



EMPLOYEE HEALTH CONTROLS

Information for Food Establishment Permit Holders and Persons-in-Charge

Question: As the Permit Holder or Person-in-Charge of a food establishment, am I legally entitled to request medical information from a food employee, or from an applicant to whom a conditional offer of employment has been made?

Answer: Yes, the State of Delaware Food Code, in Section 2-201.11, titled “Responsibility of Permit Holder, Person in Charge, and Conditional Employees” provides the authority.

The authority to collect this information is supported by Title 29, Code of Federal Regulations (CFR), Part 1630, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” specifically in 29 CFR 1630 Section 13, “Prohibited medical examinations and inquires,” and in 29 CFR 1630 Section 14, “Medical examinations and inquiries specifically permitted.”

A wide range of communicable diseases and infections may be transmitted by infected food employees to consumers through food or food utensils. Proper management of a food establishment operation begins with employing healthy people and instituting a system of identifying employees who transmit foodborne pathogens to food or to other employees. To protect the health of both consumers and employees, information concerning the health and status of applicants and food employees must be disclosed to the person in charge.

Title 1 of the Americans with Disabilities Act (ADA) prohibits medical examinations and inquiries as to the existence, nature, or severity of a disability before extending a conditional offer of employment. In order for the permit holder and person in charge to be compliant with this particular aspect of the Code and the ADA, a conditional job offer must be made before making inquiries about the applicant’s health status.

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Revised: 01/2015

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Furthermore, an applicant to whom an employment offer is conditionally made or a food employee who meets the Code conditions that require restriction from certain duties or exclusion, must be accommodated to the extent provided under the ADA. That is, if there is an accommodation that will not pose an undue hardship and that will prevent the transmission of the disease(s) of concern through food, such accommodations (e.g., reassignment to duties that fulfill the intent of restriction or exclusion) must be made. It should be noted that the information provided here about the ADA is intended to alert employers to the existence of ADA and related CFR requirements. For a comprehensive understanding of the ADA and its implications, consult Title 29, Code of Federal Regulations Part 1630, or contact the U.S. Equal Opportunity Commission.

The information required from applicants and food employees is designed to identify employees who may suffer from a disease that can be transmitted through food. It is the responsibility of the permit holder to convey to applicants and employees the importance of notifying the person in charge of changes in their health status. Once notified, the person in charge can take action to prevent the likelihood of the transmission of foodborne illness.

Applicants receiving conditional offers of employment and food employees are required to report specific high-risk conditions, medical symptoms, and previous illnesses. The symptoms below may indicate a disease that is transmitted through the food supply by infected food employees.

- Diarrhea • Vomiting • Jaundice • Sore throat with fever • Open wound
- Diagnosis of Hepatitis A, Typhoid Fever, *Shigella* infection, Norovirus, non-typhoidal *Salmonella*, or an illness caused by Shiga toxin-producing *E.coli*.

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