

## Back To Basics: What the ADA Does — and Doesn't — Allow Employers to Ask in the Hiring Process

HR Dive | Ryan Golden | August 18, 2025

It's an area that employers "mess up all the time," a disability compliance consultant told HR Dive.



Yujin Kim/HR Dive

Editor's note: The Back to Basics column serves as an accessible way to understand employment law. If you're new to HR (or just need a little refresher), follow along as the HR Dive team speaks with legal experts, peruses federal guidance and lays out the basics of employment law.

A hiring manager for a hotel chain is interviewing job candidates for a receptionist opening. As she opens the door to call the next candidate into the interview room, she notices that the candidate is using a wheelchair.

The manager assumes that the candidate may be using the wheelchair due to some kind of medical condition. Still, she knows that the Americans with Disabilities Act has strict rules regarding what questions employers may ask job candidates about their medical histories at various stages of the hiring process.

Navigating those restrictions can be tricky for HR departments, and it's an area that employers "mess up all the time," said Rachel Shaw, an ADA compliance consultant and president of Shaw

HR Consulting. This is particularly the case after an offer of employment has been extended, but risks exist for each stage of the process, even post-hire.

To give newcomers to the profession a quick refresher of the ADA's requirements, HR Dive asked Shaw to walk through a typical hiring decision.

### **Before an offer: No medical questions allowed**

If an employer has not yet given a conditional job offer to an applicant, that employer may not ask anything that would require the applicant to disclose that they might have a medical condition, Shaw said.

According to guidance from the U.S. Equal Employment Opportunity Commission, this restriction extends to written questionnaires and inquiries made during interviews as well as medical examinations. It also extends to any such questions regardless of whether they are related to the job to which a candidate is applying.

EEOC lists a variety of examples of prohibited questions, which include asking about conditions such as asthma and mental health problems as well as inquiries about the amount of sick time employees have taken or whether they have taken workers' compensation.

Shaw noted that employers should also be wary about formats like pre-hire personality tests. Employers "have to be very careful that no question they're asking could lead a person to disclose whether they have any physical- or mental-type health conditions," she said.

### **After an offer: Inquiries and exams allowed, but be consistent**

During the post-offer phase but before a new hire begins to work, employers are permitted to make disability-related inquiries and conduct medical examinations, Shaw said. This may include psychological, physical or cognitive health tests that could reveal a disability, but only if the employer requires the same assessments for all entering employees of the same job category.

Medical examinations can be "pretty broad" under the ADA's guidelines, Shaw noted, and specific examples include a physical agility test, a medical assessment conducted by a healthcare provider or a psychological test, among others. State and local laws may impose their own restrictions, however.

"But the key to that is that the results of that would disclose whether the person has functional limitations," Shaw said. "If so, the employer is obligated to engage in the interactive process."

Employers cannot simply use the results of an exam to immediately determine that a candidate is unfit for duty, she continued. Rather, the purpose of the exam is to determine what physical, mental or emotional limitations the candidate may have. The employer is then obligated under the ADA to evaluate whether the candidate can perform the essential functions of the job with or without a reasonable accommodation or, per EEOC, the candidate poses a "significant risk of causing substantial harm" to themselves or others.

This part of the process “regularly gets employers in trouble,” Shaw said. “When getting to the point of getting results back, [employers] can’t just say you’re not fit. They would have to then view the restrictions or evaluations against the job-related requirements, then go through the interactive process.”

Shaw noted that employers might want to consider two things during this stage: whether the employer can mitigate or help the candidate overcome their limitation so that they can perform the job’s essential functions and do so safely, and whether those limitations are temporary in nature.

On the latter point, Shaw gave the example of a candidate who has suffered injuries due to a recent car accident and is physically incapable of doing the job now, but could do so with six weeks of recovery time. An employer in that scenario may need to evaluate, for example, whether it is reasonable to delay that candidate’s start date so that they can recover, or if there exists a kind of light duty, work restriction or other adjustment that would allow the employee to begin working.

### **How to make medical evaluations worth your time, money**

Unless an employer has in-house, legal medical providers such as physicians or physician assistants, medical evaluations are typically done at third-party clinics, Shaw said. Such exams must be performed by healthcare providers, though in some cases, such as the administration of functional testing, they may be administered by a physical therapist.

Pre-employment exams of this kind can be “wonderful tools,” Shaw said, particularly for employers that have physically demanding job openings like those for laborers or heavy mechanics. But in order for the exams to be effective, employers need to be specific with evaluators about which criteria they want assessed.

“You don’t want to be paying a doctor to look at a candidate and use their crystal ball to determine [the candidate’s] ability,” Shaw said. “You want a test to physically demonstrate the candidate’s ability to push, lift, pool, walk and climb, even if accommodations are possible.”

By doing so, employers will have a better outcome that they can rely on to make a determination, even if a more comprehensive test costs more up front. “It’s a little more money and time, but in my opinion, you’re kind of throwing money in the trash if you’re just paying someone to look at your candidate,” Shaw said.

HR departments also struggle, she added, with understanding that such evaluations don’t absolve them of the need to engage in the interactive process if the candidate has limitations. The employer should also document this process — on paper — to show each step of its engagement of the candidate and exploration of any and all limitations revealed as part of an exam. This can come in handy in the event of future legal claims, Shaw said.