




Office of State Human Resources

ROY COOPER
Governor

BARBARA GIBSON
Director, State Human Resources

Memorandum

To: Local Government Human Resources Directors
From: Glenda Farrell, Chief Deputy 
Date: December 8, 2022
Re: Collection and Storage of Medical File and Data Analysis File Information

Due to recent enforcement prioritization from the Equal Employment Opportunity Commission (EEOC), we need to offer guidance to all local entities on the appropriate collection and storage of information related to an employee's voluntary self-identification of disability. **This advisory memo details actions that your entity is strongly encouraged to take to ensure that your entity is storing self-identification of disability information, and medical information, appropriately under the law.**

Applicants and employees may voluntarily self-identify as having a disability, both during the application process and at any point in time after they begin employment with a local agency. It is completely voluntary for an applicant or employee to provide this information. It is a best practice for state and local entities to collect this information from applicants and employees as it enables local entities to ensure they are seeking a diverse applicant pool and hiring a diverse group of employees, including employees who may identify as having a disability. Many State agencies use this information in their EEO plan each year to measure progress in hiring people with disabilities. [Executive Order 92, Employment First for North Carolinians with Disabilities](#), calls for North Carolina to be a leader in recruiting workers with disabilities and to create an inclusive job climate for workers with disabilities. In addition, many federal contractors are required to collect the information. 41 C.F.R. § 60-741.42.

Why this information needs to be kept in separate files

Forms that ask about self-identifications of disability may indicate employees' medical conditions. If that is the case, the record must be kept in a separate, confidential medical file. 42 U.S.C. § 12112(d)(3)(B),(d)(4)(C); 29 C.F.R. § 1630.14.

For federal contractors, employees' self-identifications of disability must be kept in a separate "data analysis" file. Federal regulations require covered federal contractors to "keep all information on self-identification confidential," and "maintain it in a data analysis file (rather than in the medical files of individual employees)." 41 C.F.R. § 60-741.42(e).

How to collect self-identification of disability information

This information should only be collected on [Form CC-305, Voluntary Self-Identification of Disability](#), prepared by the U.S. Department of Labor. Federal contractors must use this form, under 41 C.F.R. § 60-741.42(a)(2). For other employers, use of Form CC-305 is not required, but the federal form is well-structured and makes it convenient to put self-identification of disability information into a separate file.

No form used by an entity, other than the Form CC-305 or its electronic equivalent in an HR Information System or Applicant Tracking System, should contain a question seeking voluntary self-identification of disability. **All local entities should review their forms to remove any questions on this topic, then replace those questions with a copy of the Form CC-305.**

The Local Government Application for State Employment (PD-107) has been updated to remove Form CC-305 from the application document. Form CC-305 has been placed online in the same local government location as the PD-107 but as a separate document. **All local entities using paper application forms should replace the older PD-107 forms with the new PD-107.** This is important so that disability information can be conveniently separated from the rest of the PD-107 form. Entities should collect self-identifications of disability only on federal Form CC-305.

For the collection of this information at any point in time after hire, the best practice is to collect this information in a way that can be stored separately from an employee's personnel and medical file. **Local entities should search their websites for forms containing any version of the Voluntary Self-Identification of Disability question, and either update the form to remove the question or remove the form from its website so that it may not inadvertently be used.** Please see Attachment A for examples of how this question may appear on forms.

How to store self-identification of disability

Once collected, local entities should ensure appropriate storage of voluntary self-identification of disability information, including the following.

- The information should be in a "data analysis" file that is separate from the medical record of the employee and is separate from the general personnel file.
- The information may be stored in the existing HR Information System, provided the disability-related data are stored securely, apart from other personnel information, so confidentiality is maintained. Access to this data shall be limited to personnel who need to know the information to comply with federal regulations or need to report on the data so that the entity can measure its progress on employing people with disabilities.
- If the information is collected on paper, the paper form (or an electronic copy of the paper form) and any log, spreadsheet, or database that may have been developed from the forms should be retained only in the "data analysis" file, and not in the medical record file or general personnel file.

Reviewing existing personnel files for medical information and self-identifications of disability

Local entities should review their existing personnel files for any medical or disability information. If any such information is found within the personnel file of the employee, local entities should remove that medical or disability information from both electronic and paper files.

