

E*Alert

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By: C. Ann Martin, Esq.

Employers Using the MMPI and Other Psychological/Personality Testing Must Proceed Cautiously

In *Karraker v. Rent-A-Car, Inc.*, the Seventh Circuit Court of Appeals recently ruled that an employer's administration of the Minnesota Multiphasic Personality Inventory (MMPI) to assist in promotional decisions violated the American's with Disabilities Act (ADA). Title I of the ADA prohibits employers from administering "medical examinations" that identify, or tend to identify, mental disorders or impairments. However, the ADA does not prohibit psychological tests that measure personality traits such as honesty, preferences or habits. Particularly, the MMPI contains questions intended to identify individual personality traits as well as questions used to diagnose mental disorders. The MMPI is the most frequently administered psychometric test in the nation.

In *Karraker*, the employer required all employees seeking a management position to take a version of the MMPI, and the results of the MMPI affected an employee's eligibility for promotion. The employer argued that the MMPI results were used solely for the purpose of identifying job-related personality traits, such as the ability to work with others, and that the results were never analyzed by a mental health professional. Despite these contentions, the court held that "no matter how the test is used or scored," the MMPI "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." Accordingly, the court determined that the "MMPI is best categorized as a medical examination" and its use by the employers violated the ADA.

The distinction between lawful pre-employment personality testing and discriminatory “medical examinations” is extremely delicate, and employers must be cautious in using psychometric test results to assist in hiring or promotional decisions. Examinations yielding information on mental health expose an employer to ADA liability even if the employer did not use, or intend to use, the test results to acquire information concerning an employee’s mental condition. Employers must evaluate the specific contents of any psychological or personality test impacting job eligibility and should consult an attorney to determine ADA compliance.

If you have any questions about the issues raised by this e-alert, please feel free to contact C. Ann Martin at (414) 273-3910 or by e-mail at ajordan@lindner-marsack.com.

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