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Administrative Letter A093

Pre-employment Medical Examinations

Administrative Letter #93 Pre-employment Medical Examinations - Approved 09/04/2013; Updated 07/07/2017

DATE: Reviewed and Updated July 2017 – Lyle Cox

SUBJECT: Pre-employment Medical Examinations

Under the Americans with Disabilities Act of 1990 (the “ADA”), an employer may require a fitness for duty medical examination only after the applicant has been given a conditional job offer.

In an employer requires post-offer medical examinations, it must make sure that:

- all entering employees in the same job category are subjected to the examination, regardless of disability; and
- all medical information obtained must be kept confidential.

For the purposes of the District “all entering employees” will be defined as all employees who are hired, rehired*, or transferred into a job category that requires a fitness for duty medical examination. Current job categories that require a fitness for duty examination include custodians, severe paraprofessionals, and food service workers.

*An employee who is hired within 90 calendar days of the start of a contract year who worked to the end of the prior contract year in the same job category is considered a continuing employee and is not “rehired” for the purposes of this guidance. For example, a severe paraprofessional who worked to the end of the 2013 contract year who is rehired 89 calendar days after the start of the 2014 contract year is considered a continuing employee (not an “entering employee”) and will not need to complete a fitness for duty examination. Likewise, a severe paraprofessional who quits employment one week prior to the end of the 2013 contract year and is then rehired on the first day of the 2014 contract year is considered an “entering employee” and is required to submit to a fitness for duty medical examination.

Reference:

29 C.F.R. § 1630.14 (b) Employment entrance examination. A covered entity may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the

applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

(1) Information obtained under paragraph (b) of this section regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) The results of such examination shall not be used for any purpose inconsistent with this part.

(3) Medical examinations conducted in accordance with this section to not have to be job-related and consistent with business necessity. 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 as required in this part. (See §1630.15(b) Defenses to charges of discriminatory application of selection criteria.)

<https://www.eeoc.gov/policy/docs/guidance-inquiries.html>