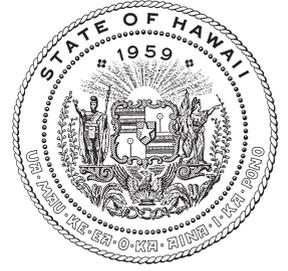


Americans with Disabilities Act - Title I

Medical Examinations and Inquiries



Covered Entities

Title I of the Americans with Disabilities Act of 1990 (P.L. 101-336) applies to **covered entities**. Covered entities are private employers, state and local governments, employment agencies, labor unions, and joint labor management committees with 15 or more employees.

Limitations on Medical Examinations and Inquiries

Under Title I, a covered entity may obtain medical and related information necessary to evaluate the ability of applicants and employees to perform essential job functions, or to promote health and safety on the job.

However, Title I imposes specific limitations at three stages of the employment process.

1. Before making a job offer, a covered entity may not conduct any medical examination or any medical inquiry.
2. After making a conditional job offer, and before a person starts work, a covered entity may conduct unrestricted medical inquiries, but may not refuse to hire an individual with a disability based on results of such inquiries, unless the reason for rejection is job-related and justified by business necessity.
3. After employment, a covered entity may conduct a medical examination or an inquiry as long as it relates to the job and business necessity. Exceptions are voluntary examinations conducted as part of employee health programs and examinations required by other Federal laws.



Pre-employment, Pre-offer Stage

Title I prohibits medical examinations and medical inquiries before making a conditional job offer because covered entities frequently use the results to exclude people with disabilities from jobs they can perform. Medical policies that focus on disability instead of the ability of individuals could lead to discrimination under Title I.



Permitted Examinations and Inquiries

Covered entities may condition a job offer on the satisfactory result of a post-offer medical examination or medical inquiry if it requires the same of all entering employees in the same job category. A covered entity does not have to require post-offer medical examinations of all entering employees in all jobs, only to those in the same job category.

Title I does not require a covered entity to justify its requirement of a post-offer medical examination. A covered entity may conduct a post-offer medical examination or post-offer medical inquiry for the purposes below.

- Determining whether an individual currently has the physical or mental qualifications necessary to perform certain jobs.
- Determining whether an individual can perform a job without posing a direct threat to the health or safety of self or others.
- Compliance with the medical requirements of other Federal laws.



A covered entity may also conduct post-offer medical examinations required by state laws, but may not take actions based on such examinations if the state law conflicts with Title I requirements.

After making a conditional job offer, a covered entity may conduct examinations and inquiries to obtain information that it considers relevant to an individual's ability to perform a job. Such inquiries and examinations do not have to be job-related and consistent with business necessity. However, if a covered entity withdraws a conditional job offer based on the results of such examination or inquiry, a covered entity must show the following:

- The reasons for the exclusion are job-related and consistent with business necessity, or it excluded the individual to avoid a direct threat to health or safety; and
- No reasonable accommodation could enable the person to perform the essential job functions without a significant risk to health or safety, or that providing such an accommodation would cause undue hardship.

Assessment of Harm to Self or Others



A covered entity may not use the results of a medical inquiry or examination to disqualify individuals who can perform the essential functions of a job, either with or without an accommodation, because of fear or speculation that a disability may indicate a greater risk of future injury or absenteeism, or may cause future workers' compensation or insurance costs. On the other hand, a covered entity may use such information to exclude an individual with a disability where there is specific



medical documentation reflecting current medical knowledge that the individual would pose a significant, current risk of substantial harm to health or safety.

Medical documentation showing that an individual constitutes a direct threat to health and safety does not mean information obtained solely from medical doctors. A covered entity may find information from other sources, such as rehabilitation experts, occupational or physical therapists, psychologists, and an individual's previous work history, more relevant in making such determinations than relying on an examination from a physician. Any assessment should focus on (1) whether the individual is currently able to perform the specific job, with or without an accommodation; and (2) whether the individual can perform the job without posing a direct threat to the health or safety of self or others.



When a covered entity rejects an individual based on a direct threat to health and safety, it must:

- Show a **significant current risk of substantial harm** (not a speculative or remote risk);
- Identify the specific risk;
- Document the risk by objective medical or other factual evidence as it relates to the particular individual; and
- Consider whether providing a reasonable accommodation could eliminate or reduce the risk below the level of a direct threat.

Conclusions of general medical studies about work restrictions for people with certain disabilities are not sufficient evidence because they do not relate to a particular individual and do not consider reasonable accommodation.

Confidentiality and Limitations on Using Medical Information



A covered entity must collect and maintain all information obtained from post-offer medical examinations and inquiries on separate forms, in separate medical files, and treat the information as confidential medical records. Therefore, a covered entity should not place any medically-related material in an employee's personnel file.

A covered entity must keep all medically-related information confidential, with the following exceptions:

- It may inform supervisors and managers about necessary restrictions on the work or duties of an employee and necessary accommodations;
- It may inform first aid and safety personnel, when appropriate, if the disability might require emergency treatment or if there is a need for any specific procedures in the case of fire or other evacuations;



- It should provide relevant information on request to government officials investigating compliance with Title I and other Federal and state laws prohibiting discrimination based on disability;
- It may provide relevant information to state workers compensation offices or second injury funds in accordance with state workers' compensation laws; and
- It may provide relevant information to insurance companies where the company requires a medical examination to provide health or life insurance for employees.

Wellness and Health Screening Programs

A covered entity may conduct voluntary medical examinations and inquiries as part of an employee health program (such as medical screening for high blood pressure, weight control, and cancer detection), provided that participation in the program is voluntary, information obtained is maintained according to the confidentiality requirements of Title I, and it does not use the information to discriminate against an employee.

Medical Examinations and Inquiries of Current Employees

The Title I requirements concerning medical examinations and inquiries of current employees are more stringent than those affecting applicants that are evaluated for employment after a conditional job offer. A covered entity may conduct a medical examination based on evidence of problems related to job performance or safety, or on the necessity of determining whether individuals in physically demanding jobs remain fit for duty. In either case, the scope of the examination also must be job-related.



ADA Information

Visit the EEOC web site to see the Title I regulations and related guidance at eoc.gov.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Blvd., Room 101 • Honolulu, HI 96814

Oahu: (808) 586-8121 (Voice/TTY), (808) 586-8129 (Fax)

Call toll free from:

Maui: 984-2400, ext. 6-8121# (Voice)

Kauai: 274-3141, ext. 6-8121# (Voice)

Molokai & Lanai: 1(800) 468-4644,
ext. 6-8121# (Voice)

Big Island: 974-4000,
ext. 6-8121# (Voice)

E-mail: dcab@doh.hawaii.gov • **Web Site:** www.hawaii.gov/health/dcab/

