

Personality Testing in Employment: Useful Business Tool or Civil Rights Violation?

Alan M. Goldstein and Shoshanah D. Epstein*

The use of personality and psychological assessment tests in screening and hiring job applicants has become standard practice at many large companies in the United States.¹ Even the National Football League and other professional sports leagues use personality tests, such as The Wonderlic Personnel Test, for screening recruits prior to draft day.² Many employers believe that personality tests are useful in predicting future behavior, lessening the likelihood of poor hiring decisions that can be costly.³ However, some personality and psychological tests may be considered “medical examinations” under the Americans with Disabilities Act (ADA), which prohibits discrimination against an individual because of a disability “in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”⁴ The ADA imposes strict

* Alan M. Goldstein is a Senior Attorney for Equip for Equality. Equip for Equality is the Illinois Protection and Advocacy System for people with disabilities and is providing this information under a subcontract with the DBTAC: Great Lakes ADA Center, University of Illinois at Chicago, U.S. Department of Education, National Institute on Disability Rehabilitation and Research Award No. H133A060097. Shoshanah D. Epstein was a Public Interest Law Initiative Intern for Equip for Equality in Chicago, summer 2008. Ms. Epstein is a student at the University of New Mexico School of Law in Albuquerque, New Mexico, where she is also a McCune Charitable Foundation Constitutional Law Fellow. She will graduate in May 2009. Mr. Goldstein and Ms. Epstein would like to thank Equip for Equality Legal Advocacy Director Barry C. Taylor for his valuable assistance with this article.

¹ See, e.g., Ariana Eunjung Cha, *Employers Relying On Personality Tests To Screen Applicants*, WASH. POST., March 27, 2005, at A01. Approximately 30% of all companies use personality tests to aid with hiring decisions. Diane Stafford, *Hiring tests: the Right Fit*, SEATTLE TIMES, September 11, 2005, at F1; see also Alexia Elejalde-Ruiz, *Want a job? Be Prepared To Offer Up More Information Than Ever Before As Companies Search For The Perfect Fit For Their Bottom Line*, CHI. TRIB., April 25, 2006, at 6 (calling pre-employment testing a \$500 million industry).

² *Karraker v. Rent-A-Center*, 411 F.3d 831, 833 (7th Cir. 2005) (citing Richard Hoffer, “Get Smart!,” SPORTS ILLUSTRATED, Sept. 5, 1994); see also, e.g., Rick Reilly, *Licking My Wounds*, April 17, 2001, CNN SPORTS ILLUSTRATED, http://sportsillustrated.cnn.com/inside_game/magazine/life_of_reilly/news/2001/04/17/life_of_reilly.

³ Thadford A. Felton, *Is The Use Of Personality Tests In Hiring Permissible?*, INT’L LAWYERS NETWORK, THE BULLET “iln” NEWSLETTER, Vol. 5, Issue 1, January 19, 2006, http://www.imakenews.com/iln/e_article000515156.cfm?x=b11,0,w.

⁴ 42 U.S.C. § 12112(a) (West 2008).

limitations regarding administration and use of “medical examinations.”⁵ Even if an employment test is not considered a “medical examination” under the ADA, its use may still be governed by the ADA’s requirements regarding “qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability.”⁶

The only federal appellate court ruling addressing the use of personality testing in employment, *Karraker v. Rent-A-Center, Inc.*, held that requiring job applicants to take the Minnesota Multiphasic Personality Inventory (MMPI) violates the ADA, as the MMPI is a “medical examination.”⁷ In the wake of the Seventh Circuit’s decision in *Karraker*, businesses across the country are reassessing the use of personality testing. However, personality testing raises several ADA issues that are not completely resolved by *Karraker*. This article discusses when personality tests may be considered “medical examinations” under the ADA, the application of *Karraker* beyond the MMPI, and other ADA issues raised by personality testing in the workplace, including issues affecting people with non-psychiatric disabilities.

