



On February 11, 2020, the Equal Employment Opportunity Commission (EEOC) filed a complaint in Connecticut federal court against Yale New Haven Hospital—the teaching hospital associated with Yale Medical School—alleging that the hospital violated the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA) by implementing a policy that requires medical practitioners age 70 or older to submit to eye and neurological exams as a condition of getting or renewing medical staff privileges. Here's what happened:

The hospital had a longstanding policy that, at the time of appointment and every two years thereafter, all medical practitioners, had to undergo an evaluation of their skills and competence. If the evaluation revealed any indication that a practitioner's ability to provide care needed further evaluation, a separate "focused evaluation" would be performed.

In 2016, however, the hospital adopted an additional policy that, on top of requiring the biannual evaluation of all medical practitioners, it required that those age 70 and older must also take both eye and neurological exams to receive or renew their medical privileges. These additional exams were not required of any other category of practitioner. According to the hospital, these exams were designed to protect patients from harm while including safeguards to ensure that our physicians are treated fairly. In the three years following the implementation of the policy, it was applied to 145 individuals, and all but one practitioner who submitted to the exams were classified as either a "Pass" or a "Qualified Pass."

Despite the apparently high rate of success, one practitioner, Dr. Irwin Nash, filed a charge of discrimination with the EEOC. The EEOC agreed that Dr. Nash and all others subject to this policy were discriminated against based on their age and improperly subjected to medical testing. The EEOC's position is that the policy violates the ADEA because it subjects a class of individuals to differential treatment "solely because of their age and without any particularized suspicion that their eyesight or neuropsychological ability may have declined." The EEOC further contends that the policy violates the ADA because it requires certain employees to subject themselves to medical examinations that have not been shown to be job-related and consistent with business necessity.

KEY TAKEAWAY FOR EMPLOYERS

This type of late-career medical examination policy has become increasingly common for physicians, and this is the first time the EEOC has taken a stance on the legality of such policies. Although the EEOC is far from guaranteed to win this case, employers with similar late-career policies are now on notice that the EEOC's position is that they are discriminatory. Moreover, the EEOC's complaint indicates that it finds the biannual individualized assessment the hospital performs on all employees to be a sufficient and proper method for ensuring that practitioners are able to competently practice medicine, and it is consequently the safer course to avoid a charge of discrimination and a cause finding issued by the EEOC.

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