



# How the ADA Protects Your Medical Information at Work

## Self-Help Guide



Arizona Center for Disability Law

[www.azdisabilitylaw.org](http://www.azdisabilitylaw.org)

[center@azdisabilitylaw.org](mailto:center@azdisabilitylaw.org)

All requests for Center services are handled in our Phoenix office:

602-274-6287

Toll free: 800-927-2260

*This guide was adapted from The Americans with Disabilities Act (ADA) and Confidentiality of Medical Information, written by University of Arizona, College of Law students: Derrick Alesevich, Trent Baker, Brian Bova, Courtney McDermed and Naveen Rao.*

This guide will answer these questions:

- What information does the ADA protect?.....Page 4
- When may employers ask for your medical information? .....Page 7
- What do employers have to do to protect your privacy?.....Page 9
- When may employers share your medical information with others? .....Page 16
- Where can you get help? (more information, legal services).....Page 21

You may worry that your employer will share your medical records with others. For example:

- You apply for a job as a waitress. You have to take a drug test before starting work. You're worried because you have HIV.
- You quit your old job as a data programmer and get a new one with a competing company. You have an eye problem and will need an accommodation.

The ADA (Americans with Disabilities Act) is a law that helps protect your privacy in cases like these. **A major goal of the ADA is to help people with disabilities get and keep jobs.**

## What This Guide is (and Isn't) About

This guide is about how the ADA protects your medical records in the hands of employers. It covers what employers must do when they get medical information about you because of your job. At the end of the guide we list some places to go for help when you have a problem.

**This guide only covers employers. It doesn't cover:**

- social service agencies
- hospitals, clinics, or doctors
- professional licensing groups

Talk to a lawyer if you need help with one of those agencies. **This guide *doesn't* cover employment laws *other than the ADA*.** There are other federal and state laws that protect medical records, too. Contact a private lawyer to learn if another law can help you. If you need help finding a lawyer, ask for a copy of the Center's *Employment Attorney Referral List*.

You may also want to see our guides *B-6: Getting a Job When You Have a Disability* and *E-6: The ADA and Medical Examinations*.

# The Americans with Disabilities Act (ADA)

The ADA says that a covered employer may **not** discriminate against a qualified person with a disability. This is true whether you're applying for a job or already in a job. The ADA may apply to you if you can answer **yes** to all 4 of these questions:

1. Is the employer covered under the ADA?
2. Do you have a disability under the ADA?
3. Do you have the skills needed to do the job?
4. Has the employer treated you unfairly **because** of your disability?

A **covered employer** is one with 15 employees or more. The employees **don't** need to work together. They can be in many different places, working for the same employer.

A **disability** can be a problem with the body or mind that substantially limits you in doing major life activities. Major life activities are things like seeing, walking, working, and learning. A disability can also be a **past** problem or illness that has substantially limited you. The ADA can also protect you if your employer **thinks** you have a problem that substantially limits you.

For help answering the 4 questions above, see the Center's self-help guide, *B-5: Have You Been Treated Unfairly at Work?*

To learn how to file a complaint against an employer, see the guide, *B-3: Taking Action: How to File a Charge When You've Been Treated Unfairly Because You Have a Disability.*



## Key Points in This Guide

- The ADA protects your medical privacy even if you **don't** have a disability. See page 21.
- Employers must keep your medical records separate from your other job records. See page 10.
- Even if you tell your employer about a condition or disability, the employer must keep it private. See page 4 and page 13.
- There are some times (exceptions) when an employer can share your medical information. See page 16.
- You can file a complaint against an employer who wrongly gives out your medical information. See page 211.

### Are you looking for extra help and are you...

... confused by a lot of the words employers and ADA lawyers use?

- Go to page 30 for a list of **Words to Know**.

... HIV positive?

- Go to page 23.

... wondering how the ADA can help you even if you **don't** have a disability?

- Go to page 21.

... worried about your co-workers seeing your medical records?

- Go to page 13 and page 19.

... thinking of leaving your job and getting a new one?

- Go to page 11.

... afraid of failing a drug test because you take prescription drugs?

- Go to page 22.

# 1. What medical information does the ADA protect?

The ADA is a rather new law. The courts are still figuring out what the law covers and how it can protect you.

So far, we know the ADA protects your right to keep the following things private:

1. Results of a medical exam done for an employer at any time
2. Medical information you share during the hiring process
3. Information about a disability that you give for affirmative action
4. Medical information you give to get an ADA accommodation
5. Medical information you give in an employer's health and wellness program
6. Disability information about you that an employer got against the law

## Examples of protected information

 Example from a **medical exam**:

Alvin gets a job as a construction worker. The building company requires all its new hires to have a medical exam before starting work. Alvin has HIV. He's worried that his fellow employees may find out about his HIV after his medical exam. But Alvin's employer must keep Alvin's HIV private.



