

Friendship or Not, Employer Should not Divulge Employee's HIV-Positive Status

QUESTION: I am a supervisor. Yesterday, while I was out to dinner with a friend from work, Dave, he confided in me that he is HIV positive. He is a good friend, and I was sad to hear the news, but I feel he should inform his supervisor and the coworkers with whom he is in frequent contact of his condition. I told him as much, and he responded that he was planning on telling no one else at work, and he expected - especially given our friendship - that I would keep the information private.

I feel that my position as a member of management obligates me to disclose the medical information to his supervisor, who also happens to be a friend. I mean, what if Dave starts missing a lot of work, or has to start taking lots of prescription drugs?

ANSWER: Not only are you under no obligation to disclose this information to Dave's supervisor, you are probably prohibited by law from doing so.

Under both the federal Americans with Disabilities Act (42 U.S.C. 12101) and state disability law (ORS 659A.100), employers are required to keep employee medical information confidential and in a secure location that is separate from the personnel file. Such information can only be disclosed to supervisors when they have a business need to know. And in this case, there is no reason why Dave's supervisor would need to know his HIV status.

In addition, aside from the legal requirements, employees have a right to expect that personal information such as this will not be shared with others in the workplace. Employers have a responsibility to preserve the confidentiality of medical information whether it is discovered inadvertently, provided directly to the employer as a basis for leave requests or other work related reasons, or, as in your case, when employees confide in coworkers or supervisors for purely personal reasons.

When employees disclose medical issues to supervisors or coworkers, regardless of their reasons for doing so, employers should avoid taking a paternalistic approach, even if motivated by concern for the employee's well-being. Employers must also avoid speculating and making assumptions based on stereotypes about the future need for leave or other accommodations.

In all cases, employers must limit disclosure and discussion of employee medical conditions on a need to know basis; for example, when a supervisor needs to authorize time off or provide a reasonable accommodation to an employee due to a disability. In addition, written material that contains employee medical information should be protected in a confidential location, for example, a locked file cabinet, and not disclosed to others in the workplace.

It may be helpful to look at your situation with Dave this way: despite Dave's HIV positive condition, which is currently asymptomatic, he continues to report to work and perform his job in an efficient manner. In fact, if Dave had not informed you of his HIV status, you would have no indication that he has HIV. Would it really be fair to perceive him or his work performance

differently now that you know? If it becomes necessary in the future for Dave to take time off, or needs any other reasonable accommodation in the workplace due to his medical condition, he can then cross that bridge with his employer.

In short, you have no obligation to disclose Dave's HIV positive status to anyone in the workplace, including his supervisor. In fact, doing so could potentially lead to discriminatory treatment of Dave by coworkers or members of management, or to claims of discriminatory treatment in situations in which Dave mistakenly believes employment decisions and interactions in the workplace are motivated by others' knowledge that he has HIV.

For more information on this and other important issues affecting Oregon employers, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.

See you at our Annual Employer Conference!