employee’s need for reasonable accommodation(s) or in connection with an employee’s work restrictions; (2) with first aid or safety personnel where a condition might require emergency treatment or an employee would require assistance in the event of an emergency; (3) with government officials investigating compliance with the ADA or similar state and local laws; (4) as needed for workers’ compensation purposes; and (5) for certain insurance purposes.