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**accommodation** – a change to the workplace or how work is done to help someone apply for or do a job

**affirmative action** – a set of laws and programs meant to help get rid of discrimination based on race, color, religion, sex, or national origin

**disability** – something that limits one or more major life activities, such as caring for yourself, learning, working, walking, seeing, hearing, talking, breathing, and feeling close to other people

 Example from a **job interview**:

Jake applies for a job as a waiter. The employer asks Jake if he is OK with carrying a tray for long periods of time. Jake says it's OK as long as he can sit down every now and then. He explains that he has severe asthma. The employer must keep the fact that Jake has severe asthma private even if Jake **doesn't** get the job.



 Example from an **affirmative action survey**:

Steven applies for a job as an audio engineer at Mega Radio. Mega asks all its employees and applicants to fill out affirmative action surveys. Steven has a history of depression and includes this on his survey. Mega must keep Steven's history of depression private.



 Example from an **ADA accommodation**:

Steve works as an office assistant for PR Printing. He is a recovering alcoholic. Every Tuesday, Steve has to leave work early for his AA meeting. He comes in early on Tuesdays to make up the time. PR Printing must keep the reason for Steve's Tuesday hours private. His boss may **not** tell any of Steve's co-workers why Steve leaves early on Tuesdays.



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**accommodation** – a change to the workplace or how work is done to help someone apply for or do a job

**affirmative action** – a set of laws and programs meant to help get rid of discrimination based on race, color, religion, sex, or national origin



Example from an **employer health care program**:

Eric's employer sets up a program where all employees can get health care. To join this program, employees must have their medical records sent to the employer. The employer must keep all medical records private (confidential).



Example of information the employer got **against the law (illegally)**:

Jamie is applying for a job as a secretary. The boss asks Jamie a question that's against the law: He asks whether she has any disabilities he should know about. Jamie doesn't know this question is wrong (improper). She tells him she's diabetic. Even though the boss got this information against the law, he still has to keep it private.

### Drug test results need to be kept private, too

Except for illegal drug use, the ADA protects information from drug tests. Arizona state law protects even more. In Arizona, an employer can only share your test results with you and one other party. This "third party" is the one that analyzes your test results. It's usually a testing service or lab.



Both the ADA and Arizona law say that employers can only use drug tests to check for abuse. They may **not** use these tests to check for anything else.

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**confidential** – private, secret

**illegally** – against the law

**improper** – wrong, against the rules



Example of how the ADA and Arizona law each protect drug test results

Carlos is an aircraft mechanic at GHI Aviation in Tucson. GHI tests all its employees for illegal drug use twice a year. Carlos takes the test. His heart medication shows up on the test. According to the ADA, GHI has to keep this information in Carlos's separate medical file. GHI may **not** show it to anyone except in an emergency. (See page 20.)

Arizona allows GHI to also show the results to a third party (a testing service).

## What medical information *doesn't* the ADA protect?

The ADA **doesn't** protect your privacy when it comes to using illegal drugs. If a drug test shows that you abuse drugs, the employer can share this information.



Example of drug test results **not protected under ADA**:

Cody has to take a drug test before he is allowed to work as a pizza delivery person. Cody tests positive for cocaine use. Cody's employer **doesn't** have to keep this information private under the ADA. But, if the drug test shows that Cody also has asthma, the employer must keep the asthma information private.

## 2. When may employers ask for your medical information?

An employer may **not** ask for any medical records **before** making a job offer. But an employer **can** insist that you pass a medical exam **after** offering you a job. To be legal, the employer must ask **everyone** who's offered that type of job to pass a medical exam.



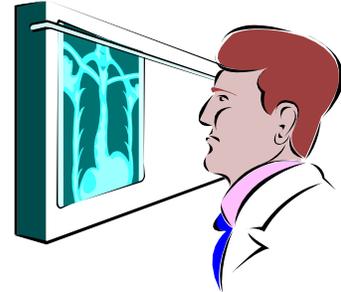

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**Legal** – following the law

Employers can either ask for your medical records, or create new ones through medical

exams. An employer may also do follow-up tests.

For example, you apply for a job that requires lifting. During the medical exam, you tell the doctor you have a history of back problems. The doctor asks to do a follow up X-ray and tests on your back. These follow-ups create new information that goes into your medical record with this employer.



Once you're hired, your employer may need more medical information because of your job. **Employers may ask you:**

- **questions about your health that relate to the job**
- **to get a medical exam**
- **to let them see medical records that doctors or old employers have about you**

For example, employers may ask for medical proof (documentation):

- that you need an accommodation you've asked for
- that you're fit for duty after **not** being able to do your job for a long time
- to check you after being exposed to a chemical at work
- to make sure you're safe to do your job after a poor safety review

✓ **Example of when an employer may ask for your medical records:**

Bill, Mike, and Pam were just hired on the same day by ABC Movers. During the job interview, Bill told ABC that he has epilepsy. ABC Movers asks Bill, Mike, and Pam for their medical records before they start work. ABC's request for records is OK (legal) because they asked all 3 new employees for the same information.

