

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INDICATES THAT HEALTH RISK ASSESSMENTS MAY VIOLATE ADA

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On occasion the Equal Employment Opportunity Commission ("EEOC") issues informal opinion letters on various labor issues. These opinions are nonbinding and do not constitute official opinions of the EEOC, however, they provide employers with direction.

In a recent informal opinion letter, the EEOC responded to an inquiry concerning whether an employer can require employees to participate in a health risk assessment (HRA) as a condition of participating in its health plan without violating the Americans with Disabilities Act (ADA). The HRA referenced by the EEOC was one in which employees were required to fill out a short health-related questionnaire, take a blood pressure test, and give a blood sample for screening. Those employees who declined to participate were rendered ineligible for coverage under the plan. The results were given directly and exclusively to the employee, with the employer only receiving results in the aggregate.

Title I of the ADA limits when an employer may obtain medical information from applicants and employees. Before a job offer is made, the ADA prohibits employers from making disability-related inquiries and medical examinations, even if they are related to the job. After a conditional offer is made, an employer may ask disability-related questions and require medical examinations as long as it does so for all entering employees in the same job category. 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. For explanation purposes, a disability-related inquiry or medical examination of an employee may be job-related and consistent with business necessity when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition." Based on the above criteria, the EEOC informally opined that requiring all employees to take a health risk assessment that includes disability-related inquiries and medical examinations as a prerequisite for obtaining health insurance coverage does not appear to be job-related and consistent with business necessity, and therefore potentially violates the ADA.

The EEOC opinion also briefly discussed why disability-related inquiries and medical examinations incorporated into voluntary wellness programs are considered legal. The EEOC noted that the key component in these voluntary wellness programs, which is missing in the HRA, is that employees are neither required to participate nor are penalized for nonparticipation. The EEOC indicated that the pivotal difference between the voluntary wellness program and HRA is that non-participants of the HRA are penalized.

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