

## Focus | Labor & Employment/Immigration Law

# Putting Your Employees to the Personality Test

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Most of us have taken a personality test at one point—whether online for fun, for a class, or even when applying for a new job. When it is for fun or a class, we may not think much of the result, but it may be a little more stressful if the chance of getting an interview or job offer is on the line. “Do I want to be strong and independent, or do I want to look like a team player? Or something in between?” Employment lawyers must be mindful of whether their clients’ use of these personality tests will run afoul of state and federal discrimination laws.

Personality and integrity tests assess the degree to which a person has certain traits or dispositions (e.g., dependability, cooperativeness, safety) or aim to predict the likelihood that a person will engage in certain conduct (e.g., theft, absenteeism). Personality testing today is a roughly \$500 million industry, with an annual growth rate estimated at 10 to 15 percent. Eben Harrell, *A History of Personality Testing*, HARVARD BUSINESS REVIEW, (Mar.-Apr. 2017) available at [hbr.org/2017/03/the-new-science-of-team-chemistry#a-brief-history-of-personality-tests](https://hbr.org/2017/03/the-new-science-of-team-chemistry#a-brief-history-of-personality-tests).

A study conducted by the Society for Human Resource Management found that many organizations use personality testing for career development, and approximately 22 percent use it to evaluate job candidates. Approximately 76 percent of all companies with more than 100 employees are using these tests, and this number is expected to grow. Tomas Chamorro-Premuzic, *Ace the Assessment*, HAR-

VAR BUSINESS REVIEW (Jul. 2015) available at <https://hbr.org/2015/07/ace-the-assessment>. Despite their many benefits, these personality tests *might* violate Title I of the Americans with Disabilities Act (ADA) and cause an impermissible disparate impact under Title VII.

Employers have many reasons for wanting to learn more about their employees’ personalities, including maximizing productivity and minimizing risk. However, some of these tests have been challenged in court by individuals who took them at an employer’s insistence, and some courts have expressed uneasiness with their use.

For example, the Seventh Circuit in *Karraker v. Rent-A-Ctr., Inc.* held that an employer’s administration of a Minnesota Multiphasic Personality Inventory (MMPI) as part of a management test was a medical examination and violated the ADA. 411 F.3d 831, 837 (7th Cir. 2005). The *Karraker* case largely turned on whether the MMPI test was designed to reveal a mental impairment. The Court reasoned that psychological tests “designed to identify a mental disorder or impairment” qualify as medical examinations, but psychological tests “that measure personality traits such as honesty, preferences, and habits” do not. *Id.* Determining whether a specific personality test lands on either side of this dichotomy is inherently difficult without diving deeper into the test, its purported use, the results, and perhaps consulting with a psychologist.

In the *Karraker* case, the plaintiff argued the MMPI discriminated against potential employees with paranoid personality disorder (PPD), a disability protected by the ADA. While the plaintiff’s

expert psychologist concluded that a high score on a certain scale of the MMPI did not necessarily mean that the person had PPD, he also testified it would be likely that a person who does, in fact, have PPD would tend to register a high score on that scale of the test. Based on the way the test was evaluated, a higher score on that particular scale could potentially cost an applicant the chance at a promotion. Therefore, the Court concluded that because the MMPI was designed, at least in part, to reveal mental illness and had the potential effect of hurting the employment prospects of people with a mental disability, it was best categorized as a medical examination. *Id.* at 837. And even though the MMPI was only a part (albeit a significant part) of a battery of tests administered to employees looking to advance, its use, the Court ultimately concluded, violated the ADA. *Id.* at 837.

The United States Equal Employment Opportunity Commission (EEOC) Fact Sheet on Employment Tests and Selection Procedures offers additional guidance for employers considering the proposed uses of specific tests. The EEOC specifically cautions against casual use of these tests without understanding their effectiveness and limitations for the organization and their appropriateness for a specific job. Thus, given the wide range of available tests and possible applications, it is important for employers to consider the underlying purpose of the tests *before* implementing them in order to ensure compliance with applicable employment laws. **HN**

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