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**accommodation** – a change to the workplace or how work is done to help someone apply for or do a job

**documentation** – written proof

**legal** – following the law

**X** Example of what the same employer may **not** do:

What if ABC had only asked for **Bill's** medical records, and **not** Mike's or Pam's? That would be against the law (illegal). The employer has to ask for the same information from all workers in the same job.

### 3. What do employers have to do to protect your privacy?

The ADA says that employers must keep protected records private. There are a few exceptions to this rule. For examples, see page 16.

**Keeping records private means:**

- **Medical records must be kept in separate, locked files from other employment records.**
- **Medical records stay private whether they belong to job applicants, current employees, or past (former) employees.**



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**former employee** – someone who used to work for the employer, but doesn't anymore

**illegal** – against the law

**legal** – following the law

## Employers have to keep medical records separate

The employer must keep **all** employee and applicant medical records in a separate file from applications, W-4 forms, and other basic information. Only a few people who do filing should see medical records. The file cabinets with employees' medical information should be locked. The employer needs to protect computer files, too.

 <b>Examples of Records That Must Stay in Separate Medical Files</b>	 <b>Examples of Records That may be Kept in Regular Employee Files</b>
<ol style="list-style-type: none"> <li>1. Medical exam</li> <li>2. Written request for disability-related accommodation</li> <li>3. Medical proof (documentation) supporting accommodation request</li> <li>4. Drug test that shows legal prescription use</li> <li>5. Fitness for duty exam</li> <li>6. Information on Affirmative Action form about disability</li> </ol>	<ol style="list-style-type: none"> <li>1. Employment application*</li> <li>2. Resume*</li> <li>3. Reference letters*</li> <li>4. Wage withholding form (W-4)</li> <li>5. Personnel Evaluations*</li> <li>6. Disciplinary Warnings*</li> <li>7. Employee Awards or Honors</li> <li>8. Results of pre-employment tests (such as typing tests)</li> <li>9. Letters of appreciation</li> <li>10. Background investigations*</li> <li>11. Information about leaving the job (termination)*</li> </ol>

\* What if these records have information about a disability or medical condition? Then the record or that part of the record must be kept in the separate medical files.



Example of medical information to be kept separate from other employee records

Tina is a carpenter for DFE Construction Company. She was injured on the job. Tina **can't** work because of her injuries and has applied for workers' compensation. DFE gets information about Tina's permanent injury. This information should **not** go in Tina's regular employee files. It should go in a separate medical file.

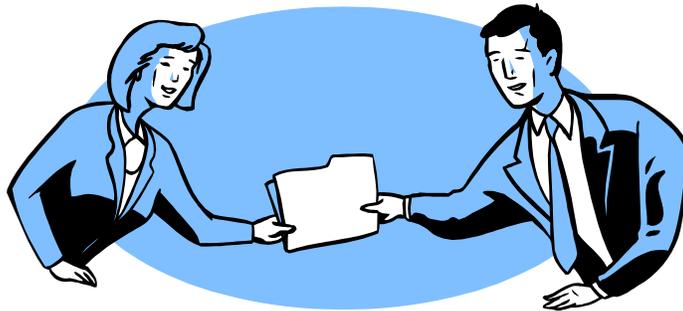
## Employers have to keep your medical records private even *after* you leave the job

A past (former) employee's medical records are protected under the ADA the same as a current employee. Your employer must keep your medical records private even after you leave the job.

Managers and supervisors **don't** need to know about a **former** employee's limits on the job.

In a few cases, the employer may share a past employee's medical records with someone else. These are the **only** groups the employer can share that information with:

1. Government offices checking for compliance with the ADA
2. State workers' compensation offices or "second injury" funds, according to state workers' compensation laws
3. Insurance companies where the company requires a medical exam. (This only applies if the former employee still gets insurance benefits.)



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**former employee** – someone who used to work for the employer, but doesn't anymore

**workers' compensation** – a kind of insurance that helps pay the extra cost of an employee who gets hurt on the job



## Example of a former employee's right to privacy

Lisa worked as a programmer at Bright Idea, a software company. A competing software company offered Lisa a job paying a lot more than Bright Idea was paying her. Lisa accepted the job. But she's worried that Bright Idea may release her medical records, which would show that she has epilepsy. Under the ADA, Bright Idea may **not** release the medical records of a former employee to another company. Even if Bright Idea had fired Lisa, it would still be against the law for them to release her medical records.



## Employers have to keep your medical records private even if they *don't* hire you

The ADA protects you when you **apply** for a job, too. An employer may offer you a job on the condition that you pass a medical exam. If you fail the exam, the employer can take away (withdraw) the job offer. But, the employer must still keep that medical exam in a separate file. The employer still may **not** give out the information except as the ADA allows.

An employer may learn about a job applicant's disability or medical condition in other ways. For example, you may ask for an accommodation during the hiring process. You may need to give written proof of your disability to get the accommodation. In all cases, the employer must keep this information private.

