Personality Tests: Proceed with Caution
By Kathryn M. Davis

In a world where dating services promise to identify ideal mates through personality tests, it’s tempting for employers to imagine the same might be true for identifying ideal employees. Indeed, roughly 30% of all companies, including big names like Wal*Mart and General Motors, subject their applicants and employees to some sort of personality test. Judicial decisions, however, illustrate the risks employers assume by using and relying on such tests for employment decisions. This article surveys the use of personality tests historically, their purported benefits to employers, and the potential liability associated with the tests. Any employer utilizing a personality test to screen individuals for employment or promotion, should review its use of the test in light of the recommendations outlined below.

DEVELOPMENT OF EMPLOYMENT PERSONALITY TESTS

Employers of all types have long looked for ways to quickly and effectively cull through applicants to find those most likely to perform well in certain positions. In the early twentieth century, this need spawned the use of psychological tests to measure applicants’ and employees’ traits and aptitudes. For the large part these tests were created either by military psychologists for the purpose of screening military recruits for assignments in the first and second World Wars (including screening out the mentally ill altogether) or by clinical psychologists. A subset of these tests, the precursor of the modern personality test, were designed to test not aptitudes and intelligence but rather attitudes and behavioral traits.

In their modern form, these personality tests include well-known assessment tools, such as the Minnesota Multiphasic Personality Inventory (MMPI), the Myers-Briggs Type Indicator (MBTI), and the California Psychological Inventory (CPI). While widely used by employers to screen employees and applicants, these tests are generally not designed for that purpose. For example, the MMPI is specifically designed to identify personal, social, and behavioral problems in psychiatric patients. The CPI test — based on an early version of
the MMPI — is primarily used as an assessment tool for psychologists.

**BENEFITS OF TESTS FOR EMPLOYERS**

The appeal of personality tests is obvious. First, they lend objectivity to decisions that may otherwise be largely subjective. Second, they may more accurately predict success in a position than typical interviewing methods. For example, though it is widely believed that certain types of personalities are more suitable for certain positions, e.g., that extroverts are better suited for sales positions, it may be difficult to assess from an interview (where the individual is intentionally projecting the image he or she believes the employer wants to see) whether an applicant truly possesses the sought-after trait. Use of personality tests, it is believed, allows the employer to identify desirable personalities and then screen for those traits.

While obviously attractive to employers, personality tests may have significant downsides. Chief among these is the concern that the tests may not actually achieve their intended goal. Each of the widely used tests has encountered criticism (most particularly the MBTI has been criticized for lacking scientific basis), and there appear to be questions as to whether psychological personality tests can be validated for their effectiveness in employment situations.¹

In addition to the concern that the tests may be unhelpful or ineffectual, case law teaches that the tests can expose employers to litigation and damages. Claims related to these tests have been based predominately on theories of invasion of privacy and discrimination, and most recently on the theory they constitute impermissible medical examinations under the Americans with Disabilities Act (ADA).

**INVASION OF PRIVACY/ DISCRIMINATION**

Because many of the personality tests utilized by employers came into existence as assessment tools for mental health professionals, the tests often inquire into topics far removed from the workplace. This is true even where the tests have purportedly been tailored for the hiring process. As a result, applicants for hire or promotion may be confronted with very personal questions eliciting information, for example, related to their religious beliefs and sexual orientation. These sorts of questions have troubled applicants and courts because they seek information related to the applicants’ private life unconnected to job-related criteria or performance standards. As a result, these and similar questions have long been the basis of invasion of privacy and discrimination claims.

For example, in *Soroka v. Dayton Hudson Corporation*, 18 Cal. App. 4th 1200 (1991), Soroka, a successful applicant for a security officer position with Dayton Hudson, challenged its use of “Psychscreen,” a personality test based on a combination of the MMPI and the CPI. The Psychscreen test included questions related to the nature and depth of the applicant’s religious faith and sexual orientation. The applicant’s answers to the test were processed by a consulting psychologist firm that interpreted the answers and recommended either hire or no-hire based on the applicant’s rating on five traits: emotional stability, interpersonal style, addiction potential, dependability and reliability, and socialization.

Soroka asserted that the use of the religion and sexual orientation-based questions invaded the applicants’ privacy and discriminated against the applicants based on protected traits. To prevent further such invasions and discrimination during the pendency of the suit, Soroka sought a preliminary injunction. The trial court denied the request, finding that Soroka was unlikely to prevail on his claims. On appeal, the appellate court reversed, ruling Soroka was likely to succeed at trial.