I. When Are Personality Tests “Medical Examinations” Under the ADA?

Karraker relied upon Equal Employment Opportunity Commission (EEOC) guidelines for guidance in assessing when personality tests are “medical examinations” under the ADA.⁸ The EEOC defines a “medical examination” as “a procedure or test that seeks information about an individual’s physical or mental impairments or health.”⁹ Generally, “psychological tests that are designed to identify a mental disorder or impairment” are “medical examinations,” while

⁵ The Americans with Disabilities Act of 1990, 42 U.S.C. § 12112(d) (West 2008).

⁶ 42 U.S.C. § 12112(b)(6) (West 2008).

⁷ *Karraker*, 411 F.3d 831, 838 (7th Cir. 2005).

⁸ *Id.* at 835 (citing ADA ENFORCEMENT GUIDANCE, NO. 915.002, DISABILITY-RELATED INQUIRIES AND MEDICAL EXAMINATIONS OF EMPLOYEES UNDER THE AMERICANS WITH DISABILITIES ACT (2000), <http://www.eeoc.gov/policy/docs/guidance-inquiries.html> [hereinafter EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES]; see also ADA ENFORCEMENT GUIDANCE, NO. 915.002, PREEMPLOYMENT DISABILITY-RELATED QUESTIONS AND MEDICAL EXAMINATIONS (1995), <http://www.eeoc.gov/policy/docs/preemp.html> [hereinafter EEOC GUIDANCE, PREEMPLOYMENT INQUIRIES]).

⁹ EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, Question 2.

“psychological tests that measure personality traits such as honesty, preferences, and habits” are not “medical examinations.”¹⁰ Further, “psychological examinations are medical if they provide evidence that would lead to identifying a mental disorder or impairment (for example, those listed in the American Psychiatric Association's most recent Diagnostic and Statistical Manual of Mental Disorders (DSM)).”¹¹

The EEOC has identified seven non-exhaustive factors to assess whether a test qualifies as “medical examination.” In some cases, “one factor may be enough to determine that a test or procedure is medical.”¹² The factors identified by the EEOC are:

- (1) whether the test is administered by a health care professional;
- (2) whether the test is interpreted by a health care professional;
- (3) whether the test is designed to reveal an impairment or physical or mental health;
- (4) whether the test is invasive;
- (5) whether the test measures an employee's performance of a task or measures his/her physiological responses to performing the task;
- (6) whether the test normally is given in a medical setting; and,
- (7) whether medical equipment is used.¹³

A. Medical Examinations and the Three Stages of Employment

The ADA limits an employer’s ability to compel medical examinations during certain stages of the employment process.¹⁴ For the purposes of administering medical inquiries and examinations, the EEOC identifies three stages: pre-offer, post-offer, and during employment.¹⁵ Prior to extending a job offer, the ADA prohibits employers from conducting any pre-

¹⁰ *Karraker*, 411 F.3d 835; *see also* EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, Question 2.

¹¹ EEOC GUIDANCE, PREEMPLOYMENT INQUIRIES.

¹² EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, Question 2 (*citing* EEOC GUIDANCE, PREEMPLOYMENT INQUIRIES).

¹³ *Id.*

¹⁴ 42 U.S.C. § 12112(d)(2)(A) (West 2008); 29 C.F.R. § 1630.13(a) (West 2008).

¹⁵ *See* EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, General Principles, Background.

employment medical inquiries or examinations.¹⁶ At the first stage, prior to an offer of employment, the employer is prohibited from requiring a medication examination and making any disability-related inquiries, “even if they are related to the job.”¹⁷ “The central purpose of this prohibition is to prevent employers from basing their decisions on an applicant’s disabilities instead of on his or her qualifications.”¹⁸

The second stage of employment is the period after the employer extends an offer of employment to a job applicant, but before the applicant begins working.¹⁹ During this stage, the employer may require an applicant to undergo a “medical examination” if “all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.”²⁰ The offer of employment may be conditional upon the results of the medical examination or inquiry.²¹

However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation.²²

At the third stage of employment, once the employee begins,²³ an employer may require a “medical examination” or make medical inquiries only if they are “job-related and consistent with business necessity.”²⁴ This means that the employer must have “a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be

¹⁶ EEOC GUIDANCE, PREEMPLOYMENT INQUIRIES, Introduction.