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**accommodation** – a change to the workplace or how work is done to help someone apply for or do a job

**disability** – something that limits one or more major life activities, such as caring for yourself, learning, working, walking, seeing, hearing, talking, breathing, and feeling close to other people

**former employee** – someone who used to work for the employer, but doesn't any more

Your employer may *not* tell your co-workers about your accommodation(s)

Telling your co-workers about your accommodation is like telling them you have a disability. This violates the ADA.

Your employer may tell your supervisor, but only if they need to know it. If a co-worker asks why you are getting “special treatment,” the employer **can’t** say much. The employer can only say that the law permits different treatment and requires privacy.

### **Example of how employers may *not* share your information with co-workers**

Yusef works as a bagger at Sanderson’s market in Tucson. He has severe asthma. A fellow employee complains to Sanderson’s about Yusef. He says that Yusef is the only bagger who **doesn’t** help customers out to their cars in the sweltering Tucson heat.

Under the ADA, Sanderson’s **can’t** tell the complaining employee that Yusef has an accommodation because of his asthma. But Sanderson’s **can** put general information in the employee handbook. They can say Sanderson’s is an Equal Opportunity Employer and gives accommodations when needed.

### **Your employer may *not* use affirmative action information in hiring decisions**

Employers may ask if you want to (voluntarily) tell them you have a disability **before** a job offer in 2 cases:

- First, if federal, state, or local laws require the employer to have an affirmative action program.
- Second, if the employer has created an affirmative action program by choice.

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**affirmative action** – a set of laws and programs meant to help get rid of discrimination based on race, color, religion, sex, or national origin

**Equal Opportunity Employer (EOE)** – an employer that gives everyone an equal chance for jobs and promotions. EOE employers may not discriminate based on things like race, sex, or disability.

**voluntarily** – by your own free choice, not by force

When asking questions for affirmative action, the employer **must** let you know:

1. The information will **only** be used for the affirmative action program.
2. You **won't** be rejected for refusing to fill out the form.
3. Filling out the form is totally your choice (voluntary).
4. The employer will keep the information private (confidential).



Example of how an employer must protect affirmative action information

John has a bi-polar disorder. He takes his meds (medications) and keeps his condition under control. One day, John's employer asks all employees to fill out an affirmative action survey. John fills out the affirmative action survey. He answers that he has a mental disability, bi-polar disorder. Except for giving the information to the EEOC, John's employer must keep John's medical information private (confidential). This includes keeping the information in a locked file cabinet, separate from other employee records.



## **An employer may *not* make you give up your right to privacy**

The law **isn't** clear about whether you can choose to give up (waive) any of your ADA rights. But it **is** clear that an employer **can't make you** give up your rights.

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**affirmative action** – a set of laws and programs meant to help get rid of discrimination based on race, color, religion, sex, or national origin

**confidential** – private, secret

**disability** – something that limits one or more major life activities, such as caring for yourself, learning, working, walking, seeing, hearing, talking, breathing, and feeling close to other people

**EEOC** – Equal Employment Opportunity Commission; a government agency that makes sure employers follow equal opportunity rules and don't discriminate

**voluntary** – by your own free choice, not by force

**waive** – to give away a legal right or claim

This means an employer may **not** make you sign a paper to:

- release your medical records
- release any and all records (because “any and all” records may include medical records)
- protect former employers and others from being sued for giving out your private information

An employer **may** do a background check on job applicants. And the employer can make you agree to the background check when you apply. But the background check may **not** include asking for your medical information.

## Giving out protected information violates the ADA

Employers may **not** give out medical information about an applicant, employee, or former employee to anyone. (See page 16 for exceptions to this rule.)

An employer who **doesn't** have a good system for keeping records separate may be breaking the law, too. For example, it may violate the ADA for an employer to keep employee medical information on computers where co-workers can see it.

### ✗ Example of an ADA violation (breaking the law)

Justin works in customer service for a large internet company. He had to take a medical exam before starting his job. During the exam, Justin told the doctor he is HIV+. When the employer saw this in Justin's medical records, he told all the supervisors in the building that Justin has HIV.

This directly violates the ADA. Justin's supervisors **didn't** need to know about Justin's HIV because Justin **didn't** need any special accommodations.

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**accommodation** – a change to the workplace or how work is done to help someone apply for or do a job

**background check** – to look at a person's public and private information to learn about that person

**violate** – to break a rule or law

**violation** – breaking a rule or law; going against a person's rights

## 4. When may employers share your medical information with others?

Under the ADA, there are a few times when it's OK for an employer to disclose a private medical record. These are called "exceptions."

### Supervisors need to know medical information that affects your job

Your employer can give your supervisor medical information about you that relates to your job tasks or accommodations.

#### ✓ Example 1

Leslie is a waitress at the Delicious Eats Diner. Leslie has diabetes and needs to take short breaks to check her blood sugar. Sometimes she also needs to take insulin. Leslie's employer tells the shift manager to give Leslie breaks when she needs them. The employer explains that Leslie needs to check her blood and may need to take insulin. The employer is doing the right thing, because Leslie's manager needs to know this when granting breaks. The shift manager must keep the information private and may **not** tell co-workers.

