

Employee Medical Exams Permitted Under Limited Circumstances

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Requiring current employees to undergo a medical examination is unlawful, unless the ADA's requirements, and those of any comparable state law, are closely followed. The ADA generally prohibits employers from requiring current employees to submit to medical examinations, unless they can show the examination is "job related and consistent with business necessity." *Conroy v. N.Y. State Dept. of Correctional Services*, 333 F.3d 88 (2d Cir. 2003).

In *Conroy* the court laid out what an employer must prove to justify the examination. It stated it is not enough for an employer to demonstrate the exam is convenient or beneficial to its business. Instead it must show the asserted business necessity is "vital" to the business. The employer must also prove the exam genuinely serves the asserted business necessity, and that the request is no broader or more intrusive than necessary. The exam need not be the only way of meeting the necessity, but it must be a reasonably effective method of achieving the employer's goal.

Examinations normally meeting the test include exams to justify a request for medical leave; return to work exams; and exams to determine whether an employee can perform job-related duties when the employer can identify legitimate, non-discriminatory reasons to doubt the employee's capacity to do so. Also, employees seeking reasonable accommodations can be asked to provide sufficient medical documentation to substantiate their needs. When an employer reasonably believes the information provided is inadequate it may arrange for an independent medical examination at its own cost.

The Second Circuit's thinking in *Conroy* was recently supported by the Appellate Court of Connecticut. *Joyner v. Simkins Industries, Inc.*, 111 Conn. App. 93 (2008). In *Joyner*, the company fired the plaintiff for insubordination when she refused to submit to an independent medical exam after the company felt the documentation she previously provided was inadequate, and she failed to have her own doctor clarify her condition.

While employers have a right to require medical examinations under certain conditions, it is prudent to consult with counsel prior to making such a request, or taking adverse action based on an employee's failure to comply.

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