



STRENGTH AND AGILITY TESTING **ADA LEGAL SUMMARY**

Frequently, prospective CRT clients request a plain language interpretation of the Americans with Disabilities Act (ADA) relating to pre-employment physical abilities testing. We understand how federal regulations can be confusing and it is tempting to assume the ADA severely limits an employer's conduct, however, this is not the case. Hopefully, the following interpretation of the ADA will be helpful. **This interpretation is not to be construed as providing legal advice.** You are encouraged to seek your own legal advice from counsel familiar with the ADA within the states in which you do business.

For a more in-depth interpretation on this subject, please refer to the legal monograph and monthly fact sheets on this website located at <http://www.costreductiontech.com/legal>. The monograph explains the case law and EEOC suggestions for physical employment testing in-depth.

Over the past ten years, since the creation of the ADA, there has been very little litigation to speak of outside of physical testing of police and firefighters. In this type of situation, less litigation is better.

The EEOC has set out Enforcement Guidance on this subject interpreting the Federal Code of Regulations regarding agility testing. The Federal Code of Regulations states **employers are permitted to use strength and agility testing for pre-employment evaluation.** It is absolutely acceptable to require a candidate to demonstrate s/he may be able to perform the required (essential) functions of the job (29 CFR § 1630.14(a)). The EEOC has stated guidelines of what must take place to be acceptable. CRT's testing is not considered a medical examination and therefore is an acceptable physical agility test under the code. The EEOC Guidance directly affirms "a physical agility test, in which an applicant demonstrates the ability to perform actual or simulated job tasks, is not a medical examination under the ADA."

Additionally, **employers have the right to legally refuse employment to applicants failing the physical agility test specifically designed for the respective job.** If the applicant is not physically capable of performing the "essential" job requirements, employers may refuse employment. The employer does not need to find another position for the applicant. If the prospective employee cannot perform the essential job tasks¹, s/he is not "qualified" and the employer owes no duty of any kind. This interpretation was upheld by the Supreme Court in Chevron U.S.A., Inc. v. Echazabal (536 U.S. __ 2002).

To summarize, pre-employment physical agility testing is legal under the ADA. A covered entity does not have to hire a candidate who cannot pass the physical agility test and therefore cannot

¹ It is assumed that the employer can not make any reasonable accommodations, without undue hardship, relative to the essential physical demands of the job.

perform the required essential job tasks. It is important to consider that entities are less likely to be challenged with a claim of discrimination if there are clear grounds for denying employment. By having the specific job requirements outlined (credible job task analysis of each job classification), and a CRT test result showing the prospective employee incapable of performance, there is a paper trail to support the decision not to hire. Without having performed physical agility testing, there is no concrete evidence that the decision not to hire is based on lack of ability versus age, sex, or perceived disability. It is much safer to have an agility test to establish conclusively that the candidate is not capable of performing job functions.