#### ✓ Example 2

Maria is a supervisor. She has accepted a project using an exotic new wood stain that has flower pollen in it. The maker of the wood stain recommends that people with asthma should not use the stain. It could make them very ill. Michelle and Ed work under Maria. Before assigning them to this project, Maria is allowed to ask Michelle and Ed if they have asthma. Or she may ask the company doctor to check the medical records to see if they have asthma.

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**accommodation** – a change to the workplace or how work is done to help someone apply for or do a job

**exception** – something that doesn't follow a rule or plan

## Safety workers need to know if your disability may require emergency treatment at work

### ✓ Example of when safety workers need to know medical information

Karen is a junior high school teacher. She has epilepsy. Karen may need emergency treatment at school. So it's important that medical staff at the school know about her epilepsy. Karen's employer may also tell a paramedic that Karen has epilepsy if her seizures last more than a few minutes.



### ✗ Example of when safety workers **don't** need to know medical information

Marcos is a lawyer who has a hearing problem. Marcos works for a big company as an in-house attorney. He answers legal questions for other employees. Marcos would never need emergency treatment for his hearing problem. So it would be wrong for Marcos's employer to tell an in-house nurse that Marcos is hearing impaired.



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**disability** – something that limits one or more major life activities, such as caring for yourself, learning, working, walking, seeing, hearing, talking, breathing, and feeling close to other people

Government workers need to know medical information when checking for ADA compliance

✓ Example

Mary works for the EEOC (Equal Employment Opportunity Commission). She is assigned to check out a complaint against Tiny's Bar and Grill. Tiny's is accused of not accommodating six employees with disabilities. Jason owns Tiny's Bar and Grill. When Mary asks, Jason gives her all the medical information he has about his employees with disabilities. Jason is right to do this because Mary is working for the government to learn whether Tiny's complies with the ADA.

## Insurance companies need to know medical information for health and life insurance programs

✓ Example

Seymour owns a hair salon called Seymour's Place. Seymour wants to set up a health insurance program for his employees. The insurance company requires Seymour to disclose all of his employees' medical information to them. It's OK for Seymour to do this, because the insurance company needs to look at its risks to set its prices.



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**disability** – something that limits one or more major life activities, such as caring for yourself, learning, working, walking, seeing, hearing, talking, breathing, and feeling close to other people

**EEOC (Equal Employment Opportunity Commission)** – a government agency that makes sure employers follow equal opportunity rules and don't discriminate

**paramedic** – someone trained to give emergency medical help

## Employers may give medical information to workers' compensation groups

Employers may give medical information to:

- state workers' compensation offices
- state "second injury" funds
- workers' compensation insurance carriers according to law

## Employers may *not* give medical information to co-workers

Employers **can't** give out medical information to co-workers about another worker's disability.

### **X** Example

Hans works as a salesperson at a store. He has a mental illness and needs certain meds (medications) to keep him stable. When Hans doesn't take his meds, he gets depressed and grouchy. One day at work, Hans forgets to take his meds. He is rude to a few co-workers. Jon, one of the co-workers, complains to the employer about Hans. The employer tells Jon about Hans' disability and tells Jon to be patient with Hans. The employer was wrong to do this. He has violated Hans's rights under the ADA. Co-workers are **not** on the list of people allowed to know medical information.

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**disability** – something that limits one or more major life activities, such as caring for yourself, learning, working, walking, seeing, hearing, talking, breathing, and feeling close to other people

**EEOC (Equal Employment Opportunity Commission)** – a government agency that makes sure employers follow equal opportunity rules and don't discriminate

**second injury** – fund set up by most states to help pay added workers' compensation costs for workers with disabilities

**workers' compensation** – a kind of insurance that helps pay the extra cost of an employee who gets hurt on the job

## Employers may only tell emergency medical staff what they need to know

An employer may tell paramedics about an employee's medical condition only if they need to know about it to treat the person. Employers may **not** reveal medical conditions to "protect" medical workers. There are basic things that doctors and other medical staff do to protect themselves from getting sick. These are called "universal precautions." Employers should also train medical staff or co-workers in universal precautions if they need to deal with medical emergencies.

### ✓ Example of when the employer may reveal an employee's medical condition

Jill is a waitress at the restaurant, The Famished Hunter. Jill has diabetes and takes insulin to control her blood sugar. One day at work Jill goes into shock because her insulin level is too high. Her employer **should** tell paramedics that Jill is diabetic so that they can treat Jill the right way. This information will help Jill.

### ✗ Example of when the employer may **not** reveal an employee's medical condition

Jane has HIV and is a hostess at The Famished Hunter. One day at work, Jane steps on a slick spot on the floor. She falls and hits her head. She is bleeding. Jane's employer may not tell paramedics that Jane has HIV. Emergency medical workers always take precautions to protect themselves from getting infected.



