

**22. Are there ADA-compliant ways for employers to identify which employees are more likely to be unavailable for work in the event of a pandemic?**

Yes. Employers may make inquiries that are not disability-related. An inquiry is not disability-related if it is designed to identify potential non-medical reasons for absence during a pandemic (e.g., curtailed public transportation) on an equal footing with medical reasons (e.g., chronic illnesses that increase the risk of complications). The inquiry should be structured so that the employee gives one answer of "yes" or "no" to the whole question without specifying the factor(s) that apply to him. The answer need not be given anonymously.

Below is a sample ADA-compliant survey that can be given to employees to anticipate absenteeism.

**ADA-COMPLIANT PRE-PANDEMIC EMPLOYEE SURVEY**

Directions: Answer "yes" to the whole question *without specifying the factor that applies to you*. Simply check "yes" or "no" at the **bottom of the page**.

**In the event of a pandemic, would you be unable to come to work because of any one of the following reasons:**

- If schools or day-care centers were closed, you would need to care for a child;
- If other services were unavailable, you would need to care for other dependents;
- If public transport were sporadic or unavailable, you would be unable to travel to work; and/or;
- If you or a member of your household fall into one of the categories identified by the CDC as being at high risk for serious complications from the pandemic influenza virus, you would be advised by public health authorities not to come to work (e.g., pregnant women; persons with compromised immune systems due to cancer, HIV, history of organ transplant or other medical conditions; persons less than 65 years of age with underlying chronic conditions; or persons over 65).

**Answer: YES \_\_\_\_\_ , NO \_\_\_\_\_**

**33. May an employer require *new entering employees* to have a post-offer medical examination to determine their general health status?**

Yes, if all entering employees in the same job category are required to undergo the medical examination<sup>(30)</sup> and if the information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record.