

MMPI USE OF PERSONALITY TEST VIOLATES ADA
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USE OF PERSONALITY TEST VIOLATES ADA
Employee Evaluation Procedure Amounts to Medical Exam, 7th Circuit Says

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An employer violated the Americans with Disabilities Act when it used a personality test on prospective managers, the Chicago-based 7th U.S. Circuit Court of Appeals ruled last week.

The case involved three brothers in Illinois—Steven, Michael and Christopher Karraker—who were seeking promotions at Rent-A-Center, a chain of rental stores where they worked. The company required candidates for promotion to take a management profile, a series of tests that included the Minnesota Multiphasic Personality Inventory. The MMPI often is used to help diagnose certain psychiatric disorders.

When none of the brothers scored well enough on the overall management profile to gain promotions, they sued Rent-A-Center, primarily on grounds that the company's use of the MMPI violated the ADA's general prohibition against using "medical tests" that tend to screen out people with disabilities.

The 7th Circuit reversed and remanded a district court ruling that granted the employer's motion to dismiss based on a finding that the MMPI was used solely to discern personality traits of candidates for promotion rather than as a medical exam to uncover mental disorders.

Rent-A-Center did not use the test to examine the psychological well-being of employees, Rent-A-Center attorney M. Brek Johnson says. "In fact, it was not even possible to do so based upon the way the test was administered and scored. This is because the [test] results do not provide any insight into whether the test taker's personality traits might be indicative of psychological disorders. Rather, the results merely reflect how closely the employee's personality traits match those most commonly found in successful managers and supervisors."

Rent-A-Center began using a new management test in 2000 that better measures the skills the company looks for in supervisors and managers, he says.

"The problem with the district court's analysis," Judge Terence T. Evans wrote for a unanimous three-judge 7th Circuit panel, "is that the practical effect of the MMPI is

similar no matter how the test is used or scored—that is, whether or not Rent-A-Center used the test to weed out applicants with certain disorders, its use of the MMPI likely had the effect of excluding employees with disorders from promotions." *Karraker v. Rent-A-Center Inc.*, No. 04-2881 (June 14, 2005).

"Because it is designed, at least in part, to reveal mental illness and has the effect of hurting the employment prospects of one with a mental disability, we think the MMPI is best categorized as a medical examination," Evans wrote.

The 7th Circuit noted that provisions of the ADA:

- * Limit the use of "medical examinations and inquiries" as conditions of employment.
- * Prohibit the use of pre-employment medical tests.
- * Prohibit the use of medical tests that are not job-related or have no business necessity.
- * Prohibit tests that are used to screen out people with disabilities.

The court's opinion noted that Rent-A-Center's appellate arguments focused only on whether the MMPI constitutes a medical exam. The court concluded that the MMPI is a medical exam on the basis of guidelines from the Equal Employment Opportunity Commission.

The MMPI has a long history of legal trouble in the employment discrimination arena, especially in relation to issues like religion and sexual orientation, according to Stewart J. Schwab, dean at Cornell University Law School in Ithaca, N.Y.

"Part of the problem is that it was designed not with employment in mind but to diagnose mental disorders," Schwab says. "Because of the litigation it's been in, it's a challenge to tell employers in advance under what circumstances they can give this test."

Miami employment lawyer David M. DeMaio says, "There's a fine line separating the use of personality testing to predict personality traits and its use to diagnose personality disorders."

DeMaio notes that while the appellate court relied on EEOC definitions of what constitutes a medical test, it did not give much weight to another EEOC guideline that the district court considered important: whether the test results were interpreted by a medical expert, such as a psychologist.

As the 7th Circuit's opinion notes, the district court relied on the deposition testimony of a clinical psychologist who explained that there are various scoring methods for the MMPI. "A clinical protocol could be used for medical purposes, while a vocational scoring protocol would focus more on personality traits of potential employees," the opinion states. "The district court found that because Rent-A-Center used the vocational protocol to score the test, Rent-A-Center used the MMPI solely for the purposes of

discerning personality traits."

But, the 7th Circuit concluded, "The mere fact that a psychologist did not interpret the MMPI is not, however, dispositive."

The ruling should make employers wary of personality tests, DeMaio says.

"The conundrum is that a human resources person who is a nonexpert can't properly interpret the MMPI," he says, "but if you've got the MMPI administered and interpreted by a psychologist, according to the EEOC, you're a lot closer to impermissible conduct. This is a cautionary tale for employers using those tests."

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