



December 2008

### **SICK LEAVE INQUIRIES: WHAT CAN AN EMPLOYER ASK UNDER THE ADA**

The EEOC recently filed suit against Dillard's, Inc. in the Southern District of California, alleging that Dillard's violated the Americans with Disabilities Act by requiring sick employees to disclose the precise medical condition causing their absence. *EEOC v. Dillard's, Inc.*, No. 08-CV-1780 (S.D. Cal. filed Sept. 29, 2008). According to the EEOC, Dillard's refused to excuse absences unless an employee disclosed this information—even if the employee presented a physician's note verifying the employee's need for an absence.

The ADA generally prohibits an employer from inquiring into an employee's medical condition unless the inquiry is job-related and consistent with business necessity. See 42 U.S.C. § 12112(d). The EEOC has stated, however, that "an employer is entitled to know why an employee is requesting sick leave." Therefore, an employer may request that an employee provide a doctor's note or other explanation to substantiate his/her use of sick leave so long as the employer requires all employees, regardless of disability, to do so. See EEOC's 2002 Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees, Question 15, available at <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>.

As demonstrated by the EEOC's recent filing against Dillard's, if the doctor's note does not reveal the specific nature of the illness, an employer risks litigation if it continues to press the employee for medical details. Thus, while an employer may safely request that an employee substantiate his/her absence with a doctor's note, it may be wise to simply accept the note as presented and not delve further into an employee's precise medical condition.

Of course, in those situations where a disabled employee requests a reasonable accommodation, it may be necessary for the employer to gather specific medical information to confirm the employee's disability. In such cases, the EEOC has stated that, "[a]n employer may require an employee to provide documentation that is sufficient to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested, but cannot ask for unrelated documentation. This means that, in most circumstances, an employer cannot ask for an employee's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation." See Enforcement Guidance, *supra* at Question 10.

▲ [Top](#)



Kansas City Houston Miami Orange County  
San Francisco Tampa Washington, D.C.

This Newsletter is prepared by Shook, Hardy & Bacon's National Employment Litigation & Policy Practice<sup>sm</sup>. Contributors to this issue: [Bill Martucci](#) and [Jennifer Oldvader](#).

[Contact us by e-mail](#) to request additional documentation or unsubscribe.

Attorneys in the [Employment Litigation & Policy Practice](#) represent corporate employers throughout the United States in all types of employment matters. To learn more about the SHB employment group and its members, see [SHB.com](#).

Shook, Hardy & Bacon L.L.P. respects the privacy of our clients and friends. Your contact information is maintained in our database and may be used to advise you of firm news, events and services, as well as for internal statistical analysis. We may forward contact details to our appointed marketing agencies but will not provide this information to any other party for marketing or any other purposes as required by law. If you wish to correct your information or would like to be removed from our database, please contact us at [interaction@shb.com](mailto:interaction@shb.com).

*The choice of a lawyer is an important decision and should not be based solely upon advertisements.*