

## **Ergonomics and the Law: a Practical Look at How Ergonomics and the Americans with Disabilities Act Intertwine**

With the advent of the Americans with Disabilities Act (ADA) in 1990, Congress legislated all employers with 15 or more employees to assess and provide reasonable accommodations to those people in the work force with disabilities to allow them to perform job tasks within their companies.<sup>1</sup> As a result of this legislative act, companies must now perform ergonomic assessments of jobs to properly assess accommodations that would be available to disabled persons applying for work.

A large share of the ergonomic assessments appear to be directed at the body mechanics involved in performing the job. This is an area in which the chiropractic physician can play an intricate role. The chiropractic physician can assist the company and applicant by providing proper ergonomic evaluations and suggestions for reasonable accommodations to allow disabled persons to be a functional part of the work force.

The Americans with Disabilities Act protects against discrimination of people with disabilities. It differs from other forms of anti-discrimination laws such as sex, race or religion in that it is very narrow and case-specific, whereas the others cover a more broad spectrum of cases. When dealing with the ADA, it is important to carefully assess the individual and the job to determine if this specific person can perform the essential functions of this specific job with reasonable accommodations.

Employers must determine what are the essential functions of each job within their company.<sup>2</sup> This is initially performed by writing job descriptions and determining which of the specific job tasks are essential to the performance of the job. Essential functions are basically defined as those tasks that are required for the specific job to exist.

There are three basic guidelines to assist companies in determining if the job task is essential:

1. The position exists to perform the function.
2. There are a limited number of other employees available to perform the function or among whom the function can be distributed to.
3. The function is highly specialized in that the person hired for the job must possess special expertise or ability to perform that function.

Reasonable accommodations are defined as any modification or adjustment to a job, an employment practice or work environment that enables an individual with a disability to enjoy an equal employment opportunity. Reasonable accommodations require consideration of both the specific abilities and functional limitations of the applicant and the specific functional requirements of the job. Examples include the creation of accessible work stations, equipment modifications and job restructuring.

An employer is not required to provide accommodations that impose an undue hardship on business operations. Accommodations that are extremely costly, extensive, substantial, disruptive or that would fundamentally alter the nature or operations of the business would be considered to have created a hardship for the employer.

In performing ergonomic assessments to determine reasonable accommodations, two factors must be taken into account: human factors and mechanical factors. Mechanical factors may include work station analysis; tools; ergonomic chairs; and line height or ramps which allow people access to the work site.

While chiropractors may have good ideas for mechanical factors, we truly shine on human factors. We understand proper body mechanics and the effects of motion, force and posture on the muscles, tendons and joints of the body. The goal should be to provide a body-neutral work station for the employee. By providing proper biomechanical analysis to the work site, the chiropractor can and should be an intricate part of the total ergonomic team. The chiropractor can also assist in the biomechanical analysis of what the applicant or employee can or cannot functionally perform to match the employee to the specific job.

Medical evaluations or examinations for applicants changed with the initiation of the ADA. Prior to the rules and regulations of the ADA, companies would routinely send employees for a medical examination as a condition of employment. A study found that companies with more than 500 employees were more aggressive with the use of pre-employment examinations, with approximately 87.8% requesting them as compared to 56.4% for employers with 100-499 employees.<sup>3</sup>

The goal of the pre-employment physical was to determine if this applicant had a probability or potential to injure themselves as a result of their employment with their specific company. Several types of examinations were provided by doctors including x-ray analysis and orthopedic/neurological examinations. The medical results were generally buried in the totality of the employment hiring process. If there was a negative examination, the application could have been denied employment based upon this examination, but the true reason could have been hidden from them.

Because of this "system" Congress made pre-employment medical examinations illegal to perform under the ADA.<sup>4</sup> If utilized, the medical examination must be performed post-offer/pre-placement. By making the medical examination post-offer contingent on passing the examination, the results could not be buried somewhere else and the applicant would know the rejection was based upon the examination.<sup>5</sup> If the employer withdraws his offer as a result of the post-offer medical examination, he must show that the reason was job-related and consistent with business necessity.<sup>6</sup>

The employer must also demonstrate that there are no reasonable accommodations that will enable the applicant with a known disability to perform the essential functions of the specific job.<sup>7</sup> There are DOT physicals and drug testing, which we will not discuss in this specific article, but medical examinations that consist of orthopedic or neurological testing must be done post-offer/pre-placement. While it may seem like a play on words or semantics, how and when you perform medical examinations for companies will determine if you are or are not violating the rules and regulations of the ADA. Even in 1998, some eight years after the enactment of the ADA laws, we still find companies at our seminars that are performing pre-employment physicals and doctors who call us for exam forms for pre-employment exams. So be careful to ensure that you are within the guidelines of the law when working with industries.

The type of medical examination has also changed. Under the ADA, the medical examination must be very specific and job-related. Determining if the applicant is medically qualified to perform the job involves two steps: There must be an evaluation of the physical and mental demands of the job, and the applicant must undergo a job-related medical assessment. Exclusions of individuals based upon generic medical criteria will be inherently suspect and in most cases disqualified. Basic examinations used to be workable for generalized industrial jobs or pre-ADA screenings, but are not workable for the demands under the ADA.<sup>8</sup> The focus of the medical examination must be on the ability of the person to perform the essential functions of the job. This is very case specific. The examining doctor must evaluate the specific applicant and the specific job and perform medical tests that either confirm or document the applicant's ability to perform or not perform the essential functions of that job.

It is important for the doctor performing the post-offer/pre-placement examination to have a thorough understanding of each job in the company for which he/she is examining applicants. Remember that the medical examination must also account for the ability to perform the job with reasonable accommodations.

As a side note, many companies have now discarded the medical examination as part of hiring because of the ADA. Others have continued to use medical examinations as a baseline for comparison if the applicant later has a workers' compensation injury, rather than as a basis for hiring. Under many workers' compensation laws, the company is responsible for returning the injured employee to pre-accident status. The baseline examination has been successful in documenting the condition of the employee prior to the injury.

The chiropractic physician can participate as a member on the industrial assessment team by providing biomechanical analysis for the determination of reasonable accommodations for disabled applicants. They can also perform post-offer medical examinations that correlate the specific or essential functions of the job to the functional abilities of the disabled applicant and assist employers in finding proper placement within their companies. The medical examination can also assist employers with developing baselines for assisting in workers' compensation cases.

### *References*

1. 42 U.S.C., section 12101.
2. Ibid.
3. 28 J Occ Med 1986 906, 907-08.
4. 2 U.S.C. section 12112(d)(2).
5. 29 C.F.R. 1630.14(b)
6. Ibid.
7. Ibid.
8. Bigos SJ et al. A prospective evaluation of pre-employment screening methods for acute industrial back pain. Spine 1992, vol. 17, no. 8.

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