

## Permissible Questions on Health Risk Assessments

The EEOC has recently indicated its position on health risk assessments by employers. It did so in response to an employer question as to whether, under the Americans with Disabilities Act (ADA), employees may be required to complete a health risk assessment in order to receive monies from an employer-funded health reimbursement arrangement. In that reply, the EEOC advised that once employment begins, an employer generally may make disability-related inquiries and require medical examinations *only* if they are job-related and consistent with business necessity. This standard may be met when an employer “has a reasonable belief, based on objective evidence, that: (1) an employee’s ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition.”

In addition, the EEOC pointed out that disability-related inquiries are also permitted to follow up on an employee’s request for reasonable accommodation or where the examination or other monitoring is conducted under specific circumstances (*e.g.*, such as where periodic medical examinations are required of employees in positions affecting public safety). Finally, disability-related inquiries and medical examinations are permitted as part of a voluntary wellness program. In this regard, a wellness program is voluntary if employees are neither required to participate nor penalized for non-participation.

The Commission then noted that the employer’s health risk assessment would require employees to answer many disability-related inquiries, including questions about how often they feel depressed; whether they ever have been told that they have certain conditions, such as asthma, cancer, heart disease, or diabetes; how many different prescription medications they currently take; and how much alcohol they drink. In the Commission’s opinion, requiring answers to disability-related inquiries as a prerequisite to obtaining reimbursement for health expenses does not appear to be job-related and consistent with business necessity. Because all employees are required to complete a health risk assessment as a prerequisite for eligibility for a health insurance program, there is no indication that the employer has concerns that a particular employee will be unable to do his job or will pose a direct threat because of a medical condition. Also, the employer does not appear to be obtaining medical information in response to a request for reasonable accommodation or because it is monitoring employees in positions affecting public safety.

As a result, the Commission informed the employer that disability-related questions on a health care assessment are not permissible as part of a voluntary wellness program. Those inquiries do not pertain to any of the permissible reasons to ask such questions. Moreover, any employee who does not complete the questionnaire is penalized by being ineligible to receive reimbursement for health expenses. Therefore, the Commission advised the employer that the ADA prohibits use of the health care assessment in this case.