



elimination of discrimination against individuals with disabilities.

The ADA is relevant to psychological testing in the employment context because the act includes mental impairments in its definition of “disability.” The court in the Rent-A-Center case particularly noted that people with psychiatric disabilities have suffered as a result of stereotypes, resulting in an employment rate that is drastically lower than people without disabilities.

Congress enacted three specific provisions limiting the ability of employers from using “medical examinations and inquiries” as a condition of employment. First, an employer cannot use medical examinations as pre-employment tests or before an offer of employment is made. Second, an employer cannot use medical tests that lack job-relatedness. Third, an employer cannot use medical tests that screen out or have the tendency to screen out people with disabilities. Under the ADA, the total prohibition against medical examinations is lifted once a conditional offer of employment is made. At that point, a medical test can be given provided that it is given to all similarly situated persons, the results are kept confidential, and the test is administered in accordance with the ADA.

In the Rent-A-Center case, three brothers were applying for manager positions within the company. In order to be considered for a promotion at Rent-A-Center, an employee was required to take an APT Management Trainee-Executive Profile, which consisted of nine tests designed to measure math and language skills as well as personality traits. In testing an applicant’s personality traits, Rent-A-Center chose 502 questions from the MMPI. Rent-A-Center scored the nine tests together, and any applicant with more than 12 “weighted deviations” was not considered for promotion. It was, therefore, possible for an applicant to be denied promotion solely because of his responses on the MMPI portion of the test.

But was the test a medical examination?

The Equal Employment Opportunity Commission defines “medical examination” as “a procedure or test that seeks information about an individual’s physical or mental impairments or health.” The EEOC lists several factors to consider when determining whether a test should be construed as a medical examination, any of which could be enough to determine that the test is medical. One such factor is whether the test is “designed to reveal an impairment of physical or mental health.”

The issue that the court had to decide in Rent-A-Center was whether the MMPI was considered a “medical examination” under the ADA. Specifically, the court had to decide if the MMPI was designed to reveal a mental impairment. If such a determination was made, then Rent-A-Center would be liable for damages to the plaintiffs because it violated the ADA, which prohibits the use of medical examinations in a pre-employment context. The court decided to look at this as a pre-employment situation even though the broth-

ers already were employed at Rent-A-Center because the brothers were essentially required to apply for new jobs within the company.

The Rent-A-Center decision can be distressing to companies that test applicants and employees because the court considered the MMPI portion of the test to be a “medical examination,” which could not be given in a pre-employment situation. The court came to this conclusion even though Rent-A-Center took affirmative steps that had been suggested by the EEOC to ensure that psychological tests used by companies were not classified as medical examinations under the ADA.

In particular, the company did not have the MMPI portion of the managerial test administered by a psychologist nor was the test interpreted by a psychologist. In fact, there are two tools for interpreting the MMPI, a vocational measure and a clinical measure. Rent-A-Center specifically used the vocational measure rather than the clinical measure in grading the responses in order to prevent the appearance that it was administering a medical examination.

In the end, none of this mattered to the Seventh Circuit. Instead, the court articulated a distinction between psychological tests that are designed to identify mental disorders and impairments and those that measure personality traits like honesty; the former in the court’s eye being classified as a medical examination under the ADA. Because the MMPI was designed, at least in part, to reveal mental illness, the Seventh Circuit found that it qualified as a medical examination that could not be administered in a pre-employment context regardless of whether the company took affirmative steps to ensure that it was used vocationally rather than clinically.

In contrast, the Eighth Circuit Court of Appeals decided differently when it examined the use of the MMPI in the context of testing police officer applicants. The plaintiff in *Miller v. City of Springfield* was a female applicant who applied for an officer position with the Springfield Police Department. The department required officer applicants to pass agility and psychological tests.

On the MMPI portion of the psychological test, Miller received a score of 66, which indicated above-normal depression. Based on these results, she was denied employment as a police officer. Miller sued the police department claiming she was screened out in violation of the ADA because of her psychological evaluation results. Unlike the Seventh Circuit in Rent-A-Center, the court in Miller found for the employer and determined that the MMPI was an appropriate job-related psychological screening tool that was consistent with a business necessity.

The differences between the Rent-A-Center and Miller decisions may simply be explained by the fact that courts may be more willing to accept certain psychological tests for applicants and employees when such tests serve a business necessity or are in the public interest. There is little doubt

