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EMPLOYER'S USE OF PSYCHOLOGICAL TEST VIOLATED AMERICANS WITH DISABILITIES ACT

In a decision sure to have wide-ranging implications for many employers, the Seventh Circuit Court of Appeals recently ruled that an employer's use of a psychological test known as the Minnesota Multiphasic Personality Inventory ("MMPI") as part of its promotional process violated the Americans with Disabilities Act ("ADA"). The case is *Karraker v. Rent-A-Center*, No. 04-2881 (June 14, 2005).

The ADA prohibits an employer from asking disability-related questions or using medical examinations, tests, or inquiries prior to making an offer of employment. The Equal Employment Opportunity Commission has identified several factors for determining whether a particular test is a permissible personality inventory, or a prohibited "medical examination." For example, the EEOC instructs courts to consider, among other things, whether the test is administered or interpreted by a health care professional, and "whether the test is designed to reveal an impairment of physical or mental health." Looking to these factors, the Court noted that the MMPI is designed, at least in part, to uncover potential mental disabilities or illnesses; therefore, the Court ruled, it was a "medical examination" that could not be administered as part of a selection process.

The employer argued that the specific way in which it used the MMPI did not violate the ADA—it did not have the results interpreted by a psychologist or psychiatrist, and only used the "vocational scoring protocol," which would not disclose any psychiatric illness. The Court



disagreed, reasoning that no matter how the MMPI was scored, it “likely had the effect of excluding employees with [mental] disorders from promotions.”

This decision is especially crucial because the lower court had upheld the employer’s use of the MMPI. Obviously, employers may no longer rely on the lower court’s decision. Employers who use the MMPI, or any sort of pre-employment personality testing, should have their procedures reviewed to be sure they do not present a risk of liability under the ADA.

If you need further information about this decision in particular, or about legally permissible testing procedures in general, please feel free to call on us. The Labor & Employment Practice Group of Balch & Bingham LLP has several lawyers experienced in helping employers design and implement legally permissible testing procedures.

S A V E T H E D A T E
Balch & Bingham’s **2005 Labor and Employment Seminars** will be held in:
Birmingham, AL: September 29-30
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