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Court rules Employer's request for general diagnosis does not violate the Americans with Disabilities Act

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The Sixth Circuit Court of Appeals recently upheld an employer's right to require employees to provide a physician's note stating the nature of the illness and their ability to return to regular duty when that employee uses more than three consecutive sick days.

The ruling reversed a federal district court's decision which found this requirement in violation of the Rehabilitation Act of 1973. Because of the Rehabilitation Act's similarity to the Americans with Disabilities Act (ADA), the Sixth Circuit analyzed the issues under that law (see *Lee v City of Columbus, Ohio)*.

Two of the more interesting issues discussed by the court were whether the employer's request for a general diagnosis was an unlawful medical inquiry under the ADA and whether the employer can require that the employee's immediate supervisor receive the information.

The Sixth Circuit first noted that not all inquiries for medical information are prohibited by the ADA. However, an inquiry can be unlawful if it is "tantamount to an inquiry 'as to whether such employee is an individual with a disability or as to the nature or severity of the disability.'" The court recognized that asking an employee about his or her medications or about current or past medical conditions or illnesses may trigger the ADA's protections.

However, the policy at issue in this case requiring a doctor's note stating the "nature of the illness" "is not ipso facto a prohibited inquiry 'as to whether [an] employee is an individual with a disability." Moreover, "an employer may ask an employee to justify his/her use of sick leave by providing a doctor's note or other explanation, as long as it has a policy or practice requiring all employees, with or without disabilities to do so." Therefore, the inquiry concerning the nature of the illness was acceptable and valid under the ADA.

Turning to whether medical information can be provided to the employee's supervisor without violating confidentiality requirements, the Sixth Circuit found the district court's analysis flawed. Specifically, the lower court had reasoned that, to ensure confidentiality, the only permissible disclosures to an

immediate supervisor involved medical restrictions or accommodations and that all other medical information should be directed to human resources personnel, where such departments exist.

The Sixth Circuit noted that there was nothing in the law that, with regard to the processing of medical inquiries, makes a distinction based on organizational structure or the existence of a human resources department. Rather, the ADA permits the employer's agent (without differentiating between positions) to make reasonable medical inquiries and to receive such information. In fact, the Equal Employment Opportunity Commission's own sick leave policy requires such information to be submitted to first line supervisors to avoid additional levels of review.

The confidentiality provision of the ADA merely requires job-related medical information to be kept separately from personnel files. Thus, there is nothing impermissible with requiring the employee to provide such information to their immediate supervisor.

Therefore, Michigan employers are permitted to obtain general information concerning an employee's medical condition provided it is solicited of all employees (disabled or not), who request sick leave, and require him or her to submit the information to an immediate supervisor for processing.

However, whether it is a good practice to permit the immediate supervisor to have access to such information is a practical issue based on the organizational structure and the location of the business. Employers having operations subject to decisions of the Second Circuit Court of Appeals (Connecticut, New York and Vermont) are advised that the practice at issue would likely be found unlawful by that federal appellate court.

If you have any questions, please contact the author Claudia D. Orr or any member of Plunkett Cooney's Labor and Employment Law Practice Group. To review a practice group directory, click here or call Labor and Employment Practice Group Co-Leader Courtney L. Nichols at (248) 594-6360.