



Employers Should Limit Health-Related Inquiries to Employee's Ability to Perform the Job

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In *EEOC v. Dillard's Inc.* [PDF], a federal district court in California ruled that a retail chain's attendance policy, which required employees to provide a doctor's note identifying the nature of a health-related absence for such absences to be excused, violated the Americans with Disabilities Act (ADA).

The ADA provision at issue prohibits covered employers from make[ing] inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity. 42 U.S.C. § 12112(d)(4)(A).

Corina Scott, an employee at one of Dillard's stores, was absent from work from May 29 to June 3, 2006, for health-related reasons. To excuse her absence, Scott gave the assistant store manager a note from her doctor stating off work this week return 6/5/06.

The manager did not excuse Scott's absences because the note failed to state the nature of the condition being treated, as required by Dillard's attendance policy. Scott refused to provide any further information regarding the health reasons for her absence. Scott was terminated on June 6, 2006, for absenteeism.

Scott filed a charge of discrimination with the EEOC. After investigating the charge, the EEOC brought suit against Dillard's on behalf of Scott and other similarly situated employees. Among other things, the EEOC claimed that Dillard's attendance policy violated the ADA's prohibition against disability-related inquiries.

The court held that Dillard's attendance policy was unlawful on its face because it permitted supervisors to conduct disability-related inquiries in violation of the ADA. Adopting the EEOC's interpretation of the ADA

provision, the court reasoned that the policy invited intrusive questions regarding employees' medical conditions that would tend to elicit information about an actual or perceived disability.

The court rejected Dillard's argument that the policy was necessary to verify the legitimacy of medical absences and to ensure that employees can safely return to work without posing a threat to themselves or others.

This decision underscores the importance of employers' policies and procedures being compliant with the ADA (and FEHA). Employers should limit health-related inquiries to the employee's ability to perform his or her job responsibilities.