

Save medical exams for last step in pre-hire screening

When you or your hiring managers need to fill an open slot fast, it may be tempting to skip steps in the application process. But don't do it.

Follow the proper pre-hire chain of events, especially when it comes to testing. As a new court case shows, performing tests in the wrong order can violate ADA.

Specifically, complete all nonmedical parts of your pre-hire screening first, including skills testing and background checks. Then, after those tests are completed and you've made a conditional job offer, schedule medical exams that test for fitness for duty and ability to perform essential job functions.

Case in point: To speed the application process, an airline extended a conditional job offer to a flight-attendant applicant. The offer was contingent on a successful background check and medical exam.

But the applicant took the medical exam before the airline completed its background check. The company rescinded the offer after lab tests showed he was HIV positive. The applicant sued under the ADA and won.

The airline tried to argue that, although it performed the medical test before the background check, it had reviewed the results of the medical test last.

The federal court didn't buy that argument, saying ADA specifically regulates the timing and sequence of when applicant information can be collected during the hiring stage, not the order in which it's reviewed.

Employers must complete all nonmedical testing before obtaining any medical information, or they must be able to show reasons they can't do so. Expediting the hiring process isn't a valid reason. (*Leonel v. American Airlines Inc.*, No. 03-15890, 9th Cir., 2005)

Final tip: Don't single out only certain applicants for medical exams. EEOC says job offers can be conditioned on a medical exam's results, but "only if the examination is required for all entering employees in similar jobs."

Online resources: Read the EEOC's Enforcement Guidance on Disability-Related Inquiries and Medical Examinations at www.eeoc.gov/policy/docs/guidance-inquiries.html. Read a Q&A on the subject at www.eeoc.gov/policy/docs/qanda-inquiries.html.