

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 workers' compensation claims. Most times, employers simply want information about prior claims so that they may take steps to prevent re-injury. Because most employers are covered by the Americans with Disabilities Act (ADA) and/or the Minnesota Human Rights Act (MHRA), however, screening job applicants for prior workers' compensation claims is not appropriate.

An employer may not ask job applicants about prior workers' compensation claims. In addition, it is improper for an employer to attempt to obtain that information from any other source. An employer may ask, though, 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.

After a conditional job offer has been made, the employer may ask the applicant to submit to a pre-employment medical examination if the examination is required of all persons within the same job category. The examination may test only for essential job-related capabilities. Because the examination is limited to essential job-related capabilities, employers are not permitted to ask about prior workers' compensation claims or seek that history from an outside source.

In addition to these limits on medical examinations and inquiries, the ADA specifically prohibits 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 ADA. Obtaining information about an applicant's prior workers' 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 MHRA. But, even though you cannot investigate an individual's workers' compensation history before hiring the person, please know that SFM conducts a thorough investigation of every claim that is made for workers' compensation benefits. If we find that a claimant has sustained a prior work-related injury that may be contributing to a current injury, our claim-handling strategy will reflect that fact. In some instances, the claim representative may deny the claim entirely. In other situations, the claim representative may admit liability for only a temporary aggravation of a pre-existing condition. In all instances, we do our best 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.

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