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Employers May Be Liable For Violating ADA Based On Vague And Overbroad Medical Questionnaires

In *Scott v. Napolitano*, a California federal district court recently provided guidance on how employers may draft medical examination questionnaires that comply with the Americans With Disabilities Act (“ADA”). The plaintiff, a security officer, sued his employer for violation of the ADA, disability discrimination, and retaliation after he was suspended and then terminated for refusing to respond to the employer’s medical questionnaire. The plaintiff claimed that the questions he refused to answer were impermissible disability-related inquiries that ran afoul of the ADA. The plaintiff and the employer filed motions for summary judgment.

The court noted that under the ADA, an employer may make inquiries into the ability of an employee to perform job-related functions so long as the inquiry is consistent with business necessity. The court determined that the questions on the employer’s exam were overbroad in time and scope, and were not narrowly tailored to assessing whether the plaintiff could perform the essential functions as a security officer. The questionnaire sought general information about illnesses, mental conditions, and other impairments, including:

- Have you ever been treated for a mental condition?
- Have you ever had any illness, injury, or other condition (including learning disability, attention deficit disorder, etc.) other than those already noted?
- Have you ever consulted or been treated by clinics, physicians, healers, or other practitioners within the past years for other than minor illness?
- Have you or do you currently experience any of the following: psychiatric/psychological consult, episodes of depression, periods of nervousness?
- List all medication (prescription and non-prescription) you are currently taking with dosage and frequency, and reason below.

The court found that the questions were not limited in time, and would include for example, childhood phobias or long-resolved eating disorders. The questions were also deemed overbroad and ambiguous because they did not define terms such as “disability,” “nervousness,” or “depression,” and did not attempt to distinguish between job-related and non-job related impairments. The court concluded that the employer could not satisfy its burden of establishing that the inquiries were no broader or more intrusive than necessary to accomplish its goal of

ensuring that the plaintiff could safely perform his job. Thus, the court granted the plaintiff's motion for summary judgment as to his claim for violation of the ADA.

The plaintiff also claimed that the employer discriminated against him on the basis of a perceived disability by suspending and then terminating his employment after he refused to answer the medical questionnaire. In granting summary judgment for the defendant on this claim, the court noted that the fact an employer questions whether an individual can perform a specific job does not mean that the employer regards the individual as disabled. The plaintiff also asserted a retaliation claim against based on these same facts. The court found there was a triable issue as to whether the employer suspended and terminated the employee for failing to respond to the impermissible medical inquiry, which would be unlawful, or if it terminated him based on his failure to release his medical records to the company physician, which the court indicated would be lawful.

This case serves as a warning to employers that they may be liable for violation of the ADA based on vague and overbroad language in their medical examination inquiries. To comply with the ADA, an employer's medical questionnaire must be narrowly tailored, and limited in time and scope, to evaluate whether the employee can perform the essential job functions.