

GET READY FOR A NEW JOB TEST

By DIANE STAFFORD
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Job applicants are accustomed to the drug test routine: Get a job offer, pass the drug test, be employed – in that order, no exceptions.

Amendments to the Americans with Disabilities Act, effective Jan. 1, may cause a different kind of post-offer, pre-employment test to become a more common part of hiring routines.

Changes in the law broadened the legal definition of a disability to include many more physical limitations. That's causing employers to brace for more lawsuits from applicants, claiming they've been victims of disability discrimination.

Matthew Condon, president of the Athletic and Rehabilitation Center in Overland Park, says some of the expected lawsuit

avalanche could be stemmed if employers follow this hiring mantra: "Standardize your processes, individualize your assessments."

Part of his business is to help employers do that first step – get a current analysis of what "essential functions" are actually involved in doing the job.

Then, Condon advises, a standardized, post-offer, essential functions test can determine if all applicants can meet those real-life requirements.

If an applicant fails the post-offer test, there's a post-offer "window of opportunity," he says, for employers to have access to medical information to determine if the failure was attributable to a disability.

A disability, then, requires a "reasonable accommodation" discussion – at

least in workplaces of 15 or more employees where the ADA applies.

If assistive technology or duties realignment can allow the person with a disability to do the job without undue hardship to the employer, that's the law.

But if the post-offer test finds that the applicant isn't disabled but simply can't meet the essential requirements, there's a level of proof that disability discrimination wasn't the basis for not hiring.

Discrimination claims rarely are based on clear-cut, indisputable evidence of bias.

"The ADA can be a can of worms," Condon admits.

But standardized, functional pre-employment testing can help bring clarity and protection in the legal minefield.