

## CLIENT ALERT

### Do You Often Have A Hard Time Getting Out Of Bed In The Morning? Can A Psychological Test Violate The ADA?

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A panel of the Seventh Circuit recently invalidated an employer's use of the Minnesota Multiphasic Personality Inventory Test (MMPI), the country's most widely used personality test. *See Karraker v. Rent-A-Center, Inc.*, 2005 U.S. App. LEXIS 11142 (June 14, 2005). The court ruled that the test constituted a medical examination within the meaning of the Americans With Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* ("ADA"), and that the employer's use of the test violated the ADA.

This dispute grew out of the employer's administration of a battery of paper/pencil tests in assessing current employees as candidates for promotion. The test battery included 502 questions from the MMPI, a test used to measure personality traits. According to the court, questions in the MMPI go beyond the measurement of personality traits, and consider where an applicant falls on scales measuring traits such as depression, hypochondriasis, hysteria, paranoia and mania. Poor scores on the test batteries barred the employees for further consideration for promotion.

Plaintiffs in *Karraker* brought a class action against the company, asserting (among other things) that the employer violated the ADA by using the MMPI in making decisions regarding promotions. The district court granted summary judgment in favor of the employer, concluding that the MMPI was not a medical examination under the ADA.

The Seventh Circuit reversed. The court recited three provisions in the ADA that restrict the ability of employers to use "medical examinations and inquiries" as a condition of employment. *E.g.*, 42 USC §12112(d)(1). The court then summarized guidance from the Equal Employment Opportunity Commission (EEOC) that defines "medical examination" as "a procedure or test that seeks information about an individual's physical or mental impairments or health." *See ADA Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examination* (1995).. According to the EEOC, psychological tests "designed to identify a mental disorder or impairment" qualify as medical examinations. Applying that test, the court concluded that the MMPI "is best categorized as a medical examination." The court observed that, as used by the employer in this case, 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."

In reaching this conclusion, the court rejected the district court's conclusion that the test results were not interpreted by a psychologist and thus were not used to identify "a mental disorder or impairment." According to the Seventh Circuit panel, this fact was not dispositive because the "practical effect" of the use of the test is the same, in that it "likely had the effect of excluding employees with disorders from promotions."

*Karraker* is the first reported appellate court decision on the question of whether personality tests should be viewed as "medical examinations" for purposes of the ADA. The widespread use of various types of personality and psychological testing by U.S. corporations, combined with the broad nature of the court's ruling, makes this a significant development in ADA law. Prudent employers should review their current use of these tests, as part of their ongoing HR/legal compliance programs.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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