

October 15, 2009

TO: All Members

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Subject: What to do if you suspect an employee  
has H1N1 virus

Do you suspect an employee may have the H1N1 virus or some other contagious disease? Don't ask! And certainly don't report the medical status of an employee to any other employee with a few exceptions, described in red below.

Here is the law: The Americans with Disabilities Act (ADA) absolutely prohibits an employer from disclosing an employee's H1N1 diagnosis to other employees. In fact, there are strict rules about even *asking the potentially affected employee* if they have H1N1.

### **Disability-Related Inquiries and Medical Examinations**

Title I of the ADA protects applicants and employees from disability discrimination. Among other things, the ADA regulates when and how employers may require a medical examination or request disability-related information from applicants and employees, regardless of whether the

individual has a disability. **This requirement affects when and how employers may request health information from applicants and employees regarding H1N1 flu virus.**

Under the ADA, an employer's ability to make disability-related inquiries or require medical examinations is analyzed in three stages: pre-offer, post-offer, and employment.

- At the first stage (**prior to an offer of employment**), the ADA prohibits all disability-related inquiries and medical examinations, even if they are related to the job.
- At the second stage (after an applicant is given a conditional job offer, but before s/he starts work), an employer may make disability-related inquiries and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category.
- At the third stage (after employment begins), an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.
- **The ADA requires employers to treat any medical information** obtained from a disability-related inquiry or medical examination (including medical information from voluntary health or wellness programs), as well as any medical information voluntarily disclosed by an employee, **as a confidential medical record**. **Employers may share**

**such information only in limited circumstances with supervisors, managers, first aid and safety personnel, and government officials investigating compliance with the ADA.**

*See Disability-Related Inquiries & Medical Examinations of Employees Under the ADA (2000) at*

*<http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.*

*See also Enforcement Guidance: Preemployment*

*Disability-Related Questions & Medical Examinations*

*(1995) at <http://www.eeoc.gov/policy/docs/preemp.html>.*

We urge you to contact your CIS Risk Management Consultant for additional information. [Click here](#) for your consultant's contact information.