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## Question of the Week

JULY 27, 2022

### QUESTION

**Can we ask references about an applicant's previous use of sick time? We'd like to get a sense of their reliability.**

### ANSWER

No, you shouldn't make any inquiries into an applicant's history of calling in sick. Asking about absences because of illness or injury before extending an offer of employment runs afoul of the Americans with Disabilities Act because it's likely to elicit information about an applicant's disability.

Sick leave laws may also come into play. If you're in a state that requires you to provide sick leave, making adverse employment decisions based on use of protected sick leave use (including deciding not to hire someone) could expose you to liability.

Finally, someone's past use of sick time is not a good indicator of reliability, particularly when we've been experiencing a global pandemic for the last 2.5 years. Asking about this could eliminate great applicants who have had caregiving responsibilities and ultimately have a disparate impact (a legal no-no) on certain protected classes (according to a Kaiser Family Foundation study, 50 percent more women than men reported taking time off work to care for children during COVID-related school closures).

If you still want to consider an applicant's previous job attendance as a gauge of their reliability, you could ask about their attendance record generally, rather than asking about absences for sickness.