EEOC Lawsuit Reminds Employers That Pre-Employment Health Inquiries Are Off-Limits

Labor & Employment Law Update

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A recent consent judgment entered against Grisham Farm Products, in a lawsuit brought by the EEOC, Case No. 6:16-cv-03105 (W.D. Mo.) (June 8, 2016), provides an important reminder to employers that job application questions directed at medical histories are generally off-limits.

The case arose from an EEOC Charge filed by a man who did not even submit a job application. Instead, after seeing the application's medical history questions, he headed to the EEOC and filed a Charge of Discrimination alleging violations of the Americans with Disabilities Act, as amended ("ADA"), and the Genetic Information Non-Discrimination Act of 2008 ("GINA").

The job application included a three-page health history that asked 43 questions. The top page of the history stated: "All questions must be answered before we can process your application or change authorization"—potentially indicating that applications would be rejected for failure to provide a complete medical history. The history sought information on virtually any condition an applicant might have, from allergies to varicose veins. For each "yes" response an applicant gave, indicating a current or past medical diagnosis, the history sought additional information, including the dates symptoms presented, whether hospitalization was necessary, and the name and address of the applicant's doctors and hospital.

It did not stop there. The history inquired about current medications, including dosage, the reasons for prescription, and the name and address of the prescribing doctor. The history concluded by asking applicants to disclose—again in complete detail—whether any surgery or medical testing had been recommended, and to provide recent blood sugar and blood pressure testing results.

Considering the ADA generally prohibits employers from conducting pre-offer medical examinations or inquiring into the existence or severity of an applicant's disabilities, it was clear that this application violated the ADA. The fact that the man had not actually applied for a job was of no consequence. The ADA affords

protection to persons who are deterred from applying for a job because of discriminatory practices or policies.

Additionally, because the health history required disclosure of consultations with "'a doctor, chiropractor, therapist or other health care provider within the past 24 months'" and identification of "whether 'future . . . diagnostic testing . . . has been recommended or discussed' with [a] medical provider," the application violated GINA by soliciting information that might reveal an applicant's family history or other risk factors for certain medical conditions.

The consent judgment included a permanent prohibition from requiring any pre-offer medical examinations or pre-offer medical inquiries and a payment of $10,000.

This case serves as a reminder that an employer may not ask a job applicant medical questions before making a job offer. An employer may ask a job applicant if they can perform the essential functions of the job. The essential job functions should be listed in a job description that is provided or made available to the applicant.