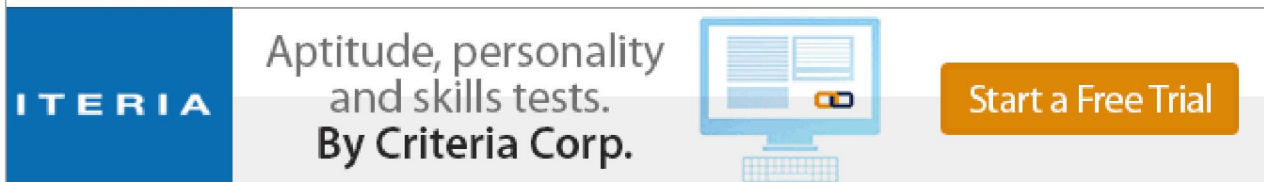



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When do fitness-for-duty inquiries go too far? EEOC weighs in

by [Christian Schappel](#)

September 19, 2014

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By now you know the Americans with Disabilities Act (ADA) allows to you subject an employee to a job-related fitness-for-duty exam. But even if the exam is job-related, that doesn't mean you can ask whatever you want as part of that exam.

That was the main takeaway of a new lawsuit filed by the Equal Employment Opportunity Commission (EEOC) against Minnesota-based Cummins Power Generation.


In its suit, the EEOC states that fitness-for-duty exams violate the ADA when they contain disability related inquiries that are not job-related or consistent with business necessity.

Asked to sign a medical release prior to exam

Here's what sparked the lawsuit, [according to the EEOC](#):

Cummins required an employee to undergo a fitness-for-duty exam that the EEOC says was legal because it was "job-related and consistent with business necessity."

But, the company required the employee to sign various medical release forms prior to the exam that the EEOC



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says “sought irrelevant information.” That crossed the line, according to the EEOC.

In addition, the EEOC alleges that the releases required the employee to disclose family medical history, which violated the [Genetic Information Nondiscrimination Act \(GINA\)](#).

A release issued by the EEOC, quoted John Hendrickson, regional attorney for the EEOC’s Chicago district:

“The EEOC doesn’t challenge Cummins’ request for a fitness-for-duty examination, but Cummins had an obligation to request only those medical records and information that actually pertained to that issue. Employees don’t give up all rights to privacy of their medical information when they get a job. By asking for all and sundry medical information, Cummins went too far. The EEOC is here to make sure employers follow the requirements of ADA – and of GINA, which is a newer statute that everyone needs to understand and observe.”

Bottom line: Not only do fitness-for-duty exams need to be job-related and consistent with business necessity — so do all inquiries made of employees in relation to those exams.

In addition, at no time should you ask employees about their family medical history (a.k.a., genetic info) in connection with anything related to decisions about the employees’ health insurance or employment status.

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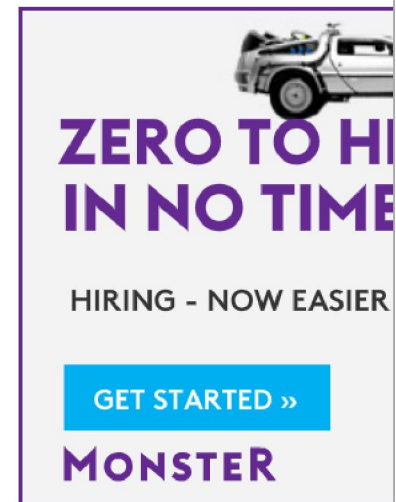
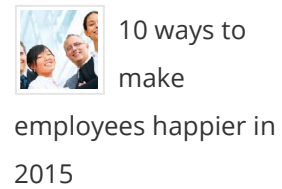
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