

During an interview, can employers ask about ability to comply with attendance rules?

Q. Can an employer ask a job applicant whether he or she can meet the company's attendance policy?

A. Generally, such an inquiry would not violate the ADA or California's Fair Employment and Housing Act. According to guidelines issued by the EEOC, a pre-employment inquiry violates the ADA if it seeks to or is likely to elicit a response that requires disclosure of the existence, nature or severity of a job applicant's disability.

Questions concerning a job applicant's abilities, including his or her ability to perform the essential functions of the job, are allowed under the guidelines. Thus, the manner in which the employer asks the question is often the key to determining whether an inquiry is prohibited or allowed.

Examples of what you *can* ask:

- Can you perform all of the job functions, with or without a reasonable accommodation?
- Describe how you would perform the job? (This must be asked of all applicants in the job category, unless the applicant has a known disability.)
- We require attendance with no more than three absences per quarter. Can you meet this requirement? (Note, however, that such an attendance requirement may raise issues under the FMLA.)
- Do you use alcohol?
- Do you handle stress well?
- Are you currently using illegal drugs?
- Have you ever used illegal drugs?
- Have you ever been disciplined for tardiness?
- Do you get along well with your co-workers?
- Can you explain any periods that you were not employed?

Examples of what you *may not* ask:

- Will you require an accommodation to perform the job functions?
- Do you have any medical conditions that would prevent you from meeting our attendance requirements?
- How many days were you sick in the past year?
- Are you currently taking prescription medication?
- How much alcohol do you use?
- Have you ever been addicted to illegal drugs?
- Has stress ever caused you to be ill or to seek psychological treatment?
- Have you ever filed a workers' compensation claim?
- Have you ever suffered from one of the following illnesses?

- Have you ever been treated by a psychiatrist or psychologist?
- Have you had any major illnesses in the past five years?
- Are you in good health?

Note: These guidelines apply only to the pre-employment stage. Once you have extended a job offer to an applicant, a wider range of inquiries is allowed. However, even at the post-offer stage, discrimination against individuals with disabilities is still prohibited.