



In the Courtroom

You think your boss is crazy ...

Excerpted from [Arizona Employment Law Letter](#), written by attorneys at the law firm [Lewis and Roca LLP](#).

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The Seventh Circuit (covering WI, IL, and IN) recently held that requiring employees to take a psychological test *capable of* measuring mental disorders (whether or not you actually use the results for that purpose) is a "medical examination" used to screen out people with disabilities in violation of the Americans with Disabilities Act (ADA).

Promotional opportunities

Three brothers, Steven, Michael, and Christopher Karraker, all worked for Rent-A-Center, a chain of stores that rents appliances, furniture, and other household goods. Rent-A-Center required all employees who wanted to be considered for management to undergo a battery of nine tests designed to measure math and language skills as well as interests and personality traits, including the Minnesota Multiphasic Personality Inventory (MMPI).

The MMPI doesn't measure only personality traits, such as whether the applicant works well in groups. The test also measures whether the taker suffers from depression, paranoia, and other psychological conditions, and elevated scores on certain scales can be used by psychologists to diagnose certain psychiatric disorders. Although all nine management profile tests were scored together and the applicant received a composite score based on all the results, an individual could be eliminated from consideration for promotion simply based on how his MMPI results affected the composite score.

The brothers Karraker fail — but win in court

The Karrakers all "failed the test" — that is, each had more than the number of permitted deviations to be considered for promotion. They then filed a class-action lawsuit on behalf of Illinois Rent-A-Center employees asserting that using the MMPI as part of the company's management testing profile violated the ADA.

The court agreed, reasoning that Title I of the ADA expressly limits an employer's ability to use "medical examinations and inquiries" as a test to screen out people with disabilities, including mental disorders. Although Rent-A-Center could have argued that the test was permissible under Title I because it was job-related and a business necessity, it didn't. Consequently, the court focused on whether the MMPI fits the ADA's definition of a "medical examination."

Rent-A-Center maintained that the test wasn't a medical exam because it was used to measure only personality traits, not mental disorders, and wasn't scored by a

psychologist. The court disagreed, finding neither of those defenses persuasive. Instead, the case was decided against Rent-A-Center because the test *could* be used to diagnose mental disorders and, further, because the test's practical effect was that it likely eliminated employees with such disorders from being considered for promotions.

In other words, even though Rent-A-Center didn't *intend* to use the test as a means to diagnose disorders, because the test's results had the *effect* of weeding out those who suffered from such disorders, it was a medical exam that tended to screen out people with disabilities in violation of the ADA. *Karraker v. Rent-A-Center, Inc.*, No. 04-2881, 2005 WL 1389443 (7th Cir. 2005).

Leave psych tests to the professionals

This case doesn't hold that the ADA prohibits you from using personality tests to assist in gauging whether a particular employee is suited for a particular job. If, however, the test you're using is also used by behavioral health professionals to diagnose mental disorders, seek advice about whether to continue administering it. If it diagnoses mental disorders and can't fairly be considered job-related or a business necessity, you should discontinue its use and call your lawyer in the morning.

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