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**FOR YOUR INFORMATION**

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News for School and Municipal Clients

**Court Prohibits the Use of Personality Tests in Employment Decisions**

In 1990, Congress enacted the Americans with Disabilities Act (ADA) to provide “a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” As part of its prohibition against discrimination on the basis of actual or perceived disabilities, the ADA prohibits employers from asking applicants disability-related questions and requiring medical examinations until the applicant has been given a conditional job offer. (Where an employee seeks a competitive promotion with his/her current employer, the employee is considered an applicant for purposes of the ADA’s limitations on the use of medical examinations and inquiries.) Furthermore, an employer may only use such medical examinations and inquiries where they are related to the job to be performed and where they are consistent with business necessity. The ADA is designed to prevent employers from considering an applicant’s disability before evaluating the applicant’s non-medical qualifications.

In June 2005, in *Karraker v. Rent-A-Center*, the United States Court of Appeals for the Seventh Circuit considered whether Rent-A-Center, a chain of stores that offers appliances, furniture, and other household goods on a rent-to-own basis, could use the Minnesota Multiphasic Personality Inventory (MMPI) test to determine whether

employees would progress from account managers to upper-level positions. An employee, who was denied a promotion based on his score on the MMPI test, filed an ADA claim arguing that Rent-A-Center violated the ADA’s limitations on the use of medical examinations and inquiries when it used the MMPI test in the competitive promotion process.

The United States Equal Employment Opportunities Commission (EEOC), the administrative agency charged with the responsibility of enforcing the ADA, defines a “medical examination” as “a procedure or test that seeks information about an individual’s physical or mental impairments or health.” The Court relied upon the EEOC’s definition when it concluded that the MMPI test is a medical examination because the MMPI test measures the employees’ traits related to depression, hypochondria, hysteria, paranoia and mania, and can be used to diagnose certain psychiatric disorders.

The EEOC has suggested that whether the test is administered and interpreted by a health care professional or someone trained by a health care professional is a factor in determining whether a particular test is a medical examination. Other factors considered by the EEOC include: whether the test is designed to reveal a physical or

mental health condition; whether the test is invasive; whether the test measures an employee's performance of a task or measures his/her physiological responses to performing the task; whether the test normally is given in a medical setting; and whether medical equipment is used in the test. In *Karraker*, the Court disregarded the fact that Rent-A-Center did not use physicians or psychologists to administer the test. Rather, the Court asserted that the primary factor in this determination is whether the test was designed to identify or reveal a mental disorder or impairment. The Court suggested that, if the test satisfies this factor alone, it is enough to conclude that the test is a medical examination or inquiry.

Rent-A-Center argued that it was not using the test to screen applicants for clinical depression or other personality disorders; rather, it was measuring certain personality traits in prospective managers. The Court rejected this argument, as well, explaining that, regardless of the employer's intent, the practical effect of the MMPI test is that, as a result of its use, employees with mental health disorders are excluded from consideration for promotions. Thus, the Court concluded the MMPI test is a medical examination or inquiry; as such, its use is regulated by the ADA.

It is important to understand that the ADA's prohibition against the use of medical

examinations and inquiries applies to all applicants and employees, regardless of whether they actually suffer from a medical condition that constitutes a disability under the law. Thus, any applicant or employee has a right to challenge an employer's use of disability-related inquiries or medical examinations that are not job-related and consistent with business necessity.

*Karraker v. Rent-A-Center* is not over. The Court remanded the case to the lower court for further hearing. The next step will be for the lower court to determine whether the test was related to the position for which the employee applied and/or whether the test was consistent with Rent-A-Center's business necessity. Additionally, the lower court will likely be asked to examine whether the timing of the test, i.e., prior to the offer of a promotion, assists in determining whether the use of the test violated the ADA.

Employers may believe that tests, such as the MMPI test and others, are reliable predictors of future job performance that an interview and reference checking cannot offer. However, in light of the *Karraker* decision, an employer who wishes to use such a test should carefully consider at what junctures the tests will be used, i.e., post-offer, and should weigh the benefits of the test against the risks of litigation.

*If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.*

Michael J. Julka (608) 286-7238  
Ronald J. Kotnik (608) 286-7214  
William L. Fahey (608) 286-7234

David E. Rohrer (608) 286-7249  
Michael J. Lawton (608) 286-7236  
Frank C. Sutherland (608) 286-7243  
Joanne Harmon Curry (608) 286-7248

Shana R. Lewis (608) 286-7202  
Richard F. Versteegen (608) 286-7233  
Carrie M. Benedon (608) 286-7208

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