

State and Federal Laws Prohibit Medical Testing Prior to “Extending” Offers of Employment

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Although employers are allowed to require their prospective employees to submit to certain medical testing and examinations, state and federal anti-discrimination laws prohibit the employer from requiring such tests until after the employer has made at least a bona fide conditional offer of employment.

California's Fair Employment and Housing Act, Cal. Govt. Code section 12940 (e) (1) prohibits employers and employment agencies from requiring medical or psychological examinations of any job applicant except when the examination or inquiry is job-related and "consistent with business necessity." Even then, the examination or inquiry must be required of all entering employees in the same job classification and can only be required after an employment offer has been made.

Likewise, section 12940(e)(1) also forbids an employer from inquiring about the existence or extent of any mental or physical disability or medical condition of an applicant until after such bona fide offer of employment has been made. Additionally, California regulations specify that it is unlawful to ask questions about disability on a pre-employment questionnaire but may condition an offer of employment on the results of a medical examination prior to the commencement to the employment duties, in order to determine fitness for the particular job in question.

Similarly, provisions of the Americans with Disabilities Act (ADA), 42 USC section 12112(d), also prohibit medical examinations and inquiries until after an "official" job offer has been extended by the employer.

The purpose of these sections is to prevent discrimination against applicants based upon disability and medical conditions. Thus, the anti-discrimination laws prohibit intentional discrimination literally and by their regulation of the sequence of the employers' hiring processes. Any medical screening or examination prior to receipt of an "official job offer" by the employer is premature and unlawful. In this manner, applicants are allowed to keep their medical information private until they know that they will be hired unless they are unable to meet the medical requirements. And, if they are then not hired, "the true reason for the employer's decision will be transparent."

Leonel v. American Airlines.

As explained in the Leonel v. American Airlines case, "a job offer is real if the employer has evaluated all relevant non-medical information which it reasonably could have obtained and analyzed prior to giving the offer" and therefore "either completed all non-medical components of its application process or is unable to demonstrate that it could not reasonably have done so before issuing the offer."

Therefore, no applicant should be subjected to any inquiry or examination regarding potential disability or medical condition unless and until the employer first makes a bona fide offer of employment, even if the offer is conditional upon the employee being fit for the job for which the offer was made.

Additionally, even if the results of the post-offer inquiry or examination make job fitness an issue, the employee may also request a reasonable accommodation from the employer under state and federal disability laws. ■