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**paramedics** – people trained to give emergency medical help

**universal precautions** – steps that medical workers take to prevent getting infected by the patients they treat. Example: wearing gloves when drawing blood

## 5. Where can you get help?

- This section tells more about your rights to privacy and what to do when you have a problem.
- On page 24 is a list of Web sites. These sites have more information about medical records and privacy.
- Starting on page 25 is a list of *Resources for Legal Help*. *Free and Low-Cost Services* are listed first.
- A list of *Words to Know* begins on page 30.

### Get help if you think someone has given out your protected information

You can file a complaint with the EEOC if an employer violates your privacy under the ADA. **Every** job applicant, employee, and past employee is protected by the ADA when it comes to medical privacy. The ADA protects you even if you **don't** have a disability. For help, contact the Center, or see the list of resources at the back of this guide.

#### **X** Example of an employer violating the ADA by giving out protected information

Mitch worked as a dancer for a theater group for eight years. When Mitch was hired, he told his employer that he had a learning disability and needed more time to learn dance routines. One day, Mitch quit his job and decided to go to work for another theater group. Mitch's old employer was upset, so he called a friend who worked for the other group. He told the friend about Mitch's learning disability.



The old employer has violated the ADA. Even though Mitch doesn't work for this employer anymore, the employer is still bound by law to protect Mitch's medical information.

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**disability** – something that limits one or more major life activities, such as caring for yourself, learning, working, walking, seeing, hearing, talking, breathing, and feeling close to other people

**EEOC (Equal Employment Opportunity Commission)** – a government agency that makes sure employers follow equal opportunity rules and don't discriminate

## You may have more protection than just the ADA

### Doctors, hospitals, and clinics need to keep your records private

In Arizona, health care providers must treat medical records as private (confidential). In general, your medical records can only be released if you agree to it in writing. This means your employer may **not** see your medical records unless you sign a paper saying it's OK.

If your health provider gives out your medical records without your written consent, you may be able to file a complaint with the health provider's licensing board:

- Call the board that licenses your health care provider for more information.
- Talk to a private lawyer to find out more about bringing a claim against your health provider.
- For help finding a lawyer, see *Lawyer Referral Services* on page 27 of this guide.



### You have a right to see your own drug tests

In Arizona, employers can only test for illegal drugs or alcohol. And the job applicant or employee has a right to see the results of his or her own test. If you think you were wrongly fired because of a drug test, you can sue the employer. But then the people involved in your case, such as the judge or mediator, can see your test results, too.

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**confidential** – private, secret

**consent** – permission, giving your “OK”

**illegal** – against the law

**legal** – following the law

**mediator** – a person whose job is to help others reach agreement

**sue** – to ask for help from a court to right a wrong

## ✗ Example of an employer handling drug test results the **wrong** way

Hannah works for DataCorp as a data processor. She has lupus. She takes a few different medicines to keep the lupus under control. DataCorp makes all employees take a drug test once a year. Because of her meds, Hannah failed the drug test. The test failure includes a form where she listed her new medications. The company puts the form in her **employee (personnel)** file. If DataCorp fires Hannah, DataCorp has broken the law.

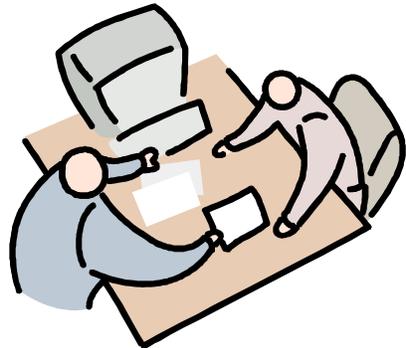
Why?

- First, DataCorp must keep Hannah's drug results private.
- Second, Hannah's boss must give her a chance to show a legal prescription.
- Third, DataCorp may **not** fire Hannah because she takes a legally prescribed drug that **doesn't** affect how she does her job.

Even if DataCorp **doesn't** fire Hannah, they have violated her rights by putting medical information in her personnel record. Medical information belongs in a separate, private file.

## HIV information is private

In Arizona, it's against the law to give out your HIV information without your OK. If someone releases your HIV information against your will, you may be able to sue them. They may even have committed a crime. Talk to a private lawyer for more information.



## Mental health records are private

Your mental health records are private, including any information about stays in a mental health treatment center. There are a few exceptions to this privacy. One is when you give your written OK to release the information.

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**legal** – following the law

**mediator** – a person whose job is to help others reach agreement

**sue** – to ask for help from a court to right a wrong

**violate** – to break a rule or law



Example of mental health records the employee may keep private

Anna has depression. Two years ago, she tried to kill herself. Now she takes medication and sees a therapist. She feels like her depression is pretty much under control. She works for Super Shopper as a salesperson and is applying for a promotion to assistant manager.

Super Shopper has **no** right to see Anna's mental health records. Why? Because Anna **hasn't** asked for an accommodation and **hasn't** taken a leave of absence for mental health treatment. Super Shopper may ask Anna if she can perform the "essential functions" of assistant manager, but they may **not** ask if Anna has any mental health issues. They also may **not** ask if she has had any hospital stays for mental health problems.