¹⁷ 42 U.S.C. § 12112(d)(2)(B) (West 2008); 29 C.F.R. §§ 1630.13(b), 1630.14(a) (West 2008); EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, General Principles, Background.

¹⁸ *Barnes v. Cochran*, 944 F.Supp. 897, 904 (S.D. Fla. 1996) (internal citations omitted); EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, General Principles, Background.

¹⁹ EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, General Principles, Background.

²⁰ 42 U.S.C § 12112(d)(3) (West 2008); 29 C.F.R. § 1630.14(b) (West 2008).

²¹ *Id.*

²² 42 U.S.C § 12112(b)(6) (West 2008); 29 C.F.R. § 1630.14(b)(3) (West 2008).

²³ *See* EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, General Principles, Background

²⁴ 42 U.S.C § 12112(d)(4)(A) (West 2008); 29 C.F.R. § 1630.14(c) (West 2008).

impaired by a medical condition; or (2) an employee will pose a direct threat²⁵ due to a medical condition.”²⁶

B. *Karraker v. Rent-A-Center* and the Minnesota Multiphasic Personality Inventory (MMPI)

The stage of employment is important if a personality test is considered a “medical examination” under the ADA. In *Karraker*, Rent-A-Center (RAC) used the MMPI for employees seeking a promotion.²⁷ As a result of the scores, three employees were denied promotions, and subsequently filed suit under the ADA.²⁸

The *Karraker* case involved the issue of whether the MMPI personality test, specifically, was a “medical examination” under the ADA.²⁹ In making this determination, the U.S. Court of Appeals for the Seventh Circuit examined the purpose, nature, scoring, and use of the MMPI. The court followed the EEOC guidelines cited above stating that the issue turned on “whether the MMPI test is designed to reveal a mental impairment” as “one factor may be enough.”³⁰

According to the officially licensed marketer of all MMPI test products, Pearson Assessments, the MMPI is the “most widely used and widely researched test of adult psychopathology” and is “[u]sed by clinicians to assist with the diagnosis of mental disorders and the selection of appropriate treatment methods.”³¹ The MMPI consists of 567 true/false

²⁵ “Direct threat” means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. 29 C.F.R. §1630.2(r) (West 2008) (listing factors to determine whether an employee poses a direct threat).

²⁶ See EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, Question 5.

²⁷ *Karraker*, 411 F.3d at 833; EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, General Principles, Question 4 (employee applying for promotion to be treated as an applicant for a new job for ADA purposes regarding medical examinations and disability-related inquiries).

²⁸ *Karraker*, 411 F.3d at 835. The *Karrakers* were already employed by RAC, but test was considered administered as “preemployment” by the court for ADA purposes because they were required for those seeking new positions within RAC. *Id.*; see EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, *supra*.

²⁹ *Karraker*, 411 F.3d at 833-34. The MMPI was first published in 1942. Its current form is the MMPI-2 (hereinafter MMPI), published since 1989. See John D. Finerty, *Seventh Circuit prohibits use of personality test*, LABOR LOGIC, WIS. L. J., June 1, 2005, <http://wislawjournal.com/archive/2005/0622/finerty-062205.html>.

³⁰ *Karraker*, 411 F.3d at 835-36.

³¹ Pearson Assessments, *MMPI*, http://pearsonassessments.com/tests/mmpi_2.htm (last visited Nov. 17, 2008).

items written at a sixth grade reading level for adult test-takers and timed at 60-90 minutes to complete.³² In general, MMPI statements cover a variety of topics including: bathroom habits, sex lives, thoughts, feelings, and religious beliefs.³³ The true/false statements in the MMPI include the following:

- “I have a good appetite.”³⁴
- “I have strange and peculiar thoughts.”³⁵
- “I have difficulty in starting or holding my bowel movements.”³⁶
- “I have never indulged in any unusual sex practices.”³⁷
- “I go to church almost every week.”³⁸
- “At times I have fits of laughing and crying that I cannot control.”³⁹
- “My soul sometimes leaves my body.”⁴⁰
- “I see things or animals or people around me that others do not see.”⁴¹
- “I commonly hear voices without knowing where they come from.”⁴²
- “At one or more times in my life I felt that someone was making me do things by hypnotizing me.”⁴³
- “I have a habit of counting things that are not important such as bulbs on electric signs, and so forth.”⁴⁴

The Seventh Circuit cited the last six questions listed above in the *Karraker* decision.⁴⁵

³² *Id.*

³³ Ruiz, *supra* note 1.

