Pre-Hire Medical Exams: Which Questions are Too Nosey?

You interview an applicant. You offer her the job. But it's conditional on her passing the pre-employment physical exam. So far, so legal. You send her to a third-party health care vendor. Do you know what that clinic is asking her? Is it legal? One judge recently ruled that inappropriate inquiries from such vendors could trigger an even closer examination from the courts …

Case in Point: Shelly Garlitz applied for a medical technologist job at a Michigan hospital. The hospital offered her the job conditional on passing the pre-employment physical. It sent her to a third-party screener, Healthwise Medical Clinic.

Healthwise gave Garlitz a questionnaire that included questions about her childbearing plans. Specifically, it asked the type of birth control she used and the number of births, miscarriages and abortions she's had. Only female applicants had to complete these questions. When Garlitz refused to answer, the hospital yanked back the job offer.

Garlitz sued the hospital under federal and state discrimination laws. First, she claimed she was discriminated under the Americans with Disabilities Act (ADA), which prohibits employers from requiring an applicant to undergo a pre-employment medical screening unless the screening is focused on the applicant's ability to perform job-related functions.

Second, Garlitz claimed discrimination under Title VII of the Civil Rights Act of 1964, which precludes sex discrimination, including issues related to pregnancy and childbearing. In addition, Garlitz claimed the questions violated her 14th Amendment right to privacy under the U.S. Constitution. That's one bulky lawsuit by a rejected applicant.

The hospital denied all the claims, saying it rescinded the job offer because of Garlitz's "attitude" in her interactions with the vendor, Healthwise. It also argued that because Healthwise provided the questionnaire—not the hospital—then the hospital should not be liable. Finally, the hospital denied violating Garlitz's privacy rights, saying that, as an employer, it had some latitude to inquire into personal matters. (***Garlitz v. Alpena Reg'l Med. Ctr.***, E.D. Mich., 12/2/11)

What happened next … and what lessons can be learned?

The court rejected all the hospital's defenses and sent the case to a jury trial. In essence, the court ruled that an applicant does not have to be disabled to claim an ADA violation; a third-party medical examiner may be acting as an agent of the employer and applicants have privacy rights to the extent the inquiry is not "relevant" to the job.

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3 Lessons Learned … Without Going To Court

1. Know what your pre-hire medical checks are asking. If you are using a third-party vendor, make sure you understand which questions they're asking and what tests they're doing. The court ruled that this questionnaire was discriminatory because the childbearing questions were asked of women and not men. The court also ruled that an employer may be liable for such third-party screenings.

2. Understand ADA inquiries. Inquiries can be made only if they are relevant to the functions of the job. (Note: For a good primer on this topic, see the EEOC's Enforcement: Guidance Disability-Related Inquiries and Medical Examinations of Employees Under the ADA.)

3. Stay relevant. In this case, Garlitz's birth control, miscarriages and abortions had no relevance to being a medical technologist … by any stretch of the imagination.

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