MEASURING THE EFFECTS OF A UNIQUE LAW LIMITING EMPLOYEE MEDICAL
EXAMINATIONS TO JOB-RELATED MATTERS

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I. Background

A common practice in American business is to require medical examinations of individuals to determine whether they have the physical abilities to perform the requirements of the job. The key law regulating the medical aspects of employee selection is the federal Americans with Disabilities Act of 1990 (ADA). According to the ADA, no medical inquiries or examinations may be conducted until after a conditional offer of employment. Thereafter, employers may require, as a condition of employment, that the individual submit to an examination and release to the employer's medical officers medical records developed in the clinical setting.

Although a conditional offer of employment may not be revoked on the basis of a medical examination unless the reason for withdrawal is directly related to the inability to perform essential job functions, the examinations themselves need not be limited in scope. Thus, it would be lawful under the ADA for the employer to demand to review results of genetic testing or even to perform genetic testing itself. This prospect already has led to several negative consequences for individuals, employers, and society, including the following.

First, for individuals, disclosure of confidential and highly personal medical information may constitute an unwarranted interference in the personal affairs of individuals. Second, for employers, reviewing comprehensive medical records and performing detailed medical examinations are costly and cause a loss of good will, both of which would only be justified if they resulted in substantial savings in workers' compensation and health benefits costs and productivity gains. Third, for society, many individuals forgo genetic tests (or decline mental health treatment) because they are afraid of the consequences if their employer or insurer would obtain the records.

II. Research Problem

Under the ADA, state laws which are more stringent in protecting employee rights are not preempted by the federal law. One state, Minnesota, has had a law in effect since 1973 that prohibits employers from conducting any medical examinations at any time unless they are job related. Therefore, by analyzing data from Minnesota and comparing them with those from other states, it will be possible to determine what, if any, effect this law has had on the ability of employers to select and assign their workers efficiently without making undue medical inquiries.

The interdisciplinary team of professors and students from law, economics, and business will test the hypothesis that restricting employer medical inquiries at all times to job-related matters has not resulted in higher costs nor impaired productivity. If true, then laws based on the one Minnesota could be supported by employers, employees, and health care advocates.

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