³⁴ Ruth Eisenberg and Debra S. Katz, *Hiring Minds Want to Know: Increasingly Popular Psychological Testing of Job Applicants May Violate ADA*, Feb. 8, 1999, www.kmblegal.com/publications_feb_08_99.php (last visited Nov. 17, 2008).

³⁵ *Id.*

³⁶ Stacy Finz, *Texas Company Settles Over Nosy Questions to Employees: \$2 million to workers who were asked about sex, bowel habits*, S. F. CHRON., July 8, 2000, at A-3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Karraker*, 411 F.3d at 834, fn. 1.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

RAC argued in its brief that the MMPI was not a “medical examination” because it only measured a “state of mood” or “the extent to which the test subject is experiencing the kinds of feelings of ‘depression’ that everyone feels from time to time (e.g., when their favorite team loses the World Series).”⁴⁶ RAC claimed to use the MMPI to discern personality traits only, not clinical diagnoses, and pointed to the fact that it used a vocational scoring system and grader, and not a medical protocol in administering the test.⁴⁷

The Seventh Circuit found RAC’s arguments disingenuous, humorously contemplating, “can an Illinois chain really fill its management positions if it won't promote disgruntled Cubs fans?” and “why would RAC care if an applicant lost his keys the morning of the MMPI or took the test the day after another Cubs loss?”⁴⁸ The court concluded that the logic behind RAC’s claims did not add up.⁴⁹

Instead, the court decided that only one of two options was possible: either the MMPI was a “very poor predictor of an applicant’s potential . . . or it was actually designed to measure more than just an applicant's mood on a given day,” presumably to discover a mental health diagnosis.⁵⁰ The court found against RAC holding that:

[b]ecause it 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, we think the MMPI is best categorized as a medical examination . . . regardless of the scoring system.⁵¹

The ruling in *Karraker* is significant for several reasons. First, it is currently the only federal appellate court decision to expressly address whether a personality test such as the MMPI is a medical examination under the ADA. Second, as noted previously, the MMPI is the most

⁴⁵ *Id.*

⁴⁶ *Id.* at 835.

⁴⁷ *Id.*

⁴⁸ *Id.* at 836.

⁴⁹ *Id.* at 835.

⁵⁰ *Id.* at 836.

⁵¹ *Id.* at 836-37.

widely used personality test nationwide, and thus, the ruling might impact many employers. Third, it has been documented that the Seventh Circuit rarely finds for the employee in ADA employment cases.⁵² The fact that the court found for the employee in *Karraker* might persuade other jurisdictions that the MMPI, and possibly other personality tests, are medical examinations under the ADA.

C. Application of *Karraker* Beyond the MMPI

While *Karraker* held that the MMPI was a “medical examination” under the ADA, other personality or psychological tests, *e.g.*, Myers-Briggs or The Wonderlic, were not at issue in the case. However, as noted throughout this article, the *Karraker* court made some noteworthy comments regarding employers’ use of personality tests in general which may be influential in future cases.⁵³ Further complicating this issue is the fact that many pre-employment tests are not given labels such as “personality” or “psychological” tests. Often tests that are generically titled as being “pre-employment” include questions that seem very similar to those used on the MMPI. Although the lawfulness of personality testing in employment as a business tool has not been challenged in any reported court decisions, these tests would appear to be vulnerable to an ADA challenge. Whether or not such a test is a “medical examination” under the ADA depends on the factors identified in Section I above.⁵⁴ Even if these preemployment tests are not deemed medical examinations, they may violate the ADA if they have the “effect” of discriminating against a person with a disability.⁵⁵ This issue will be discussed below in Section III.⁵⁶

⁵² See Ruth Colker, *Winning and Losing Under the Americans with Disabilities Act*, 62 OHIO ST. L.J. 239, 275, Table 17 (2001) (stating that ADA Title I plaintiffs have a 3.9% probability of success in the Seventh Circuit).

