



## Health Questions on the Job: FAQ

**Q: I've applied for a new job and I have to take a drug test. The drug test form asks if I take any medication. What do I do?**

*A: If you are taking any medication that may show a false positive on a drug test (for example, Sustiva or Marinol) you should be sure to list it on the form. Usually the test is performed not by your employer, but by an outside company. They are not allowed to share what you put on the form with your employer. If you have any concerns about whether they might share it, you could put a note on your form which says "This information is confidential under Illinois law. Do not share it with anyone without my written permission."*

**Q: I have to fill out an insurance form for my employer that asks me questions about my health. What do I say?**

*A: If you work for a very large company (say over 1000 employees), you should be okay, because they probably have other employees with serious health problems and their Human Relations Department probably knows the rules about keeping medical information confidential. But if you have any doubts, or you work for a smaller company, here are three ways that you might handle this.*

- 1. Put a big circle around the whole section that lists all the health conditions and write "various pre-existing conditions—full details available from my doctor" and give the doctor's name and phone number. Sign a form at your doctor's that it's okay to tell the insurance company about your HIV, but not your employer.*
- 2. Tell your employer "I know I'll be in trouble if I leave anything out on this form so I'm just going to take it to my doctor's office and have them fill it in. My doctor is a nut about privacy, though, and he'll want to fax it directly to the insurance company. Could you give me their fax number?" Then, whether or not you give it to your doctor, fax the completed form to the insurance company yourself with a note that they must not share the information with your employer (which they already should know).*
- 3. Call the insurance company yourself and tell them your situation. Tell them you are going to fill out two forms—one for them with all the truthful answers, and one for your employer that leaves out your HIV and anything else you might be worried about disclosing (for example, mental illness). Get their fax number. Then tell your employer you need an extra form because you messed up on the first one. Fax the form with the true information to the insurance company. Turn the other one in to your employer.*

**Q: I need some leave under the Family and Medical Leave Act and the form my employer gave me to fill out asks that my doctor fill out my diagnosis. Does she have to disclose that I have HIV?**

*A: No. To get leave under the Family and Medical Leave Act, your doctor only has to write that you have a serious health condition as defined by the law. The recommended doctor certification form for Family and Medical Leave does not ask for the specific health condition.*

**Q: I need an accommodation at work because of my HIV. Will I have to disclose my HIV status?**

*A. Probably yes. The Americans with Disabilities Act allows your employer to find out the nature of the disability that requires the accommodation—and only major disabilities qualify for protection under the ADA. We strongly suggest you discuss your situation with an attorney before you ask for an accommodation that may require you to disclose your HIV status to your employer.*

**Q: I'm applying for a job and they say I have to pass a physical exam before I can start work. As part of the exam, they're asking me about all my health problems. Do I have to answer?**

*A. Generally speaking, the only time an employer can make you take a physical exam or answer lots of health questions is **after they've offered you the job but before you actually start**. Most employers don't give physicals, and the ones that do usually don't ask about HIV or give you an HIV test. But it's legal for them to ask you, or even test you, just as long as they ask and test everyone applying for that job, not just people they think look gay, for example. If your employer does ask about your HIV, and then refuses to let you start the job because you are HIV positive, you should immediately contact an attorney. If the employer asks but lets you start work anyway, check to be sure that they are following the law that says the medical information in your file won't be shared with anyone else, including your supervisor.*

**Conclusion: Your HIV status is personal. Your employer usually has no business asking about your status. If you are asked about your HIV status at work, it is always a good idea to seek legal advice before you answer.**