## Web sites with information about medical privacy

[www.eeoc.gov](http://www.eeoc.gov)

[www.healthprivacy.org](http://www.healthprivacy.org)



EEOC's home page that contains guidance and law about ADA's confidentiality protections

Georgetown University  
Institute for Health Care  
Research and Policy

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**accommodation** – a change to the workplace or how work is done to help someone apply for or do a job

**essential functions** – the things you need to do to perform a job

## **Resources for Legal Help**

### **Free and Low-Cost Legal Services**

#### **Southern Arizona Legal Aid, Inc.**

##### **Pima County:**

Southern Arizona Legal Aid, Inc.  
Administrative Office-Pima County  
Continental Building  
2343 East Broadway Blvd., Suite 200  
Tucson, AZ 85719-6007  
Phone: (520) 623-9465  
Fax: (520) 620-0443  
Toll-free: 1-800-640-9465

##### **Cochise, Graham/Greenlee Counties:**

Southern Arizona Legal Aid, Inc.  
2 Copper Queen Plaza, Unit 204  
P.O. Box AL  
Bisbee, AZ 85603-0100  
Phone: (520) 432-1639  
Fax: (520) 432-1641  
Toll-free: 1-800-231-7106

##### **Pinal County:**

Southern Arizona Legal Aid, Inc.  
766 North Park Avenue  
Casa Grande, AZ 85122-3931  
Phone: (520) 316-8076  
Fax: (520) 316-8063  
Toll-free: 1-877-718-8086

##### **Apache, Gila & Navajo Counties:**

White Mountain Legal Aid  
5658 Highway 260, Suite 15  
Lakeside, AZ 85929-5189  
Phone: (928) 537-8383  
Fax: (928) 537-1838  
Toll-free: 1-800-658-7958

##### **Santa Cruz County:**

Southern Arizona Legal Aid, Inc.  
1071 N. Grand Avenue, Suite 110  
Nogales, AZ 85621-1382  
Phone: (520) 287-9441  
Fax: (520) 287-9268

## **Community Legal Services**

### Maricopa County:

Community Legal Services-Maricopa County  
Volunteer Lawyer Program  
305 South Second Ave.  
Phoenix, AZ 85003  
Phone: (602) 258-3434  
Toll-free: 1-800-852-9075

Community Legal Services-East Valley Office  
20 West First St., Suites 101-102  
Mesa, AZ 85201  
Phone: (480) 833-1442  
Fax: (480) 833-1746

### Mohave County:

Community Legal Services-Mohave County  
1720 East Beverly Ave., Ste A  
Kingman, AZ 86409  
Phone: (928) 681-1177  
Fax: (928) 681-5998  
Toll-free: 1-800-255-9031

### Yavapai County:

Community Legal Services-Yavapai County  
401 North Mount Vernon Ave  
Prescott, AZ 86301  
Phone: (928) 445-9240  
Fax: (928) 445-6312  
Toll-free: 1-800-233-5114

### Yuma County:

Community Legal Services-Yuma County  
201 South 1st Ave  
Yuma, AZ 85364  
Phone: (928) 782-7511  
Fax: (928) 782-0037  
Toll-free: 1-800-424-7962

White Mountain Apache Legal Services  
New Human Services Bldg.  
P.O. Box 1030  
Whiteriver, AZ 85941-1030  
Phone: (928) 338-4845  
Fax: (928) 338-1436  
Toll-free: 1-866-312-2291

## **DNA Peoples Legal Services**

DNA Peoples Legal Services  
2323 E. Greenlaw Lane #1  
Flagstaff, AZ 86004-1834  
Phone: (928) 774-0653

DNA Peoples Legal Services  
P.O. Box 765  
Tuba City, AZ 86045  
Phone: (928) 283-5265  
Fax: (928) 283-5460

DNA Peoples Legal Services  
P.O. Box 306  
Window Rock, AZ 86515  
Toll-free: 1-800-789-7287  
Web: <http://www.nativelegalnet.org>

## **Lawyer Referral Services**

This is where you can get referrals to attorneys for your legal problem who will charge a reduced rate for the first meeting (initial consultation).

### **Lawyer Referral Service for Maricopa County**

Maricopa County Bar Association  
303 E. Palm Lane  
Phoenix, AZ 85004-1532  
Phone: (602) 257-4200  
Fax: (602) 682-8601  
Web: <http://www.maricopabar.org>

### **Lawyer Referral Service for Pima County**

Pima County Bar Association  
177 N. Church Ave. #101  
Tucson, AZ 85701  
Phone: (520) 623-8258  
Fax: (520) 623-9772

## **Maricopa County Superior Court**

### **Self Service Center**

The Superior Court Service Center keeps a list of lawyers and mediators willing to advise you when you represent yourself. They charge on a per-hour basis. (They don't charge a retainer fee.)

