

## **Medical Standards for Job Medical Evaluations: How to Design, Implement and Manage**

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### **Introduction**

As usual, businesses sit on the razor's edge; they must provide for the safety and health of their employees, comply with complex governmental regulations and, at the same time, try to place all workers in jobs without regard to age, sex, race, religion, and, of course, disability, as mandated by the 1992 Americans with Disabilities Act.

The Americans with Disabilities Act (ADA) went further than the 1973 Rehabilitation Act, and for many employers this meant changing the way they offered and conducted medical examinations and utilized medical evaluation data in placing and accommodating employees. The key OSHA/business and employee/ADA issue, from a medical evaluation perspective, is whether and how the medical evaluation results and interpretations will be used in job placement for initial hire, continuing fitness for duty, and return to work from occupational and non-occupational injury and illness.

### **Need for Medical Exams**

There are three basic reasons employers should, and in many instances, are required to provide medical evaluations for prospective, current, and returning employees:

- *Initial* and *continued* placement (fitness-for-duty and return-to-work)
- Detection of potential adverse health effects from work (medical monitoring and surveillance)
- Health promotion

Contrary to some earlier interpretations, employers are not prohibited from requiring work-related medical evaluations for applicants or employees. The ADA also specifically makes exceptions for regulatory-mandated exams, such as U.S. Department of Transportation (DOT) required exams for truck drivers or OSHA exams for individuals exposed to specific hazards, i.e., asbestos. Additionally, it exempts *voluntary*

exams, such as those used in health promotion screening. However, when information is obtained that would place a prospective or current employee in a job with or without reasonable accommodations while performing the essential job functions without significant risk of injury, re-injury or illness, such information should be used by an employer in placement decisions.

In the present medical and governmental environment, it has become widely accepted that the proper medical approach to employee placement is that, "no individual should be placed in a job which will significantly increase the risk of illness or injury to him or herself, co-workers or the general community." This basic position has been endorsed or regulated by the American College of Occupational and Environmental Medicine (ACOEM), the Equal Employment Opportunity Commission (EEOC) and various other groups. In fact, without medical evaluations, employers face liability by placing an unfit worker in a potentially hazardous situation. For example, an individual with an unstable back, and clear clinical findings due to previous back trauma, should not be placed in a job requiring heavy material handling without medically approved accommodation. Nor should a worker with a particularly significant respiratory or cardiovascular condition be placed in a work environment requiring the use of a certain type of respirator.

There have been a number of cases where employees have gone outside of the exclusive remedy of workers' compensation and sued their employer directly for purposely placing them in a dangerous work environment, which the employer knew would cause injury/illness. This has been especially true in return-to-work cases where an improper or no medical evaluation was performed, and the employee was allowed to return to work in an "unfit capacity." There has also been associated litigation by third parties for "wrongful employment" and "wrongful retention" of an employee who did not meet the medical and physical requirements of their assigned jobs.

In addition to providing for employee safety and health and liability avoidance, employers must also try to contain workers' compensation costs and related expenses, such as replacement and training costs, lost productivity, increased use of management and administrative resources, and so forth. Thus, medical evaluations have been, and continue to be, an integral component in employee placement decision-making, liability avoidance, regulatory compliance, traditional healthcare cost containment, and company profitability.

## **Medical Standards**

The crux of ensuring that your medical examination program is job related and consistent with business necessity, as required by the ADA, and mandates the development of job-related medical standards. Medical standards have not only been used for many years by government and industry for firefighters and truck drivers (DOT Medical Standards-391.41), but also for assuring the absence of increased risk of exposure to various workplace hazards (e.g., asthmatics and bakery flour dust). Not all jobs in a given workplace have to be included, and jobs can be grouped where workers are normally

rotated through such jobs. However, all applicants/employees must be fairly and uniformly evaluated against the same medical standards. Medical standards must be developed by knowledgeable physicians (preferably with occupational medical expertise) based on critical job task (essential job functions) assessment. These critical job task factors are those identified, qualified, and quantified, which may be medically limiting either from the complete absence of, or a degree of, specific physical ability (e.g., strength), or the presence and degree of a specific medical condition (e.g., diabetes). These standards are essential in placement-related exams such as:

- Initial (contingent) hire
- Fitness-for-duty (e.g., respirator users, “impaired” worker)
- Medical monitoring and surveillance (OSHA requires physician job placement evaluations for its health standards)
- Return-to-work

## The Examination Protocol

Once medical standards are developed, an examination protocol can be established that is targeted to provide the medical information necessary to determine if a given individual meets the medical standards for a specific job. As always, clinical judgment is essential and, therefore, all evaluating physicians must have an intimate knowledge of covered jobs, critical job task factors and their related medical standards. Depending on the exact physical requirements, exposures, environmental conditions, the examination can include, among other items:

- Occupational and medical history
- Physical examination
- Job-specific functional screening; e.g., strength and endurance testing
- Pulmonary function testing
- Complete blood count
- Serum chemistry panel
- Audiometry
- Vision screening
- Urinalysis (including drug testing)

