

Medical Examination Request

Notice

The Hawaii Employers Council has prepared a variety of **Sample Forms** for private circulation to management personnel of member companies. Because different companies may have unique needs or requirements, the sample forms are intended as examples only. It is not intended to constitute legal advice, and should not be interpreted as legal advice. You should consult with a human resources professional or employment attorney prior to utilizing any of the following materials.

Laws, rules, and regulations change over time and it is strongly recommended that policies, procedures and printed materials be reviewed at least annually to ensure that the contents keep pace with those changes.

Date: _____

From: _____

Attention Physician:

Please review the following in conjunction with the medical examination for:

(Name of Employee)

1. Attached job description.
2. The definition of reasonable accommodation as stated in Sections 12-46-182 and 12-46-187, Hawaii Administrative Rules.
3. If applicable, the definition of direct threat in Sections 12-46-182 and 12-46-188(d), Hawaii Administrative Rules.
4. The federal Genetic Information Nondiscrimination Act of 2008 prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law.

To comply with this law, _____ [*name of company*] is asking that you not provide any genetic information to us when responding to this request for medical information.

In addition, if you are conducting a fitness for duty examination or other medical examination of our employee for an employment-related purpose, you are hereby notified that you must not collect or solicit genetic information from the employee, including but not limited to information regarding the employee's family medical history.

'**Genetic information**' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

§12-46-182 "Reasonable accommodation" means:

- (1) In general:
 - (A) Modifications or adjustments to a job application process that enable an applicant with a disability to be considered for the position such applicant desires;
 - (B) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a person with a disability to perform the essential functions of that position;
 - (C) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy the same or equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities; or
 - (D) Modifications or adjustments to schedules or leave policies to enable an employee with record of an impairment that previously substantially limited, but no longer substantially limits a major life activity, to attend follow-up or monitoring appointments from a health care provider.

- (2) Reasonable accommodation may include, but is not limited to:
 - (A) Making existing facilities used by employees readily accessible to and usable by persons with disabilities; and
 - (B) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for persons with disabilities.

§12-46-187 Failure to make reasonable accommodation.

- (a) It is unlawful for an employer or other covered entity not to make reasonable accommodation to the known physical or mental limitations of an applicant or employee with a disability who is otherwise qualified, unless such employer or entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business. An employee does not have to specifically request a “reasonable accommodation,” but must only let the employer know that some adjustment or change is needed to do a job because of limitations caused by a disability.
- (b) To determine the appropriate reasonable accommodation, it shall be necessary for an employer or other covered entity to initiate an interactive process, after a request for an accommodation, with the person with a disability in need of the accommodation. This process shall identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.
- (c) It is unlawful for an employer or other covered entity to deny employment opportunities to an applicant or employee with a disability based on the need of such employer or entity to make reasonable accommodation to such person’s physical or mental impairments.
- (d) A person with a disability is not required to accept an accommodation, aid, service, opportunity, or benefit which such qualified person chooses not to accept. However, if such person, after notice by the employer or other covered entity of the possible consequences of rejecting, rejects a reasonable accommodations aid, service, opportunity, or benefit that enables the person to perform the essential functions of the position held or desired and cannot, as a result of that rejection, perform the essential functions of the position, the person will not be considered qualified.
- (e) An employer or other covered entity is not required to make a reasonable accommodation to a person who meets the definition of disability solely under the “regarded as” prong.

§12-46-182 “Direct threat” means:

- (1) A significant risk of substantial harm to the health or safety of the person or others that cannot be eliminated or reduced by reasonable accommodation based upon an individualized assessment. The risk of harm should be identifiable, substantial, current, and probable.
- (2) The factors to be considered include:
 - (A) The harm that may result if the person with a disability performed the essential job functions;
 - (B) The duration of the risk of harm;
 - (C) The nature and severity of the potential harm;
 - (D) Whether the harm may be “significantly greater” than if a non-disabled person performed the essential job functions;
 - (E) The likelihood that the potential harm will occur;
 - (F) The imminence of the potential harm; and
 - (G) Whether a reasonable accommodation can eliminate or reduce the risk of harm below the level of direct threat.

Example: An employee with epilepsy who works with hazardous machinery may not automatically pose a direct threat to self or others. The employer must first make an individualized evaluation taking into account such factors as the type of job; the aspect of the disability and harm it may cause if the employee performed the essential job functions; the duration of the risk of harm; the types of seizures which have occurred; whether there is warning of seizures; the degree of seizure control; the employee’s reliability in taking medication; any side effects; whether the harm resulting from the employee’s epilepsy is significantly greater than for employees without epilepsy; and possible reasonable accommodations. Persons who have had no seizures because they regularly take medication, or who have sufficient advanced warning of a seizure so that they can stop hazardous activity, would not pose a direct threat to self or others because the risk of harm was not substantial, current, or probable.

- (3) The belief that a person may pose a direct threat to self or others shall not be based upon subjective perceptions, irrational fears, patronizing attitudes, or stereotypes about the nature and effect of a particular disability or disabilities in general. Generalized fears about risks from the employment environment, such as exacerbation of the disability caused by stress, cannot be used to disqualify a person with a disability.

Example: A person with a history of disabling mental illness cannot be rejected by an employer because of a generalized fear that the work would trigger a relapse of the illness. The mere possibility that a person with a disability may harm the health or safety of self or others is insufficient to establish a direct threat because the risk of harm is not identifiable, substantial, current, or probable.

§12-46-188

- (d) It is unlawful for an employer or other covered entity to discriminate against a person with a disability for reasons related to safety unless the person poses a direct threat to self or others. The determination that a person with a disability poses a “direct threat” shall be based on an individualized assessment of the person’s present ability to safely perform the essential functions of the job, the person’s past and current job history, and reasonable medical judgment that relies on the current medical knowledge or the best available objective or scientific evidence, not speculation, considering the factors defined in “direct threat.” The individualized assessment made by the employer or covered entity shall identify and document the aspect of the disability and specific risk of harm that would pose the direct threat to self or others. If a person poses a direct threat, the employer or other covered entity must try to eliminate or reduce the threat to an acceptable level through provision of a reasonable accommodation.