⁵³ See *Karraker*, 411 F.3d at 835.

⁵⁴ See *supra* note 14.

⁵⁵ *Karraker*, 411 F.3d at 837.

⁵⁶ See discussion *infra* Section III.

The *Karraker* court seemed troubled with the use of personality tests in general, whether they are considered medical examinations or not. The court noted the possibility that “the MMPI was a very poor predictor of an applicant's potential as a manager (which might be one reason it is no longer used by RAC).”⁵⁷ As the ADA requires that personality tests be used in a way that is “job-related” and “consistent with business necessity,” the *Karraker* court’s skepticism regarding the effectiveness of these tests should not be ignored.⁵⁸

II. The Use of Personality Tests That *Are* “Medical Examinations” Under the ADA

In the event that a particular personality test is considered a “medical examination,” the *Karraker* court noted that the ADA restricts when it may be administered and how it may be used.⁵⁹ These restrictions were discussed above in section I.A.⁶⁰ However, one issue only alluded to in *Karraker* is whether a personality test that is not deemed to be a “medical examination” may still be discriminatory even if used at the correct stage of employment.

Because the personality test at issue in *Karraker* was administered pre-offer of employment, it was prohibited under the ADA as the court held that it was a “medical examination.” The issue of using the MMPI or any other personality-related “medical examination” at the other two stages of employment was not before the court. However, even if a medical examination is given at the proper stage of employment for the proper reasons, its use still must meet the standard of being “job-related and consistent with business necessity.”⁶¹

As noted above in Section I.C. above, the *Karraker* court seemingly questioned whether personality tests could ever be used in a way that meets this standard.⁶² The court also discussed

⁵⁷ *Karraker*, 411 F.3d at 836.

⁵⁸ See 42 U.S.C. § 12112(b)(6).

⁵⁹ *Karraker*, 411 F.3d at 834.

⁶⁰ See *supra* Section I.A.

⁶¹ 42 U.S.C. § 12112(b)(6).

⁶² See *supra* Section I.C.

the significance of this standard as it relates to employment tests, especially those tests that “screen out (or tend to screen out) people with disabilities.”⁶³ The court discussed the discriminatory nature of the barriers that employment tests pose to people with psychiatric disabilities, stating that:

Americans with disabilities often faced barriers to joining and succeeding in the workforce . . . includ[ing] attitudinal barriers resulting from unfounded stereotypes and prejudice. People with psychiatric disabilities have suffered as a result of such attitudinal barriers, with an employment rate dramatically lower than people without disabilities and far lower than people with other types of disabilities.⁶⁴

III. The Use of Personality Tests That *Are Not* “Medical Examinations” Under the ADA

If a personality test is not a “medical examination” under the ADA, it may be given to job applicants at any stage of employment.⁶⁵ However, it may be unlawful if it has a disparate impact on individuals with psychiatric or other disabilities, as employers may not use

[q]ualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability . . . unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.⁶⁶

As noted above in Section I.C., the *Karraker* court seemingly called into question whether personality type testing in employment could ever meet this standard.⁶⁷ The court also paid special attention to the significant barrier that employment tests pose for people with disabilities.⁶⁸ In *Karraker*, the court focused on the ADA’s purpose in prohibiting “medical examinations” that have the effect of “excluding employees with disorders from promotions” or

⁶³ *Karraker*, 411 F.3d at 834.

⁶⁴ *Id.* (internal citations omitted).

⁶⁵ EEOC GUIDANCE, DISABILITY-RELATED INQUIRIES, General Principles.

⁶⁶ 42 U.S.C. § 12112(b)(6) (West 2008).

⁶⁷ *See supra* Section I.C.

