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## **Federal Sector: Medical Inquires and Examinations**

The Rehabilitation Act places limitations on a federal government agency's ability to make medical inquiries and direct medical examinations of all employees, not only individuals with disabilities. This article discusses these limitations, as well as when an agency's medical inquiry or examination may be permissible.

### **Protections Under the Rehabilitation Act**

Under the Rehabilitation Act, an agency can direct an employee to attend a medical examination or request an employee's medical information (make a medical inquiry) if it is (1) job-related; and (2) consistent with business necessity. *See, e.g., Milford R. v. Dep't of Def.*, EEOC App. No. 0120120081 (Dec. 3, 2015) (citing 29 C.F.R. §§ 1630.13(b), 1630.14(c)). "Generally, a disability-related [i]nquiry or medical examination of an employee may be job-related and consistent with business necessity when an employer has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition." *Milford R. v. Dep't of Def.*, EEOC App. No. 0120120081 (Dec. 3, 2015) (citing EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the ADA, EEOC Notice No. 915.002, Question 5 (July 27, 2000)). Objective evidence means that an agency cannot simply rely upon assumptions or stereotypes. Rather, the agency must have reliable information it obtained from a credible third-party or through direct observation that an employee may have or does have a medical condition that impairs his or her ability to perform the essential functions of the employee's position or which creates a direct threat. *Milford R. v. Dep't of Def.*, EEOC App. No. 0120120081 (Dec. 3, 2015). At all times, the agency bears the burden to establish that the medical examination or inquiry is permissible under the Rehabilitation Act. *Milford R. v. Dep't of Def.*, EEOC App. No. 0120120081 (Dec. 3, 2015).

### **Examples Where Medical Inquiries and Examinations were Permissible**

In *Sid E. v. Department of Veterans Affairs*, the employee provided medical documentation to the agency that indicated he had physical restrictions which could prevent him from performing

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the essential functions of his position. EEOC App. No. 0120160009 (Sept. 20, 2017). After receiving the medical documentation, the agency sent the employee for a medical examination to determine if he could perform the physical requirements of his position. *Sid E. v. Dep't of Veterans Affs.*, EEOC App. No. 0120160009 (Sept. 20, 2017). The Commission held that the agency's decision to send the employee for a fitness for duty examination was permissible because "the request was a job related medical inquiry justified based on concerns related to his continued ability to perform the essential functions of his position." *Sid E. v. Dep't of Veterans Affs.*, EEOC App. No. 0120160009 (Sept. 20, 2017). Additionally, in *Sharon S. v. United States Postal Service*, the Commission held that the agency's medical inquiry was job-related and consistent with business necessity. EEOC App. No. 0120152133 (Sept. 15, 2017). The employee, who was pregnant, stated that her pregnancy was high-risk and her sister confirmed this fact to management in the employee's presence. *Sharon S. v. U.S. Postal Serv.*, EEOC App. No. 0120152133 (Sept. 15, 2017). The employee also "stated that if anything happened to her or she lost her baby, she would sue the Agency." *Sharon S. v. U.S. Postal Serv.*, EEOC App. No. 0120152133 (Sept. 15, 2017). Based on these statements, management requested that the employee provide medical documentation demonstrating that she could perform the essential functions of her position, which the Commission found permissible. *Sharon S. v. U.S. Postal Serv.*, EEOC App. No. 0120152133 (Sept. 15, 2017).

### **Examples Where Medical Inquiries and Examinations were Impermissible**

In *Arnold C. v. United States Postal Service*, the employee provided medical documents to the Agency showing that he suffered from major depression and, as a result, he was unable to perform his duties. EEOC App. No. 0120093856 (Nov. 3, 2015). Despite receipt of this documentation, the agency ordered the employee to undergo a medical examination. *Arnold C. v. U.S. Postal Serv.*, EEOC App. No. 0120093856 (Nov. 3, 2015). The Commission held that the medical examination was impermissible because it was based on the agency's disbelief of the employee's diagnosis and resulting inability to work. *Arnold C. v. U.S. Postal Serv.*, EEOC App. No. 0120093856 (Nov. 3, 2015) (citing *Cofield-Gipson v. Dep't of Justice*, EEOC App. No. 0120073270 (July 9, 2010)). In *Complainant v. Tennessee Valley Authority*, the Commission also held that the agency's decision to send the employee for a medical examination violated the Rehabilitation Act. EEOC App. No. 0120120140 (Jan. 15, 2015). In that case, the agency stated

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that it sent the employee for a medical examination because she behaved inappropriately during an investigation of her sexual harassment complaint, as well as when she used sick leave.

*Complainant v. Tenn. Valley Auth.*, EEOC App. No. 0120120140 (Jan. 15, 2015). The Commission held that the medical examination was neither job-related nor consistent with business necessity because “the Agency failed to present any persuasive evidence that Complainant engaged in any action that would have led the Agency to form a reasonable belief that she posed a direct threat to herself or others or could not perform the essential functions of her position.” *Complainant v. Tenn. Valley Auth.*, EEOC App. No. 0120120140 (Jan. 15, 2015). There also was no evidence that the agency had any concerns with the employee’s job performance or believed she posed a direct threat until after she provided information to the investigator in her harassment complaint. *Complainant v. Tenn. Valley Auth.*, EEOC App. No. 0120120140 (Jan. 15, 2015).

### **Conclusion**

There are limitations on an agency’s ability to send an employee for a medical examination or otherwise inquire about the employee’s medical information. Where an agency does not comply with these limitations, its actions may violate the Rehabilitation Act and constitute unlawful discrimination. A law firm experienced in representing federal government employees in federal sector discrimination complaints, such as the Wick Law Office, can help an employee navigate the medical inquiry and examination process, and assist in filing a discrimination complaint if necessary.

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