

## Psychological Testing, Psychological Examinations, and ADA

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### Introduction

The impact of ADA on what is permissible in employee selection is, in many areas, unclear. Nowhere is this lack of clarity more apparent than in the area of psychological testing and psychological examinations. This article is meant as an aid to employers considering the use of psychological instruments, procedures, or inquiries with reference to candidates. Since the definitive letter of the law is not yet written, perhaps the following can serve as a guide to at least the spirit of the law.

In summary, the ADA says that tests must measure the specific skill, aptitude, or factor which is purported to be measured, rather than a disability. It also says that medical inquiries must be conducted *after* a conditional offer of employment, be job related, and be required of all applicants. How do psychological testing and psychological examinations fit these parameters?

### Psychological Testing

Generally, psychological tests are instruments which purport to measure a variety of characteristics relating to human behavior, particularly intra- and interpersonal behavior. Psychological tests constitute a wide array of instruments including the Myers-Briggs Type Indicator (MBTI), the Minnesota Multiphasic Personality Inventory (MMPI), the Leadership Opinion Questionnaire, etc. Generally, psychological tests operate on the principle that individuals with certain characteristics answer some questions differently from those who lack the characteristic. For example, highly dominant individuals answer questions on the dominance (Do) scale of the California Psychological Inventory (CPI) differently from those who are less assertive.

Some psychological tests, such as the MMPI, make a direct attempt to identify psychopathology (paranoid schizophrenia, bipolar disorder, etc.). Others attempt to differentiate aspects of human behavior within a normal population. Since the thrust of ADA is to protect individuals with disabilities against discrimination, psychological instruments which attempt to identify mental illnesses directly would be subject to much tighter restrictions than those which measure broader, job-related characteristics. It follows, then, that the use of psychological testing in selection (before a conditional offer of employment) should be limited to instruments which measure qualities that can be shown to be job-related. In this manner, a psychological test could be considered a standardized interview wherein the

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questions and the responses (yes/no, true/false, etc.) are used to make inferences regarding legitimate job-related characteristics. To argue that ADA prohibits the use of any psychological instrument would be to deprive selection professionals and decision makers of a powerful, valid set of tools for making informed decisions.

### Psychological Examinations

Traditionally, psychological examinations have referred to a process, usually quite late in the selection process, whereby an individual is sent to a psychologist (or psychiatrist) to determine whether he/she meets the minimum qualifications for the position. These procedures generally are reserved for sensitive positions in the public trust, such as those of police officer, fire fighter, etc. I would argue that they, as such, do resemble medical examinations and are subject to the same rules under ADA. Most importantly, they may be conducted only after a conditional offer of employment.

In contrast, the mere use of a psychologist to interview, test, etc. does not automatically make the procedure a psychological examination. Private industry and, in many cases, agencies of government, have traditionally used industrial/organizational psychologists to provide outside, objective assessments of candidates' strengths, weaknesses, job fit, and promotion potential. These assessments, which may use psychological inventories as one of many assessment tools, meet the ADA requirements of measurement of relevant job criteria, rather than attempts to determine disabilities.

### Conclusions

The distinctions described above are, arguably, rather subtle. However, the following principles might help one determine whether the instruments and procedures are permissible under ADA in a pre-employment, assessment context:

- Do the instruments measure attributes which can be shown demonstrably to be necessary to job performance? Sources of evidence would include the test manual, the test itself, validation studies, etc.
- Do the instruments and procedures used have a significant history in a relatively wide array of jobs which require the measured characteristic? An instrument or procedure which has been used with hundreds of thousands of managerial candidates is less likely to be seen as an attempt to measure a disability.

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- Is the focus of the inquiry on measuring the *amount* of the attribute, rather than merely determining the minimum? The focus of medical examinations (and psychological examinations which resemble them) is in determining whether someone meets some minimum threshold.<sup>1</sup> Psychological examinations attempt to determine whether someone is free of disabling psychological conditions and meets *minimum* standards of stability, trustworthiness, etc. Pre-employment assessment, on the other hand, might seek to determine how strong one's leadership is, or how effective that individual might be in building rapport with others.

In summary, the passage of ADA and the desire to further include individuals with disability in the employment arena should not dissuade employment professionals from the use of psychological instruments as one set of tools in a broad repertoire of assessment methods.

<sup>1</sup> Editor's note: EEOC has indicated it will issue clarifying instructions about the status of psychological testing and its relation to medical examinations.