

# Court drops bombshell: FFD exam is OK for hazardous devices tech

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*Employers are responsible for their employees' on-the-job safety. That includes making sure an employee poses no danger to his coworkers or himself. But an employer that's worried about an employee's mental or physical condition must take care in how it addresses that concern. Some situations call for an employee to undergo a fitness-for-duty (FFD) examination, which is a medical exam to determine whether the employee is physically or psychologically able to perform his job.*

*Before requiring an FFD exam, an employer must be prepared to demonstrate that it has a legitimate and supportable reason to believe the employee poses a direct threat to his own health and safety, the health and safety of others, or company property. The employer must take care if the employee has a disability or is regarded as having a disability because the Americans with Disabilities Act (ADA) poses strict rules in that situation. When the ADA comes into play, an employer may require an FFD exam only if it is job-related and consistent with business necessity.*

### **Explosive situation**

Charles Pickard suffers from a minor hand tremor, which he asserts doesn't affect his ability to perform his job as a hazardous devices technician for the Tucson Police Department's (TPD) bomb squad. In December 2012, another bomb technician contacted the chief of police about his concern that Pickard's shaking hands were affecting his work. At the time, no action was taken. According to Pickard, he wasn't required to submit to any physical tests, and the chief stated the issue had been thoroughly examined and wouldn't be raised again.

Pickard claimed his sergeant later became hostile toward him for questioning TPD procedures. In fact, the hostility between the two escalated to the point that the chief transferred Pickard from the bomb squad to Homeland Security in April 2013. Pickard returned to the bomb squad when the sergeant retired in March 2014.

During a demonstration course, Pickard spilled nitromethane, a liquid chemical. After the spill, the TPD informed him that he wouldn't be able to handle chemicals or explosives until he submitted to an FFD exam. The physician who conducted the examination determined that Pickard's tremors likely wouldn't prevent him from working on the bomb squad. However, the physician believed that because of the nature of his work, it was appropriate to refer him for a neurological evaluation.

The neurologist found Pickard's tremors wouldn't cause problems with his work as a hazardous devices technician. After Pickard submitted the findings to the TPD, he was again permitted to handle dangerous substances.

### **No crying over spilt nitromethane**

Having been required to undergo an FFD examination, Pickard believed the TPD had discriminated against him in violation of the ADA. As a result, he sued his employer for disability discrimination in Arizona federal district court, claiming it regarded his hand tremor as a disability and engaged in discriminatory actions based on the perceived disability.

TPD contended the FFD examination was initiated as a direct result of Pickard's spilling a dangerous chemical, not because it regarded him as disabled. The employer therefore asked the court to enter

judgment in its favor and dismiss his claims without a trial.

### ***FFD exam justified***

Under the ADA, an employee may be required to undergo a medical exam if it is (1) related to the job he performs and (2) consistent with business necessity. That means the exam must be directly connected with, and must substantially promote, business necessity and safe job performance. An employer has a defense to an ADA discrimination claim based on a mandatory FFD exam if it can demonstrate the exam was related to the specific skills and physical requirements of the employee's position.

an employee has a certain medical history (e.g., cancer) doesn't necessarily mean he can't perform his job. Prior to an FFD exam, you should provide as much information as possible to the medical professional conducting the exam. That includes a job description detailing the essential functions and physical demands of the position.

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the FFD exam was directly related to Pickard's performance as a hazardous devices technician and was consistent with a business necessity (i.e., safe performance in the position). Pickard's self-serving statements that he wasn't a danger to anyone were contradicted by the fact he had spilled nitromethane.

The court noted it "would be contrary to reason to argue that a medical examination determining the severity of [Pickard's] hand tremors was not related to his job or inconsistent with a valid business necessity." A possible hand tremor during the performance of his job could be lethal to him or the people around him. The fact that TPD returned him to full duty after he cleared the exam was additional evidence against his discrimination claim. For those reasons, the court dismissed Pickard's claims against the TPD.

### ***Takeaways***

Keep in mind that the ultimate purpose of an FFD exam is to determine whether the employee can withstand the physical demands of his job or to ensure he can perform the job duties safely. In addition to addressing performance concerns as a result of a workplace accident (e.g., Pickard's spill), FFD exams can help you uncover an employee's capacity for work following a medical leave of absence.

As you assess whether an FFD exam is appropriate, remember that each case is individual. The fact that