The Americans with Disabilities Act (ADA) was passed by Congress and signed into law on July 26, 1990. The ADA grants civil rights protections to individuals with disabilities similar to those granted to women and minorities. The Act prohibits discrimination on the basis of an individual's disability in employment, by state and local governments and their instrumentalities, by public accommodations, in public and private transportation and in communications. The ADA grants all individuals with disabilities uniform protections regardless of which state they live in.

Title I of the ADA prohibits discrimination in employment against qualified individuals with disabilities and applies to private employers with 15 or more employees. Title II of the ADA prohibits discrimination by state and local governments regardless of whether they receive any federal funds. Employees of state and local governments, their agencies and instrumentalities, have been covered for employment discrimination as of January 26, 1992.

Under the ADA, prior to the offer of a job, an employer may not ask whether an applicant has a disability, inquire about the severity of a disability, or make any inquiry that is likely to elicit information about a disability. Employers are also prohibited from asking third parties questions regarding an applicant’s disability status which they could not ask the applicant directly. Employers are permitted to inquire whether an applicant can perform job-related functions. If an applicant has a known disability that might interfere with performing the job, an employer may ask the applicant to describe or demonstrate how he or she will perform specific job duties.

If an applicant informs an employer that he or she has a disability, the employer may not ask how the person became disabled or what their prognosis is. The employer may state what the attendance
policy is and may ask whether the applicant is able to comply with the policy. An employer may request applicants to indicate any accommodations they may need to take a pre-employment test.

An employer who believes that an applicant satisfies the requirements of a position may offer the applicant a job conditioned on the satisfactory outcome of a medical examination or inquiry, as long as all applicants in that job class or category are required to undergo such an exam or inquiry. Such an exam or inquiry need not focus on the ability to perform job functions, but may explore any information the employer believes is relevant to a person's ability to perform a job. At this stage, questions may be asked that are prohibited prior to a conditional offer of the job.

All medical information obtained by employers regarding applicants or employees must be kept confidential. Exceptions to this confidentiality requirement are restricted to the following areas: supervisors who need to be informed of necessary restrictions for a particular employee, or who determine reasonable accommodations; medical departments or safety personnel who need information should emergency treatment be required; government officials who investigate complaints; state officials and workers’ compensation insurance carriers who handle workers’ compensation claims may have access in accordance with state laws; and employers who supply information to the company’s health insurance carrier with permission of the insured.

If a conditional job offer is withdrawn because of the results of an examination or inquiry, an employer must be able to show that: a) the reasons for the withdrawal were job-related and consistent with business necessity or the person's disability poses a direct threat to the health or safety of themselves or others; and b) there is no reasonable accommodation available that would enable the individual to perform the essential job functions without posing a direct threat to health or safety.
Permissible Medical Exams and Inquiries by Your Employer

Once employment begins, an employer may make disability-related inquiries and require medical examinations only if they are “job-related and consistent with business necessity.” This means that the employer must have a reasonable belief based on objective evidence that: an employee will be unable to perform the essential functions of his or her job because of a medical condition; or, the employee will pose a direct threat because of a medical condition.

Employers also may obtain medical information about an employee when the employee has requested a reasonable accommodation and his or her disability or need for accommodation is not obvious. In addition, employers can obtain medical information about employees when they: are required to do so by another federal law or regulation (e.g., Department of Transportation medical certification requirements for interstate truck drivers); offer voluntary programs aimed at identifying and treating common health problems, such as high blood pressure and cholesterol; are undertaking affirmative action because of a federal, state, or local law that requires affirmative action for individuals with disabilities or voluntarily using the information they obtain to benefit individuals with disabilities.

The Equal Employment Opportunity Commission (EEOC), the federal agency with responsibility for enforcing title I of the ADA, has issued comprehensive guidance for employees with epilepsy, which is available on the EEOC’s website at http://www.eeoc.gov/laws/types/epilepsy.cfm. An individual who feels he or she has been discriminated against because of their disability may file a complaint with the EEOC. Discrimination charges generally must be filed with the EEOC within 180 days of the alleged discriminatory act (see the Epilepsy Foundation’s fact sheet on filing a complaint with the EEOC). Additional protections may be available under federal and state employment discrimination laws. While
you are not required to have an attorney to file a complaint, you may wish to consult a local attorney to
learn how the law applies in your particular situation and for advice on how to proceed.

For information on obtaining a referral to an attorney in your area that may be able to provide
specific advice or representation, or for general legal information about this and other employment
discrimination issues, such as reasonable accommodations, and the definition of disability, please visit the
website for the Jeanne A. Carpenter Epilepsy Legal Defense Fund, at www.epilepsylegal.org, or call our
Epilepsy and Seizures Helpline toll free at 1-800-EFA-1000 (1-800-332-1000). For general information
about epilepsy, please visit our website at www.epilepsy.com.

While this material is designed to provide accurate and current information on the subject matter involved, the Epilepsy
Foundation and the authors cannot guarantee the accuracy or completeness of the information contained in this
publication. This fact sheet is not a legal document and does not provide legal advice or opinion. If legal advice or other
expert assistance is required, the services of a competent professional should be sought.