

PUBLICATION

EEOC Suggests Some Required Health Risk Assessments Violate ADA

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Employers who require their employees to participate in a health risk assessment in order to be eligible for health insurance coverage may be unknowingly violating the Americans with Disabilities Act (ADA). The ADA currently 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. Health risk assessments used as a prerequisite to determine eligibility for health insurance coverage occur once employment has begun, and therefore must be job-related and consistent with business necessity if they include disability-related inquiries and medical examinations.

The Equal Employment Opportunity Commission (EEOC) recently issued an opinion letter that health risk assessments that include disability-related inquiries and medical examinations are not job-related or consistent with business necessity.

To be job-related and consistent with business necessity, the employer must have a reasonable belief based on objective evidence that a medical condition will impair the employee's ability to perform essential job functions, or that the employee's medical condition will pose a direct threat. In this particular instance, the health risk assessment required the employees to answer a short health-related questionnaire, take a blood pressure test, and provide blood for use in a blood panel screen - none of which related to the employee's ability to perform the essential job functions. As such, the EEOC opined that this type of health risk assessment would violate the ADA. Although the EEOC did not take a formal position regarding the particular question asked, employers should take a close look at their health insurance plans' eligibility requirements, including the assessments employees must take in order to determine eligibility.

This EEOC opinion is somewhat surprising in light of the fact that programs that merely require all employees to complete a health risk assessment to enroll in a plan are not considered discriminatory under HIPAA nondiscrimination rules. Furthermore, even the EEOC noted that disability-related inquiries and medical exams are permitted as part of voluntary wellness programs. Such programs are voluntary if employees are neither required to participate nor penalized for non-participation. If employees who choose not to participate in the health risk assessment are denied a significant employment benefit (such as the opportunity to obtain health coverage through the employer's plan), then such a program is not voluntary. Thus, employers should review their programs to determine whether such programs are truly voluntary.