



CLIENT NEWS BRIEF

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COURT RULES EMPLOYER MAY REQUIRE A FITNESS FOR DUTY EXAM IF JOB-RELATED AND CONSISTENT WITH BUSINESS NECESSITY

In Brownfield v. City of Yakima ___ F.3d ___ (2010 WL 2902503) (“Brownfield”), the Ninth Circuit Court of Appeals confirmed that an employer does not violate an employee’s rights under the Americans with Disabilities Act (“ADA”) by requiring a fitness for duty examination as long as the examination is job-related and consistent with business necessity. In the appropriate circumstances, a fitness for duty examination can be a useful tool for employers to determine an employee’s ability to perform the essential functions of his or her position.

Oscar Brownfield was a police officer for the City of Yakima (“City”). He suffered a head injury in an off-duty car accident, but returned to full duty and received positive performance evaluations over the next three years. Approximately five years after his injury, he began to repeatedly exhibit emotionally volatile behavior. Specifically, Mr. Brownfield had a confrontation with his superior for which he was temporarily suspended for insubordination. In addition, he engaged in a disruptive argument with another officer, felt himself losing control at a traffic stop, was the subject of a disputed domestic violence call, and made concerning statements to another officer. Mr. Brownfield refused to complete a fitness for duty evaluation. He was terminated on the grounds of unfitness for duty and insubordination.

Mr. Brownfield filed suit alleging that the City violated the ADA by requiring him to submit to a fitness for duty examination. Under the ADA, an employer may not require a medical examination to determine whether an employee is disabled. However, an employer may request a fitness for duty examination under the ADA if the employer can establish that the examination is job-related and consistent with business necessity.

Mr. Brownfield argued that the business necessity standard cannot be met without a showing that an employee’s job performance has suffered as a result of health problems. The court disagreed and held that the fitness for duty examination was appropriate in this instance because the business necessity standard may be met even before an employee’s work performance declines if there is a question as to whether an employee is still capable of performing his or her job.

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The court cautioned that while business necessity applied in this case because of the critical nature of the work performed by Mr. Brownfield the standard to prove business necessity is still high.

This case reiterates that a fitness for duty examination under the ADA may be initiated by an employer if the examination relates to the employee's ability to perform his or her job and is necessary for the operation of the employer's business. If you have any questions regarding the fitness for duty examination process under the ADA, please do not hesitate to contact one of our [seven offices](#) located statewide or consult our [website](#).

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