

Sixth Circuit Court of Appeals Considers Meaning of ADA Term "Medical Examination"

The Americans with Disabilities Act (ADA) prohibits employers from requiring an employee to submit to a "medical examination" unless the exam is job-related and consistent with business necessity. The statute does not, however, define the term "medical examination" and there is little case law to guide employers. Recently, however, the Sixth Circuit Court of Appeals (encompassing Michigan, Ohio, Kentucky and Tennessee) considered the meaning of the term, which provides some guidance to employers.

In *Kroll v. White Lake Ambulance Authority*, Kroll claimed that her former employer illegally required her to submit to a psychological examination. Kroll was an EMT who had become romantically involved with a married co-worker and soon began displaying signs of depression and having angry outbursts while working. Initially, Kroll's supervisor suggested she obtain "psychological counseling." But after an outburst while driving an ambulance with a patient inside, Kroll was directed to get psychological counseling or she would lose her job. Kroll refused, resigned her position and filed a lawsuit alleging a violation of the ADA.

The question faced by the Sixth Circuit was whether "psychological counseling" is a "medical examination" under the ADA. If so, Kroll's employer could have violated the ADA by requiring that she obtain counseling in order to keep her job. The court looked to interpretive guidance used by the Equal Employment Opportunity Commission and concluded that such counseling could be a medical examination.

One of the factors the court considered was whether the counseling is designed to reveal an employee's mental health condition. Importantly, the court noted that the employer's intention was not relevant to this question. Rather, it is the nature of the examination itself that determines whether it is a medical examination. Because "psychological counseling" *could* in some instances include a diagnosis of mental condition, the court concluded that a reasonable jury could find that the ADA prohibited the employer's requirement that the employee obtain counseling.¹

The *Kroll* decision is a reminder that even if an employer acts with the best of intentions it still may be liable under federal law, including the ADA. As Judge Sutton noted in his dissent, Kroll's employer "understandably tried to do something" about Kroll's erratic behavior. Nevertheless, the majority found that

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the ADA prohibits an employer from forcing an employee to obtain psychological counseling as a condition of continued employment.

¹ The court did not consider whether counseling was job-related and consistent with business necessity.

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