

## ► SPECIAL REPORT

# Discussing Symptoms With Sick Food Service Employees

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Foodborne illness is an important public health issue in the U.S. Annually, 48 million people become sick from foodborne illnesses, 128,000 are hospitalized, and 3,000 die (Scallan, Griffin, Angulo, Tauxe, & Hoekstra, 2011). Surveillance data reveal that 68% of foodborne illness outbreaks are associated with food prepared in restaurants, and that food handling by a sick employee is the most common cause of these restaurant-associated outbreaks (Gould et al., 2013; Gould, Rosenblum, Nicholas, Phan, & Jones, 2013). A Centers for Disease Control and Prevention (CDC) study found that one in five restaurant employees reported having worked while experiencing vomiting or diarrhea in the previous year (Carpenter et al., 2013). Preventing restaurant employees from handling food while sick is critical to reducing the overall burden of foodborne illness.

The Food and Drug Administration (FDA) *Food Code* (U.S. Department of Health and Human Services, 2013a) is a model food code that governmental jurisdictions can adopt to regulate retail food service establishments (i.e., restaurants). It contains science-based guidance to improve food safety in retail food service establishments. Although not all states have adopted the latest version of the *Food Code* (2013a), it is considered to contain best practices concerning retail food safety.

The *Food Code* indicates that people in charge of restaurants (i.e., managers) should prevent employees who have been diagnosed with foodborne illnesses or exhibit foodborne-illness symptoms from working (U.S. Department of Health and Human Services, 2013b). These symptoms include jaundice, vomiting, diarrhea, and sore throat with fever in restaurant employees.

Nevertheless, in a study by CDC on restaurant employee practices concerning working

while sick, a large majority (89%) of employees reported that their manager was not involved in their recent decision to work while sick. Many of these employees (37%) also said that their managers were not aware of their illness symptoms (Carpenter et al., 2013). These findings suggest that restaurant managers do not always play an active role in preventing symptomatic employees from working.

In the course of disseminating these study findings at meetings and conferences, CDC staff heard repeatedly from industry food safety professionals about their beliefs that some federal laws operate as barriers to managers asking employees about their symptoms or diagnoses. These beliefs might prevent managers from taking a more active role and asking questions about worker health to determine whether or not an employee should handle food.

This special report examines two federal laws, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Americans With Disabilities Act of 1990 (ADA), and considers the role each law plays in discussions about employee symptoms or illnesses. It is possible that existing state laws might restrict restaurant manager actions on this issue. Industry food safety professionals, however, specifically mentioned federal laws in discussions, so this special report will focus on federal regulations.

## The Health Insurance Portability and Accountability Act of 1996

As electronic transmission of health information began to increase in the early 1990s, Congress sought to “standardize the use of electronic health information,” develop “nationwide security standards and safeguards for the use of electronic health care information,” and create “privacy standards for protected health information” through HIPAA (Nass, Levit, & Gos-

tin, 2009). In the workplace, HIPAA “controls how a health plan or a covered health care provider shares [an individual’s] protected health information with an employer.” More simply put, HIPAA generally applies to the “disclosures made by [a] health care provider,” such as a doctor’s office (U.S. Department of Health and Human Services, 2017a). Therefore, a manager may not call an employee’s healthcare provider and request information about the employee. The manager, however, can ask the employee directly about his or her illness and still be in compliance with HIPAA regulations.

## The Americans With Disabilities Act of 1990

ADA “prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation” (U.S. Department of Justice, n.d.). The law applies to businesses with 15 or more employees and, because it is a federal law, applies in all states and local jurisdictions (Americans With Disabilities Act, 1990b). One part of ADA prohibits employers from discriminating against potential hires or employees who live with a disability (Americans With Disabilities Act, 1990d).

Specifically, it states that no entity “shall discriminate against a qualified individual on the basis of disability.” Moreover, ADA states employers may not “require a medical examination” or “make inquiries of an employee as to whether or not such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job related and consistent with business necessity” (Americans With Disabilities Act, 1990e).

