

THE AMERICANS WITH DISABILITIES ACT (ADA)
A GUIDELINE FOR
MEDICAL STANDARDS AND EXAMINATION PROGRAMS
FOR EMPLOYEE PLACEMENT AND ACCOMMODATION

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Introduction

As usual, businesses sit on the razor's edge--they must provide for the safety and health of their employees, comply with complex governmental regulations and at the same time, try to place all workers in jobs without regard to age, sex, race, religion, etc. and as of July 1992, disabilities.

The Americans with Disabilities Act (ADA) goes further than the 1973 Rehabilitation Act, and for many employers this means changing the way they offer and conduct medical examinations and use medical evaluation data in placing and accommodating employees. The key ADA issue from a medical evaluation perspective is whether the medical exam results and interpretations will be used in hiring and job placement.

Need for Medical Exams

There are three basic reasons employers should, and in many instances, are required to provide medical evaluations for prospective and current employees:

- Initial and continued placement (fitness-for-duty and return-to-work)
- Detection of potential adverse health effects from work (medical monitoring and surveillance)
- Health promotion

Contrary to some initial interpretations, the ADA does not really prohibit an employer from requiring work-related medical evaluations for applicants or employees. The ADA also specifically makes exceptions for regulatory-mandated exams, such as U.S. Department of Transportation (DOT) required exams for truck drivers or OSHA exams for individuals exposed to specific hazards, i.e. asbestos. It also exempts voluntary exams such as those used in health promotion screening.

In the present medical and governmental environment, it is widely accepted that the proper approach to employee placement is that "no individual should be placed in a job which will significantly increase the risk of illness or injury to him or herself, co-workers or the general community." This basic position has been endorsed or regulated by the American College of Occupational and Environmental Medicine (ACOEM), the Equal Employment Opportunity Commission (EEOC) and various other groups. In fact, without medical evaluations, employers face liability from placing an unfit worker in a potentially hazardous situation. For example, an individual with an unstable back and clear clinical findings due to previous back trauma, should not be placed in a job requiring heavy material handling without medically approved accommodation. Nor should a worker with a particularly significant respiratory or cardiovascular condition be placed in a work environment requiring the use of a respirator.

There have been a number of cases where employees have gone outside of the exclusive remedy of workers' compensation and sued their employer directly for purposely placing them in a dangerous work environment. This has been especially true in return-to-work cases where an improper or no medical evaluation was performed and the employee was allowed to return to work in an "unfit capacity". There has also been associated litigation by third parties for "wrongful employment" and "wrongful retention".

In addition to providing for employee safety and health and liability avoidance, employers must also try to contain workers' compensation costs and related expenses such as replacement and training costs, lost productivity, increased use of management and administrative resources, etc. Thus, medical evaluations have been, and continue to be, an integral component in employee placement decision-making, liability avoidance, regulatory compliance and company profitability.

Medical Standards

The crux of ensuring that your medical examination program is job-related and consistent with business necessity, as required by the ADA, mandates the development of job-related medical standards. Medical standards have not only been used for many years by government and industry for firefighters and truck drivers (DOT Medical Standards-391.41), but also for assuring the absence of increased risk of exposure to various workplace hazards (e.g. asthmatics and bakery flour dust). Not all jobs in a given workplace have to be included and jobs can be grouped where workers are normally rotated through such jobs. However, all applicants/employees must be fairly and uniformly evaluated against the same medical standards. Medical standards must be developed by knowledgeable physicians (preferably with occupational medical expertise) based on critical job task ("essential job functions") assessments. These critical job task factors are those identified, qualified and quantified, which may be medically limiting either from an absence or degree of specific physical ability (e.g. strength), or presence and degree of a specific medical condition (e.g. diabetes).

These standards are essential in placement-related exams such as:

- Initial (contingent) hire
- Fitness-for-duty (i.e. respirator users)
- Medical monitoring and surveillance (OSHA requires physician job placement evaluations for its health standards)
- Return-to-work

The Examination Protocol

Once medical standards are developed, an examination protocol can be established that is targeted to provide the medical information necessary to determine if a given individual meets the standards for a specific job. As always, clinical judgment is essential and, therefore, all evaluating physicians must have an intimate knowledge of covered jobs, critical job task factors and their related medical standards. Depending on the exact physical requirements, exposures, environmental conditions, etc., the examination can include among other items:

- Occupational and medical history
- Physical examination
- Job-specific strength and endurance testing
- Pulmonary function testing
- Complete blood count
- Serum chemistry panel
- Audiometry
- Vision screening
- Urinalysis (drug testing as well)