Specifically, the court ruled that before an employer can inquire into an applicant’s or employee’s private life, the employer must establish that it has a compelling interest to do so and that the inquiry has a direct nexus to that compelling interest. Thus, here,
the employer had to show, e.g., that emotional stability was necessary for the performance of the security officer position and that a person’s religious beliefs or sexual orientation have a bearing on that person’s emotional stability or ability to perform the security officer job duties.

Additionally, the court ruled that inquiries related to protected categories must be justified as job-related. The Fair Employment and Housing Act (FEHA) prohibits non-job-related inquiries that express, directly or indirectly, any limitation, specification, or discrimination as to race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, or sexual orientation. To overcome this prohibition, the employer must demonstrate that the inquiry is sufficiently related to an essential function of the position to warrant its use. For example, the employer was required to show that a person’s religious beliefs had a bearing on that person’s ability to perform as a security officer.

**IMPERMISSIBLE PRE-SELECTION MEDICAL EXAMINATION**

More recently, employers using psychological personality tests have faced suits asserting that the tests constitute impermissible pre-selection medical examinations under the ADA. The ADA prohibits employers from subjecting applicants (either for hire or for promotion) to pre-selection medical examinations. While the ADA itself does not define medical examinations, the EEOC defines medical examinations as “a procedure or test that seeks information about an individual’s physical or mental impairments or health.” With respect to psychological tests, the EEOC draws the line between tests that are designed to identify a mental disorder or impairment (which constitute medical examinations) and psychological tests that measure personality traits such as honesty, preferences, and habits (which do not). This dichotomy raises the question: what if the employer’s personality test was designed to reveal mental disorders or impairments — for example, the employer uses the MMPI or a test based on it, but the employer intends to use it only for identifying personality traits. In *Karracker v. Rent-A-Center, Inc.*, 411 F.3d 831, 837 (7th Cir. 2005), the Seventh Circuit addressed just this question.

In *Karracker*, employees applying for management-level positions at Rent-A-Center (RAC) were required to take the MMPI test, the results of which were considered by RAC in making promotion decisions. RAC maintained that it used the MMPI test to measure personality traits, such as whether the individual worked well under stress or in large groups. The MMPI test, however, was designed also to measure other traits, such as depression, paranoia, and mania, and even certain psychiatric disorders, and included true/false questions such as “I commonly hear voices without knowing where they are coming from” and “I have a habit of counting things that are not important such as bulbs on electrical signs.”

RAC argued that its intent to use the test to divine personality traits should control with respect to whether its use of the MMPI violates the ADA. The court rejected this position. The court found “the practical effect of the use of the MMPI is similar no matter how the test is used or scored — that is, whether or not RAC used the test to weed out applicants with certain disorders, its use of the MMPI likely had the effect of excluding employees with disorders from promotions.” In other words, where a personality test is designed, at least in part, to reveal mental illness and has the effect of hurting the employment prospects of a disabled employee, the test will be deemed a medical examination, and its use will violate the ADA.

**RECOMMENDATIONS**

Employers currently using or considering using personality tests for selection decisions should take steps to
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review both the questions posed by the tests and the genesis of the tests.

All questions which solicit personal/private information should be evaluated to determine whether the employer has a compelling reason for the inquiry and whether there is a direct nexus between the inquiry and that compelling reason. Likewise, all questions that relate to any of the statutorily protected characteristics (in California: race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, or sexual orientation) should be examined to determine whether the inquiry is sufficiently related to an essential function of the position. Counsel should be contacted if any inquiry fails to meet these standards.

Further, Karracker makes it clear that the burden is on the employer to investigate the genesis of any personality test used and to ensure that it is designed solely to test personality traits, or to validate that the test is not having a disparate impact on disabled employees. Thus, employers — at the very least — should enquire as to the source of their tests, including whether the test is based on or incorporates an earlier or existing test used to identify or assess mental disorders or impairments.

1 According to a survey performed by the Aberdeen Group, 49% of employers using psychological personality tests in the hiring process saw no improvement in employee turnover, suggesting that the test did no better job-matching applicants to positions than more traditional selection methods.

2 At the time of the suit, the Fair Employment and Housing Act (FEHA) had not yet been revised to protect against discrimination on the basis of sexual orientation. Thus, Soroka’s challenge relied on Labor Code 1101 and 1102, which were interpreted to forbid such discrimination by private employers. Since FEHA’s revision, the court’s rulings with respect to the religion-based questions would apply equally to those questions inquiring into the applicant’s sexual orientation.

3 Cal. Gov’t Code § 12940(d).


6 Id.

7 RAC used the then current version of the MMPI. The MMPI has been significantly revised, eliminating many of the true-false statements found objectionable by applicants and employees.

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