Self Service Center  
Phone: (602) 506-7353  
(24-hour information. Follow prompts to "Self Service Center")  
Web: <http://www.superiorcourt.maricopa.gov>  
(Click on "Self Service Center" link)

## **Maricopa County Superior Court Offices**

### **Downtown Phoenix:**

Central Court Building (CCB)

201 W. Jefferson

Phoenix, AZ 85003-2243

Court Administration: (602) 506-3204

Civil Court Administration: (602) 506-1497

Family Court Administration: (602) 506-1561

Old Courthouse (OCH)

125 W. Washington

Phoenix, AZ 85003-2243

Probate/Mental Health Administration:

(602) 506-3668

West Court Building (WCB)

111 S. Third Ave.

Phoenix, AZ 85003-2243

Phone: (602) 506-3204

East Court Building (ECB)

101 W. Jefferson

Phoenix, AZ 85003-2243

<http://www.superiorcourt.maricopa.gov/CourtInformation/Locations/map.asp?location=ecb>

Criminal Administration: (602) 506-8575

### **Northwest, Northeast and Southeast Facilities:**

Northwest Regional Center (NW)

14264 W. Tierra Buena Lane

Surprise, AZ 85374

Phone: (602) 372-9400

Northeast Regional Center (NE)

18380 N. 40th Street

Phoenix, AZ 85032

Phone: (602) 372-7601

Southeast Court (SE)

222 E. Javelina Ave.

Mesa, AZ 85210-6234

Phone: (602) 506-2020

**Clerk of the Court Customer Service Center:**

601 W. Jackson

Phoenix, AZ 85003

Phone: (602) 506-3360

**The Center also has an attorney referral list for Tucson, Phoenix, and some nearby communities. Please call and ask for an attorney referral list if you'd like one.**

## Words to Know

**Accommodation** – An accommodation is a change to the workplace or how work is done to help someone apply for or do a job.

**Affirmative action** – Affirmative action refers to a set of laws and programs meant to help get rid of discrimination based on race, color, religion, sex, or national origin.

**Benefits** – Benefits are payments or services that you get from an insurance or pension company. Benefits can also be things you get from your employer like sick leave and health insurance.

**Confidential** – Information that is confidential is private. Anyone with this information has a duty to keep it secret, except where the law says otherwise.

**Disability** – A disability is a physical or mental impairment that substantially limits a person's ability to perform major life activities.

**Discrimination** – Discrimination is treating someone differently because of things like the person's race, sex, religion, or disability.

**Documentation** – Documentation is written proof. Receipts, test results, doctor reports, and legal papers are examples of documentation.

**Equal Employment Opportunity Commission (EEOC)** – The EEOC is a government agency that was set up to help make sure employers follow the law in hiring and treating workers fairly.

**Essential functions** – These are the things you need to do to perform a job. To qualify for a job, you must be able to do the essential functions with or without accommodation.

**Exception** – An exception is something that doesn't follow the rule. There are exceptions to the rules that protect your privacy at work. Most of these exceptions are for safety.

**Former** – A former employee is someone who worked for the company in the past, but doesn't anymore. A former employer is someone you no longer work for.

**Illegal** – Something illegal is against the law. Doing something illegal is breaking the law.

**Improper** – If something is improper, it's wrong. Doing something improper usually means breaking a rule or law.

**Legal** – To do something legal is to obey the law.

**Mediator** – A mediator is someone who helps people resolve their differences. Sometimes people or companies hire a mediator instead of going to court.

**Negative** – When test results are negative, it means you **don't** have the problem or illness the test was looking for.



## Words to Know (continued)

**Paramedic** – Paramedics are trained to give medical help in emergencies. A paramedic is **not** the same as a doctor.

**Positive** – When test results are positive, it means you **do** have the problem or illness the test was looking for.

**Pre-employment** – This is any time before you start a job.

**Release** – To release information means to give it to the person who asks for it. Releasing information is the opposite of keeping it confidential.

**Second injury fund** – A second injury fund is a fund set up by most states to help pay added workers' compensation costs for workers with disabilities. Second injury funds encourage employers to hire people with disabilities.

**Sue** – To sue someone means to take your proof that they have done something wrong to court. Then a judge or jury decides who is right and what will happen next.

**Supervisor** – Your supervisor is the person at work who tells you what to do. This person is responsible for training you and making sure you can do your job.

**Termination** – Termination is when you stop working. This happens when you quit, get fired, or are laid off.

**Universal precautions** – These are safety measures that health workers take to protect themselves from getting infected. They include things like wearing gloves to draw blood and wearing a mask when doing mouth-to-mouth breathing.

**Violate** – To violate a law is to do something the law says is **not** OK. To violate a person's rights is to do something wrong to that person.

**Violation** – A violation is when someone breaks a rule or law.

**Voluntary disclosure** – This is when you give information by your own free choice, **not** because someone forces you to.

**Workers' compensation** – Workers' compensation is a kind of insurance that helps pay the extra cost of an employee who gets hurt on the job.