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Screening job applicants for prior workers' compensation claims

Because many workers' compensation claimants have had prior work-related injuries, employers sometimes ask whether they may screen job applicants for prior work comp claims. Most times, employers simply want information about prior claims so that they may take steps to prevent re-injury.

To comply with the federal Americans with Disabilities Act (ADA) and state laws, screening job applicants for prior workers' compensation claims, disabilities or medical histories is not appropriate. Most states have anti-discrimination laws prohibiting such screenings, including, human rights and fair employment laws in Minnesota, Iowa, Nebraska, South Dakota and Wisconsin.

An employer may not ask job applicants about prior workers' compensation claims, disabilities, or medical history. Additionally, it is improper for an employer to attempt to obtain that information from any other source. However, an employer may ask, either during the interview process or on an employment application, whether the employee can perform the essential functions of the position with or without reasonable accommodation.

Once a conditional job offer has been made, the employer may ask the applicant to submit to a pre-employment medical examination. A pre-employment examination must be required of all persons within the same job category and may only test for essential job-related capabilities. Providing the examiner with a written job description can be a valuable tool in pre-employment examinations. Any records developed as

part of the pre-employment process are required to be kept in a separate file from other personnel file information.

In addition to these limits on medical examinations and inquiries, the ADA and state laws specifically prohibit employers from discriminating against an individual who is "regarded as" having a disability. If an employer makes an adverse employment decision based on unsubstantiated fears concerning the risk of future injury or increases in workers' compensation premiums, such an action may constitute discrimination under the federal ADA and the state human rights and fair employment laws. Obtaining information about an applicant's prior worker's compensation injuries could provide the basis for such a claim.

SFM wants to stress to employers the importance of complying with the ADA and the state human rights and fair employment laws. But, even though you cannot investigate an individual's worker's compensation history before hiring the person, please know that SFM conducts a thorough investigation of every claim that is made for workers' compensation benefits. SFM strives to limit your workers' compensation liability to only those claims or parts of claims you should be paying.

The purpose of this legal advisory is to give some general information about the inappropriateness of screening employees for prior workers' compensation claims. You are well advised to consult with your own corporate counsel or an attorney specializing in employment law if you have additional questions.