

ADA 104: What Certification May Be Required?

HR Summer School: The Back-to-Basics Series

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ADA 104: WHAT CERTIFICATION MAY BE REQUIRED?

I. WHEN MAY CERTIFICATION BE REQUIRED?

The issue of certification arises most often when the individual first requests an accommodation. On a broad level, employers may ask employees for documentation to support the reasonableness of the request. The EEOC has explained that an employer may require documentation “to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation.” In short, when the disability or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about the claimed disability and functional limitations.

A. WHAT IS “REASONABLE DOCUMENTATION”?

“Reasonable documentation” means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. This means that an employer may not ask for documentation that is unrelated to determining the existence of a disability and the need for an accommodation.

In most situations, an employer cannot request a person’s complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

B. WHO IS AN “APPROPRIATE PROFESSIONAL”?

The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

C. WHAT TYPES OF INFORMATION SHOULD BE REQUESTED?

In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care professional. The employee may be asked to sign a limited release allowing the employer to submit a list of specific questions to the employee’s health-care professional.

D. WHAT IF THE EMPLOYEE REFUSES TO PROVIDE DOCUMENTATION?

An employee who refuses to provide the reasonable documentation requested by the employer will not be entitled to reasonable accommodation. On the other hand, failure by the employer to initiate or participate in an informal dialogue with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation. The employee’s desire to retain a level of privacy concerning his disability does not trump an employer’s need for sufficient information. The failure of an employee to provide

This outline is provided to readers of the [Delaware Employment Law Blog](#), courtesy of:



this information releases the employer from responsibility for knowing information about the disability and providing a reasonable accommodation.

An employer will not be liable where it attempts to interact and the employee refuses to participate or withholds essential information. The employee's failure to respond to his employer's repeated requests for documentation concerning his ability to return to work will obviate the employer's duty to consider the requested accommodation.

Similarly, the employer will not be liable where the employee fails to update his medical records. This may require the employee to return to his health-care provider for an updated evaluation.

But, employers should proceed with caution in requesting documentation. The employer should explain why the documentation is insufficient, allow the employee to provide the information that is missing, and pay all costs associated with any mandated visits.

II. WHO CHOOSES THE HEALTH-CARE PROVIDER?

The ADA does not prevent an employer from requiring an individual to go to an appropriate health professional of the employer's choice if the individual provides insufficient information from his treating physician (or other health care professional) to substantiate that he has an ADA disability and needs a reasonable accommodation. If the documentation provided is insufficient, the employer should explain deficiency and allow the individual an opportunity to provide the missing information in a timely manner. Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation.

Any medical examination conducted by the employer's health professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation. If an employer requires an employee to go to a health professional of the employer's choice, the employer must pay all costs associated with the visit(s).

III. WHEN MAY CERTIFICATION NOT BE REQUIRED?

An employer cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate that he has an ADA disability and needs the reasonable accommodation requested.