This ADA provision could contribute to manager beliefs that federal laws prevent

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them from asking employees about their illness symptoms. But this belief is incorrect; ADA does not prevent managers from asking employees about their illness symptoms. ADA does, however, specifically prohibit asking an employee if he or she has a disability or what kind or how severe the disability might be.

ADA defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment” (Americans With Disabilities Act, 1990a). The majority of foodborne illnesses transmitted in restaurants present with mild to moderate gastrointestinal symptoms and are predominantly short term in nature (U.S. Department of Health and Human Services, 2013d). Therefore, they are not considered a “disability” under ADA’s definition.

When a foodservice employee has a short-term gastrointestinal illness that puts consumers and other employees at risk of a foodborne illness—one that is not considered a “disability” by ADA—his or her manager may inquire about symptoms without violating ADA. In the rare event that an employee does have a foodborne illness that is considered a disability by ADA, employers would need to take into consideration both ADA and their state’s food code.

Each year, the Department of Health and Human Services releases a list of “infectious and communicable diseases that are transmitted through handling the food supply,” which can be found at [www.cdc.gov/foodsafety/pdfs/ada2017\\_transmittedbyfood\\_final.pdf](http://www.cdc.gov/foodsafety/pdfs/ada2017_transmittedbyfood_final.pdf) (Americans With Disabilities Act, 1990f; U.S. Department of Health and Human Services, 2017b). Under ADA, an employer may require current employees to report whether or not they have been diagnosed with an illness from the list (U.S. Department of Health and Human Services, 2013c). If an employee does have an illness on the list, ADA requires the manager to consider a “reasonable accom-

modation” for the employee (Americans With Disabilities Act, 1990g). A reasonable accommodation may include adapting facilities or reassigning job duties for individuals (Americans With Disabilities Act, 1990c).

If no reasonable accommodation exists, then the manager may “refuse to assign or continue to assign the [employee] to a job involving food handling” (Americans With Disabilities Act, 1990c). If an employee has an illness included on the list and the manager cannot provide a reasonable accommodation, the manager, under ADA, may choose to give the employee assignments that do not include handling food.

ADA also emphasizes that employers may follow “any state, county, or local law, ordinance or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others” (Americans With Disabilities Act, 1990h). Thus, if a manager requires foodservice employees to report symptoms not related to a disability, the manager is both complying with ADA and following best practices outlined in the *Food Code*. It is important to remember that ADA not only recognizes the importance of food safety and public health, but promotes it (U.S. Equal Employment Opportunity Commission, 2014).

### Creating a Culture of Communication

Understanding that laws such as HIPAA and ADA do not prohibit restaurant managers from asking employees about their symptoms or illnesses, the question then becomes how to create a culture of communication. Best practices indicate that managers should create an atmosphere in which employees feel comfortable discussing their symptoms and illness (U.S. Department of Health and Human Services, 2013a). Employees should know when, how, and what to report.

For example, *Food Code* reporting recommendations indicate that an employee should give the manager “information about health and activities as they relate to the diseases that are transmissible through food” at the onset of symptoms (U.S. Department of Health and Human Services, 2013c). Managers should then ask relevant questions to determine whether or not the employee should handle food. Managers should also be prepared to collect additional information from the employee, such as the onset date of symptoms of an illness, or of a diagnosis without symptoms (U.S. Department of Health and Human Services, 2013c). According to the *Food Code*, it is the manager’s responsibility to ensure that all employees are aware of the reporting requirements (U.S. Department of Health and Human Services, 2013c).

### Conclusion

Restaurant managers and employees should work together to prevent the spread of foodborne illnesses. Creating a culture of open communication about employee symptoms and illnesses will help ensure that sick employees do not transmit foodborne pathogens to customers and other workers in the restaurant. Employees must know the symptoms to report and when to report these symptoms, and managers should ask relevant questions to determine whether or not the employee should handle food. The restrictions stemming from HIPAA do not prevent a restaurant manager from asking about an employee’s symptoms or illness. And, while ADA plays an important role in all employment settings, it is important to keep in mind that ADA also encourages restaurant food safety. 🍴

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*continued on page 26*

**References** *continued from page 25*

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