

11 Employer FAQs (No. 8): May I send an employee to our doctor to verify the need for a reasonable accommodation?

By [Robin E. Shea](#) on September 06, 2011

You bet! You may, and it's strongly recommended unless you are comfortable with the opinion of the employee's doctor.

First, by sending the employee to the doctor, you can verify the need for the reasonable accommodation. (Honestly, this is not a big deal because challenging the *existence* of an employee's medical condition is a losing battle most of the time.)

Second, you can determine which types of reasonable accommodation are appropriate and have the best chance of working. *This is a huge deal.* Here are a few ways to make sure it works:

1. Make sure the doctor is an appropriate specialist. If the employee has a bad back, send her to an orthopedic surgeon, not an internist. If she has hypertension, send her to an internist, not an orthopedic surgeon. And so on and so forth.

2. Make sure the examination is "job related and consistent with business necessity." What does this mean? It means that if your employee is having, say, vision problems that are affecting his ability to do the job, you can't require him to get a complete physical or a colonoscopy. But you can require him to get an eye exam. And so on and so forth.

3. Make sure the doctor knows your workplace and knows what the employee's job entails. Written job descriptions are fine (although I think they're overrated). Even better are photos of the worksite, preferably with employees performing the job. Even better than photos are videos. Even better than videos -- if you think you will be using this doctor again, invite her to your workplace for an in-person tour. The more she knows your work environment and your jobs, the better her advice about reasonable accommodations will be.

4. Don't be chintzy. If you're going to require the employee to see your doctor, pay the bill. You have to, anyway. As the Equal Employment Opportunity Commission [says](#) (scroll down to Item 11), "If an employer requires an employee to go to a health care professional of the employer's choice, the employer must pay all costs associated with the visit(s)."

5. Be sure to provide the ["safe harbor" disclaimer](#) required by the Genetic Information Non-Discrimination Act. (Scroll down to the asterisk at the link for the full text of the disclaimer.)



6. Don't be worried that this violates the Family and Medical Leave Act, which requires that you usually accept the medical certification of your employee's health care provider. An examination to verify the need for reasonable accommodation under the Americans with Disabilities Act is not the same thing as an FMLA medical certification. Under the ADA, you have more flexibility to choose your own doctor. But the FMLA rule will still apply to certification of FMLA leave requests.

FAQ No. 1: [What exactly is this "interactive process" that we hear so much about?](#)

FAQ No. 2: ["What does 'right to work' mean?"](#)

FAQ No. 3: [When do I have to start saving electronic evidence?](#)

FAQ No. 4: [Should I offer harassment training to rank-and-file employees? Isn't that just asking for trouble?](#)

FAQ No. 5: [Is there any difference between light duty and reasonable accommodation?](#)

FAQ No. 6: [We don't have a union. Do I still have to display that new NLRB poster?](#)

FAQ No. 7: [Should the "ugly" be protected from discrimination?](#)

Don't forget to send me your own employer FAQs! And don't forget, [if you vote for *Pedro Employment & Labor Insider*, all of your wildest dreams will come true.](#)

Constangy, Brooks & Smith, LLP has counseled employers on labor and employment law matters, exclusively, since 1946. A "Go To" Law Firm in Corporate Counsel and Fortune Magazine, it represents Fortune 500 corporations and small companies across the country. Its attorneys are consistently rated as top lawyers in their practice areas by sources such as Chambers USA, Martindale-Hubbell, and Top One Hundred Labor Attorneys in the United States, and the firm is top-ranked by the U.S. News & World Report/Best Lawyers Best Law Firms survey. More than 130 lawyers partner with clients to provide cost-effective legal services and sound preventive advice to enhance the employer-employee relationship. Offices are located in Alabama, California, Florida, Georgia, Illinois, Massachusetts, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Virginia and Wisconsin. For more information, visit www.constangy.com.