
Note: For the definition of individuals with disabilities and related terms and concepts addressed in this policy, see DAA(LEGAL).

**Pre-Employment
Examination and
Inquiries**

Except as provided below, a covered entity, including a college district, shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of a disability. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. *42 U.S.C. 12112(d)(2); 29 C.F.R. 1630.14(a)*

A covered entity may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

The results of such examination shall not be used for any purpose inconsistent with 42 U.S.C. Chapter 126, Subchapter I or 29 C.F.R. Part 1630. Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, and first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

42 U.S.C. 12112(d)(3); 29 C.F.R. 1630.14(b)

Medical examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in 29 C.F.R. Part 1630. *29 C.F.R. 1630.14(b)(3)*

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**Examination and
Inquiries of
Employee**

Required

A covered entity, including a college district, may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

Information obtained regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with 42 U.S.C. Chapter 126, Subchapter I or 29 C.F.R. Part 1630. Information obtained regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, and first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

42 U.S.C. 12112(d)(3)–(4); 29 C.F.R. 1630.14(c)

Voluntary

A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site.

Information obtained regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with 42 U.S.C. Chapter 126, Subchapter I or 29 C.F.R. Part 1630. Information obtained regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations, and first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

42 U.S.C. 12112(d)(3), (4)(B)–(C); 29 C.F.R. 1630.14(d)

HIV / AIDS

Testing

A person, including a college district, may not require another person, such as an employee, to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

1. The medical procedure or test is necessary:
 - a. As a bona fide occupational qualification, and there is not a less discriminatory means of satisfying the occupational qualification. “Bona fide occupational qualification” means a qualification that is reasonably related to the

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satisfactory performance of the duties of the job and for which there is reasonable cause to believe that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.

- b. In relation to a particular person under Health and Safety Code Chapter 81.
 - c. To manage accidental exposure to blood or other bodily fluids, but only if the test is conducted under written infectious disease control protocols adopted by a health-care facility. The protocols must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with Health and Safety Code Chapter 81.
2. A medical procedure is to be performed on the person that could expose health-care personnel to AIDS or HIV infection, according to Texas Department of State Health Services' (DSHS) guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted.

Health and Safety Code 81.102

Each institution of higher education, including each college district, shall make available the institution's policy on HIV infection and AIDS to faculty and staff members by including the policy in the personnel handbook if practicable or by any other method. *Education Code 51.919(b)*

Confidentiality of
AIDS Testing

"Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, has, or does not have a certain level of antibodies.

A test result is confidential. A person who possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section. A test result may be released to:

1. DSHS.

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2. A local health authority if reporting is required under Health and Safety Code Chapter 81.
3. The Centers for Disease Control and Prevention of the United States Public Health Service if reporting is required by federal law or regulation.
4. The physician or other person authorized by law who ordered the test.
5. A physician, nurse, or other health-care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare.
6. The person tested or a person legally authorized to consent to the test on the person's behalf.
7. The spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.
8. A person authorized to receive the test results under Code of Criminal Procedure 21.31 (regarding testing of persons indicted for or who waive indictment for certain crimes), concerning a person who is tested as required or authorized under that article.
9. A person exposed to HIV infection as provided by Health and Safety Code, Section 81.050.
10. A county or district court to comply with Health and Safety Code Chapter 81 or rules relating to the control and treatment of communicable diseases and health conditions.
11. A designated infection control officer of an affected emergency response employee or volunteer.

A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.

An employee of a health-care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health practices.

Health and Safety Code 81.103(a)–(b), (d), (i)

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HIV Education Each state agency, including each college district, shall provide to each state employee an educational pamphlet about methods of transmission and methods of prevention of HIV infection, and state laws relating to the transmission of HIV infection, and conduct that may result in the transmission of HIV infection. The educational pamphlet shall be provided to a newly hired state employee on the first day of employment. The educational pamphlet shall be based on the model developed by DSHS and shall include the workplace guidelines adopted by the state agency. DSHS shall prepare and distribute to each state agency a model informational pamphlet that can be reproduced by each state agency to meet the requirements of this section. *Health and Safety Code 85.111*

HIV / AIDS
Workplace
Guidelines Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection. The workplace guidelines shall, at a minimum, incorporate the model workplace guidelines developed by DSHS. *Health and Safety Code 85.112*