It is important to note that with the exception of strength testing, the other exam components cannot be exactly job related. This again is consistent with the ADA in that it is the standards that must be job-related. If strength testing is part of the assessment, it has to be carefully evaluated and validated against the actual job. With few exceptions, most computerized strength testing machines will not meet the ADA requirements. In fact, most of these machines test isolated muscle groups and not the full range of musculoskeletal activities required to perform a specific job function. Thus, these tests may not truly reflect the ability of the individual to perform the job. In many instances where these tests have been explored, current employees performing their present jobs satisfactorily, fail such tests. It is probably better and more cost-effective, given the fees charged for such testing, to recreate the actual material handling function in the doctor's office in a safe manner with proper size weights, conditions, frequency, etc. This can assure that the test is ADA compliant, and more importantly, truly represents the minimum necessary physical ability to safely perform the job.

One question that arises repeatedly is the use of screening back x-rays. The present position of the EEOC and the ACOEM, based on a large number of solid clinical studies and actual legal decisions, is that back x-rays in a screening capacity are neither specific nor predictive. They are, however, expensive and expose the individual to unnecessary radiation. Their use should be restricted to individuals with specific clinical indications from the history or physical exam.

Another issue raised, especially by attorneys, is the use of health history questionnaires in the placement process. While there are justifiably strict limitations on what the employer may ask, the physician does and should have a wide range of information gathering capability. That is how medical evaluations are, and must be, conducted. Physicians do not simply restrict someone from a certain work activity because of a "yes" or "no" answer to a question. They carefully probe, in-depth and in concert with data gained from tests and the physical exam, to assess whether a specific condition does or does not meet the job-related medical standards. Since the medical information is confidential and remains with the physician, the applicant/employee is protected from improper dissemination and use of such information.

Using the Information

Employers neither need nor do they have the right to receive actual medical data (with the notable exceptions for workers' compensation and health benefits claims). They do, however, need specific recommendations from the examining physician on a given applicant or employee with respect to whether that person:

- Meets the standards for a job or job group
- Does not meet the standards
- Is deferred until a potentially correctable condition is addressed
- Has specific medical restrictions

These recommendations are especially important in return-to-work activities because frequently, medical case management activities are stalled when medical standards are not in place to determine whether an injured worker has reached maximum medical recovery (improvement), and if they can resume their job duties. Job duties are also critical because of the ADA's provision for reasonable job accommodations. In most instances, it is a physician who must determine which medical restrictions are necessary, and then, the employer using those recommendations can determine whether the required accommodations are reasonable for their business.

The Physician's Role

Producing an effective program to appropriately place applicants and current employees, and comply with the Americans with Disabilities Act, requires a team approach to include company and outside expertise as follows:

- Human resources
- Legal
- Operations
- Safety and health
- Risk management (workers compensation)
- Occupational medicine

Due to the far-reaching impact on multiple company areas/disciplines, this team approach will assure that a synthesized, comprehensive plan is developed and effective policies and procedures implemented.

It is vital to have occupational medical expertise throughout this process because such input is required in the four overall ADA program components:

- Essential job function analysis (critical medically-limiting job tasks)
- Job/job grouping-specific medical standards
- Medical evaluation programs and standardized medical restrictions
- Reasonable job accommodations

One of the most important considerations is that local health care providers (contract or in-house physician and nurses) will need training and education especially to assist those providing useful input on the medical aspects of a specific job accommodation. However, other important areas for occupational medical expertise and program development include:

- Forms and medical recordkeeping
- Medical consultation on "grey area" or difficult cases
- Defense of legal challenges
- Medical aspects for developing job descriptions and job task analysis
- Modified/temporary job duty vs. permanent medical restrictions
- Physician/health provider policies and procedures manual.

Summary

The Americans with Disabilities Act actually provides employers with an opportunity, through the use of job-related medical standards and evaluations, to properly place applicants and employees. This presents an ideal time for businesses to review their current occupational health, safety and medical examination programs and to update them, not only to be compliant with the Act, but also to enhance their overall safety and health effectiveness, meet OSHA and other regulatory requirements and cut workers' compensation and related costs.

References

1. Equal Employment Opportunity Commission. Americans with Disabilities Act, 29 CFR, Parts 1602, 1627 and 1630, July 26, 1991.
2. President's Committee on Employment of People with Disabilities, Fact Sheet on: Medical Examinations: Are They Beneficial and Legal?, August 1, 1990.
3. Public Law 101-336, 101st Congress, Americans with Disabilities Act of 1990, 104 Stat 327, July 26, 1990.