Any portions of the file that contain medical information should be separated into the medical file. The voluntary self-identification of disability should be retained only in a separate data-analysis file. All other information will remain in the personnel file.

Some older forms asked employees not only to self-identify whether they have a disability, but also what that disability was. These forms should be split so that the particular disability listed is kept in the medical file, while a self-identification of disability is kept in the data analysis file.

If you fail to conduct this review and remove information from the personnel file that should not be retained in the personnel file, you risk being subject to enforcement actions from EEOC.

Contact point for questions

If you have any questions regarding this memo, please contact Anna Perkinson, Assistant General Counsel for the N.C. Office of State Human Resources, at anna.perkinson@nc.gov.

Attachment A

Examples 1, 2, 3, and 4 are examples of how this question may appear. Please remove any disability question from any document within the personnel file and store appropriately.

IMPORTANT NOTE REGARDING STORAGE OF INFORMATION: IF YOU HAVE ANY VERSION OF THIS QUESTION THAT ASKED THE EMPLOYEE TO IDENTIFY A *SPECIFIC* DISABILITY IN AN EMPLOYEE'S PERSONNEL FILE, IDENTIFICATION OF A SPECIFIC DISABILITY SHOULD BE MOVED TO A MEDICAL FILE, NOT A DATA FILE.

Example 1. (If a specific disability is indicated, store in medical file)

Disability:
<input type="checkbox"/> A None/prefer not to report
<input type="checkbox"/> B Blind or severely visually impaired
<input type="checkbox"/> C Deaf or severely hearing impaired
<input type="checkbox"/> D Loss or limited use of arms and/or hands
<input type="checkbox"/> E Non-ambulation (must use a wheelchair)
<input type="checkbox"/> F Other orthopedic impairment (e.g. amputation, arthritis)
<input type="checkbox"/> G Respiratory impairment
<input type="checkbox"/> H Nervous system/neurological disorder
<input type="checkbox"/> I Mental restored
<input type="checkbox"/> J Mental retardation
<input type="checkbox"/> K Learning disability
<input type="checkbox"/> L Other (heart disease, diabetes, speech impairment)
<input type="checkbox"/> M Other (specify in COMMENTS section)

Example 2. (If a specific disability is indicated, store in medical file)

Disability Status:	<input type="checkbox"/> No, I don't have a disability	<input type="checkbox"/> C Deaf or severely hearing impaired	<input type="checkbox"/> H Nervous system/neurological disorder
	<input type="checkbox"/> Yes, I have a Disability (or previously had a disability)	<input type="checkbox"/> D Loss or limited use of arms and/or hands	<input type="checkbox"/> I Mental restored
	<input type="checkbox"/> I don't wish to answer	<input type="checkbox"/> E Non-ambulation (Must use a wheelchair)	<input type="checkbox"/> J Mental retardation
	<input type="checkbox"/> A None/prefer not to Report	<input type="checkbox"/> F Other orthopedic impairment (e.g. amputation, arthritis)	<input type="checkbox"/> K Learning disability
	<input type="checkbox"/> B Blind or severely visually impaired	<input type="checkbox"/> G Respiratory impairment	<input type="checkbox"/> L Other (heart disease, diabetes, speech impairment)
			<input type="checkbox"/> M Other (specify in COMMENTS section)

Example 3. (If a specific disability is indicated, store in medical file)

DISABILITY A disability is any physical or mental impairment which substantially limits one or more major life activities. A person with a disability is one who: (i) has such an impairment; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. The reporting of a disability is voluntary.

A ≠ None/prefer not to report	G ≠ Respiratory impairment
B ≠ Blind or severely visually impaired	H ≠ Nervous system/Neurological disorder
C ≠ Deaf or severely hearing impaired	I ≠ Mentally restored
D ≠ Loss or limited use of arms and/or hands	J ≠ Mental retardation
E ≠ Non-ambulatory (must use wheelchair)	K ≠ Learning disability
F ≠ Other orthopedic impairment (including amputation, arthritis, back injury, cerebral palsy, spina bifida, etc.)	L ≠ Others (heart disease, diabetes, speech impairment)
	M ≠ Other (please specify)

Example 4. (store in a "data analysis" file, separate from an employee's personnel and medical files.)

Disability Status:	<input type="checkbox"/> No, I don't have a disability	<input type="checkbox"/> Yes, I have a Disability (or previously had a disability)	<input type="checkbox"/> I don't wish to answer