**Bloodborne
Pathogen Control**

Definitions

“*Bloodborne Pathogens*” “Bloodborne pathogens” means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus. *Health and Safety Code 81.301(1)*

“*Sharp*” “Sharp” means an object used or encountered in a health-care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur. *Health and Safety Code 81.301(5)*

Minimum Standards The minimum standards apply to a governmental unit, including a college district, that employs employees who provide services in a public or private facility providing health-care-related services, including home health-care organizations, or otherwise have a risk of exposure to blood or other potentially infectious material containing bloodborne pathogens in connection with exposure to sharps. The exposure control plan developed by DSHS is adopted as a model plan to achieve the minimum standard to implement Health and Safety Code 81.304. The plan is designed to minimize exposure of employees as described in 25 Administrative Code 96.201 and includes policies relating to occupational exposure to bloodborne pathogens, training and educational requirements for employees, measures to increase vaccination of employees, and increased use of personnel protective equipment by employees.

Employers should review the plan for particular requirements applicable to their specific situation. The employer may modify the plan appropriately to its practice settings. Employers will need to include provisions relevant to their particular facility or organization in order to develop an effective, comprehensive exposure control plan specific to their facility or organization. Employers will annually review their exposure control plan, update when necessary, and document when accomplished.

Health and Safety Code 81.302, .304; 25 TAC 96.201-.203

Note: Copies of the [exposure control plan](#)¹ are available on the DSHS website and at the DSHS regional offices.

DSHS-Ordered Tests

A person whose occupation or whose volunteer service is included in one or more of the categories listed at Health and Safety Code 81.050, including a law enforcement officer, may request the DSHS or a health authority to order testing of another person who may have exposed the person to a reportable disease, including HIV infection. A request under this section may be made only if the person has experienced the exposure in the course of the person's employment or volunteer service; believes that the exposure places the person at risk of a reportable disease, including HIV infection; and presents to the DSHS or health authority a sworn affidavit that delineates the reasons for the request. *Health and Safety Code 81.050(b)–(c)*

Cost of Reportable Disease Testing After Accidental Exposure

This section applies only in a case of accidental exposure of certified emergency medical services personnel, an emergency response employee or volunteer as defined by Health and Safety Code 81.003(1-a) (see below), or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B, hepatitis C, HIV, or any reportable disease if the report shows there is significant risk to the person exposed. The organization, including a college district, that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. *Health and Safety Code 81.095(b)*

Genetic Information

If a covered entity, including a college district, uses language described at 29 C.F.R. 1635.8(b)(1)(i)(B), any receipt of genetic information in response to the request for medical information will be deemed inadvertent. [See DAAA] 29 C.F.R. 1635.8(b)(1)(i)(A)–(B)

**Designated Infection
Control Officer**

An entity that employs or uses the services of an emergency response employee or volunteer shall nominate a designated infection control officer and an alternate designated infection control officer to:

1. Receive notification of a potential exposure to a reportable disease from a health-care facility;
2. Notify the appropriate health-care providers of a potential exposure to a reportable disease;
3. Act as a liaison between the entity's emergency response employees or volunteers who may have been exposed to a reportable disease during the course and scope of employment or service as a volunteer and the destination hospital of the patient who was the source of the potential exposure;
4. Investigate and evaluate an exposure incident, using current evidence-based information on the possible risks of communicable disease presented by the exposure incident; and
5. Monitor all follow-up treatment provided to the affected emergency response employee or volunteer, in accordance with applicable federal, state, and local law.

The entity that employs or uses the services of an emergency response employee or volunteer is responsible for notifying the local health authorities or local health-care facilities, according to any local rules or procedures, that the entity has a designated infection control officer or alternate designated infection control officer.

A "designated infection control officer" is the person serving as an entity's designated infection control officer who has a health-care professional license or specific training in infection control, acts as liaison between the entity and the destination hospital, and monitors all follow-up treatment provided to the affected emergency response employee or volunteer.

"Emergency response employee or volunteer" means an individual acting in the course and scope of employment or service as a volunteer as emergency medical service personnel, a peace officer, a detention officer, a county jailer, or a fire fighter.

Health and Safety Code 81.003(1-a), .012; 25 TAC 97.11

¹ Exposure control plan: http://www.dshs.texas.gov/IDCU/health/infection_control/bloodborne_pathogens/Resources.doc