It is important to note that, with the exception of strength testing, the other exam components cannot be *exactly* job-related. This again is consistent with the ADA in that it is the *standards* that must be job related. If strength and endurance testing are part of the assessment, it has to be carefully evaluated and validated against the actual job. Many computerized strength-testing machines will not meet the ADA requirements as they have not been scientifically validated. In fact, most of these machines test isolated muscle groups and not the full range of musculoskeletal activities required to perform a specific job function. Thus, these and other tests may not truly reflect the ability of the individual to safely perform the job. In many instances where these tests have been explored, current employees performing their present jobs satisfactorily fail such tests. It is probably better and more cost effective, given the fees charged for such testing, to recreate the actual material-handling function and clinically validate it for use in the doctor's or physical therapist's office in a safe manner with proper size weights,

conditions, frequency, and so on. This can assure that the test is ADA-compliant, and more importantly, *truly represents the minimum necessary physical ability to safely perform the job.*

One question that arises repeatedly is the use of screening tasks, such as back x-rays and surface electro-sensory testing devices, to potentially assess an increased risk of carpal tunnel syndrome. The present position of the EEOC and the ACOEM, based on a large number of solid clinical studies and actual legal decisions, is that back x-rays, in a screening capacity, are neither specific nor predictive. They are, however, expensive and expose the individual to unnecessary radiation. Their use should be restricted to individuals with specific clinical indications from the history or physical exam. Surface electro-sensory testing for nerve entrapment has likewise not been shown to be predictive including in an important legal decision.

Another issue raised, especially by attorneys, is the use of health history questionnaires in the placement process. While there are justifiably strict limitations on what the *employer* may ask, the physician does and should have a wide range of information-gathering capability. That is the way that medical evaluations are, and must be, conducted. Physicians do not simply restrict someone from a certain work activity because of a "yes" or "no" answer to a question. They carefully probe, in depth and in concert with data gained from tests and the physical exam, prior medical record review, and so on, to assess whether a specific condition/issue does or does not meet the job-related medical standards. Since the medical information is confidential and remains with the physician, the applicant/employee is protected from improper dissemination and use of such information.

## Using the Information

Employers neither need nor do they have the right to receive actual medical data (with the notable exceptions for workers' compensation and health benefits claims). They do, however, need specific recommendations from the examining physician on a given applicant or employee with respect to whether that person:

- Meets the standards for a job or job group
- Does not meet the standards
- Is deferred until a potentially correctable condition is addressed; e.g., further review of medical records, specialized medical testing
- Has specific temporary/permanent medical restrictions

These recommendations are especially important in return-to-work activities, as frequently, medical case management activities are stalled when medical standards are not in place to determine whether an injured worker has reached maximum medical recovery (improvement), and if the worker can safely resume those job duties with or without medical restrictions. Specific job function capability determination is critical because of the ADA's provision for reasonable job accommodations. In most instances, it is a physician who must determine which *medical restrictions* are necessary, and for what duration; the employer, using those recommendations, can determine whether the

required accommodations are reasonable for its business operations.

## **The Physician's Role**

Producing an effective program to appropriately place applicants and current employees, *and* comply with the Americans with Disabilities Act, requires a team approach to include company and outside expertise as follows:

- Human resources
- Legal
- Operations
- Safety and health
- Risk management (workers' compensation)
- Occupational medicine

Due to the far-reaching impact on multiple company areas/disciplines, this team approach will assure that a synthesized, comprehensive plan is developed, and effective policies and procedures are implemented. It is vital to have occupational medical expertise throughout this process because such input is required in the four overall "fitness-for-duty" program components:

- Essential job function analysis (critical medically limiting job tasks)
- Job/job group-specific medical standards
- Medical evaluation programs and *standardized* medical restrictions
- Reasonable job accommodations

One of the most important considerations is that local healthcare providers (contract or in-house physician and nurses) will need training and education especially to assist those providing useful input on the medical aspects of a specific job accommodation. However, other important areas for occupational medical expertise and program development include:

- Forms and medical recordkeeping
- Medical consultation on "grey area" or difficult cases
- Defense of legal challenges
- Medical aspects for developing job descriptions and job task analysis
- Modified/temporary job duty versus permanent medical restrictions
- Physician/health provider policies and procedures manual

More recently, occupational health service providers have established national "virtual" clinical provider networks with information technology solutions to schedule, track, and peer review exams to assure quality, appropriateness of exams, and proper decision-making.

## **Summary**

The use of medical standards and fitness-for-duty medical evaluation programs, along with compliance with the Americans with Disabilities Act, actually provides employers

with an opportunity to properly place applicants and employees. This presents an ideal time for businesses to review their current occupational health, safety and medical examination programs and to update them, not only to be compliant with the ADA, but also to enhance their overall safety and health effectiveness, meet OSHA and other regulatory requirements and contain workers' compensation and related healthcare costs.

## **References**

Equal Employment Opportunity Commission. 1991. Americans with Disabilities Act. 29 CFR, Parts 1602, 1627 and 1630, July 26, 1991.

President's Committee on Employment of People with Disabilities. 1990. "Fact Sheet on: Medical Examinations: Are They Beneficial and Legal?"

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