

EEOC Opinion Letter Suggests Employer Required Health Risk Assessments Violate the Americans With Disabilities Act (ADA)

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The Equal Employment Opportunity Commission (EEOC) recently issued an opinion that an employer violated the Americans With Disabilities Act (ADA) by requiring employees to participate in a health risk assessment as a prerequisite to participating in the employer's self funded health insurance plan. The health risk assessment included answering a short health-related questionnaire, taking a blood pressure test and providing blood for use in a blood panel screen. Employees who declined to participate in the health risk assessment could not participate in the health insurance plan. Notably, the results of the health screening were sent directly to the employees. The employer only received information in the aggregate without any identifying information.

The ADA prohibits disability-related inquiries prior to a job offer. Once a conditional job offer has been made, disability-related inquiries are only permitted if they are required of all employees in the same job category. Once employment begins, disability-related inquiries and medical examinations must be job related and consistent with business necessity.

Because the health risk assessments used as a prerequisite to participating in the health insurance plan occurred once employment began, medical tests and questions asked as part of the health assessment had to be both job-related and consistent with business necessity. In order to be job related and

consistent with business necessity any questions or medical tests must be triggered by a reasonable belief on the employer's part that (1) an employee's ability to perform essential functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition. The health risk assessment did not meet the criteria.

The EEOC did note that disability-related inquiries and medical exams are permitted as part of voluntary wellness programs but that such programs are voluntary only if employees are neither required to participate nor penalized for non-participation.

Employers should review their wellness programs or any health risk assessment programs that they either require employees to take or make available to employees to take to ensure that such programs are in compliance with the ADA requirements.

If you have any questions on this matter or would like assistance with this review please contact either Peter Bennett or Rick Finberg.

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