⁶⁸ *Karraker*, 411 F.3d at 837.

jobs, regardless of the employer's alleged or actual purpose in using the test.⁶⁹ The court explained that even if the test is not intentionally discriminating between applicants based on any disorder, anyone who happens to have a protected disability will likely score such that he or she will not be hired or promoted.⁷⁰

IV. Personality and Employment Testing Issues Affecting People With Non-Psychiatric Disabilities

Beyond the issue of whether or not an employment or personality test is considered a “medical examination” under the ADA or discriminates against people with psychiatric disabilities, such a test may violate the ADA if it discriminates against people with non-psychiatric disabilities. Depending on the language level and cultural standards used in a test, and the impact on people with various types of disabilities, employment tests with personality components may also “screen out (or tend to screen out)” individuals with cognitive, developmental, intellectual, or communication disabilities.⁷¹ For example, a job applicant or employee who is deaf and whose primary language is American Sign Language (ASL) may have difficulty understanding the nature of a question being asked by an employment test, as signed languages and spoken English have different grammatical structures. Therefore, a person whose primary language is ASL may test poorly for reasons unrelated to his or her ability to perform the job-related tasks. The “reasonable accommodation” of providing an ASL interpreter for a job applicant or an employee may or may not be effective in eliminating any communicative barrier, as interpretation may subtly and inadvertently change the meaning of a question.

Individuals with cognitive, developmental, learning, and/or intellectual disabilities may also have difficulty understanding the questions asked on an employment test. In these

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 834.

circumstances, it is unlikely that any “reasonable accommodation” would be effective in allowing the individual to properly take the test.⁷² For these reasons, any employment test, including one with personality components, may discriminate against people with many different types of disabilities, whether or not the test is considered a “medical examination” under the ADA.

V. Conclusion

The *Karraker* court held that the MMPI is a “medical examination” because it was designed, at least in part, to reveal mental illnesses protected by the ADA.⁷³ The court concluded that the test “has the effect of hurting the employment prospects of one with a mental disability.”⁷⁴ While there are other issues relating to personality testing that were not before the court in *Karraker*, the court’s analysis, combined with its unusually strong and rather humorous condemnation of the employer’s use of personality testing, may provide persuasive guidance for other courts that analyze the use of personality testing in employment.

The most common personality assessment techniques used in employee selection are individual interviewing and evaluation of an applicant’s background.⁷⁵ Although use of personality assessments, including the MMPI, seems to be on the rise, “[p]sychological tests are particularly vulnerable to misinterpretation and misuse.”⁷⁶ It has been noted that “[e]mployers who use the MMPI and other psychological tests do so at great legal peril.”⁷⁷

Employers that use personality tests and other forms of pre-employment and employment testing should carefully assess their use of these tests under the ADA. Any employment tests

⁷² Although it may also be possible that personality tests may violate Title VII of the Civil Rights Act and discriminate based on racial, ethnic, and cultural concerns, such issues are not addressed herein.

⁷³ *Karraker*, 411 F.3d at 836.

⁷⁴ *Id.* at 837.

⁷⁵ Gregory R. Vetter, *Is a Personality Test a Pre-job-offer Medical Examination Under the ADA?*, 93 Nw. U. L. REV. 597, 614, (1999).

⁷⁶ Eisenberg & Katz, *supra* note 35.

⁷⁷ *Id.*

should have quantifiable benefits in assessing individuals for the position in question. Employers should attempt to make all employment tests as job specific as possible to demonstrate that the test is “job-related and consistent with business necessity.” Employers should also make sure that their use of employment tests does not violate an individual’s rights under federal laws such as the ADA or possibly Title VII of the Civil Rights Act.⁷⁸ When weighing the risks and benefits of using personality tests, employers may find the risk of litigation and the difficulties of justifying the use of the tests in a court of law outweigh any helpful information that the tests might provide. Or, as Jeffrey A. Ross, an attorney for the Rent-A-Center employees who were awarded thousands of dollars and a favorable ruling after being forced to take the MMPI at work, said: “An employee's proven track record in the job is clearly a better – and more lawful – way to judge their abilities than whether they pray every week or have difficulty starting and holding their bowel movements.”⁷⁹ Employers, and the attorneys that represent them, may want to take these words to heart.

⁷⁸ See Civil Rights Act of 1964, 42 U.S.C. § 2000(d) *et seq.* (West 2008).

⁷⁹ See Finz, *supra* note 37.