

Why Post-Offer Fitness Screens are an absolute necessity

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DISCLAIMER: This article is intended for general guidance only and does not constitute or substitute for legal advice. Every employer should review with legal counsel all application forms, pre-offer, post-offer, and post-employment procedures and policies for compliance with statutory and regulatory compliance.

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The Risk of Hiring without a Post-Offer Fitness Screen

For many companies, obtaining a baseline health history and assessment of fitness for performing essential job demands is often overlooked during the hiring process. In fact, a recent survey by WorkAbility Network revealed that less than one-sixth of employers include post-offer fitness screens. Skipping this essential risk management strategy leaves companies vulnerable to:

- Increased workers compensation costs
- Inappropriate or fraudulent work-related injury claims
- Lost productivity related to absenteeism or restricted duty
- Excessive turnover and replacement costs
- Increased future liability and legal expenses

The ability to identify and effectively manage inappropriate or fraudulent Workers' Compensation claims directly impacts bottom-line profitability.

The cost-to-savings ratio is readily apparent when a workers' compensation injury claim is prevented. Given that work-related injuries cost an average of \$3,000 for medical-only claims and \$25,000 for a lost-time claim, your investment in a Workability Screening program can pay off immediately with the prevention of a single work-related injury.

The ability to identify and effectively manage inappropriate or fraudulent Workers' Compensation claims directly impacts bottom-line profitability. One way to dramatically reduce the number of "instant" claims for Carpal Tunnel Syndrome and other cumulative trauma disorders is to identify pre-existing impairments in workers entering jobs that have risk factors for musculoskeletal injuries. For State Fund Employers in Ohio, documenting an accurate baseline health status may further reduce their experience rating by applying for Handicapped Reimbursement.

Indirect (hidden) costs related to employee training or retraining, lost administrative time, loss of production, equipment down-time and employee morale can easily equal more than four times the amount of direct claims cost. For instance, the safety record of a construction subcontractor may be a deciding factor that determines whether they receive the contract in a competitive bid process. Additionally, post-offer health screen information may be used to encourage employees with pre-existing health problems to lower their risk factors that contribute to escalating healthcare benefits costs by reinforcing appropriate healthcare or wellness interventions.

Legislative Guidelines

Uncertainty about how to implement a defensible program is the primary reason companies give for not requiring employee health screening. Methods for assessing a worker's health status and fitness-for-duty are influenced by civil rights legislation and court decisions related to employment practices, including Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act (ADA) of 1991, and guidelines from the Equal Opportunity Commission (EEOC).

Title VII of the Civil Rights Act of 1964 prohibits discrimination by employers against applicants or workers based on race, color, religion, sex or national origin. The EEOC has published Uniform Guidelines on Employee Selection Procedures that state that any selection procedures resulting in an adverse impact constitute discrimination and may not be used unless substantial evidence of validity exists or a study is in progress to provide additional evidence of validity within a reasonable time.



Title I of the Americans with Disabilities Act (ADA) of 1991 prohibits employers from discriminating against a qualified individual with a disability if the individual can perform the essential functions of the job, with or without reasonable accommodation. The EEOC has provided enforcement guidance on disability related inquiries and medical examination of employees under the Americans with Disabilities Act that impact the administration of health and fitness screening:

1. **Pre-Offer:** At the pre-offer stage, the EEOC guidelines permit procedures that are not considered impermissible exams, such as, tests for current illegal drug use, psychological tests of personality traits (that are not designed to elicit information about a mental disorders), and physical agility tests that measure the ability to perform actual or simulated job tasks. **Disability-related inquiries and medical exams are prohibited even if they are related to the job.**
 - A *disability-related inquiry* is a question (or series of questions) that is likely to elicit information about a disability. Examples include: asking about the nature and severity of the person's disability, requesting medical documentation, and asking about prior Workers' Compensation history.
 - A *medical examination* is a procedure or test that solicits information about an individual's physical or mental impairments or health. Examples include:
 - Vision tests conducted by an ophthalmologist or optometrist
 - Blood, urine, and breath analyses (other than for current use of illegal drugs)
 - Nerve conduction tests
 - Range-of-motion tests
 - Muscle strength tests
 - Pulmonary function tests
 - Psychological tests designed to identify a mental disorder
 - Diagnostic tests such as X-rays, MRIs, and CAT Scans
 - Fitness tests such as running or lifting that involve medical tests such as heart rate or blood pressure monitoring
2. **Post-Offer:** After a conditional offer of employment has been made, unrestricted health exams, testing and inquiries are permitted; however, if the employer withdraws the offer based on medical information (screens out the person because of a disability), the reason must be job-related and consistent with business necessity. Exams must be done on all entering employees in the same job category. When an individual is rejected as a "direct threat" to health and safety, the employer must be prepared to show:
 - A significant current risk of substantial harm (not speculative or remote).
 - The specific risk must be identified.
 - The risk must be documented by objective medical or other factual evidence regarding the particular individual.
 - Even if a genuine significant risk of substantial harm exists, the employer must consider whether it can be eliminated or reduced below the level of a "direct threat" by reasonable accommodation without undue hardship to the employer.



3. **Post-Employment:** Any required medical exam or inquiry of employees must be job-related and consistent with business necessity. Employers may offer periodic health screening as part of a voluntary wellness program.

The ADA requires employers to treat medical information obtained from a disability-related inquiry or medical examination as a confidential medical record. Employers may only share such information under limited circumstances with supervisors, managers, first aid or safety personnel. Further regulations concerning the protection and disclosure of medical information are covered in privacy standards required by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, which took effect on 4/14/03. HIPAA provides patients with access to their medical record and limits the use and disclosure of protected health information for reasons other than treatment, payment or healthcare operations without specific patient authorization. All medical information, without exception, about employees must be kept confidential. This means keeping the information in a separate medical file, not in the employee's personnel folder.

Given these facts, it is certainly possible – in fact, it is absolutely essential – to implement an employee screening program in a practical manner that is cost-efficient and compliant with regulatory requirements regarding fitness-for-duty screening and use/disclosure of private medical information. The organizational benefits are also considerable. A Post-Offer Fitness Screen speaks loudly of a corporate culture willing to invest in human capital.

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Workability Fitness Screen Program

Setting up an efficient and cost-effective post-offer fitness screening program requires careful planning and thought. The Workability Fitness Screen Program may be tailored to give your company information needed to make proper placement decisions, as well as reduce future risk for absenteeism or lost-productivity.

As a minimum, a defensible post-offer screening program should include the following:

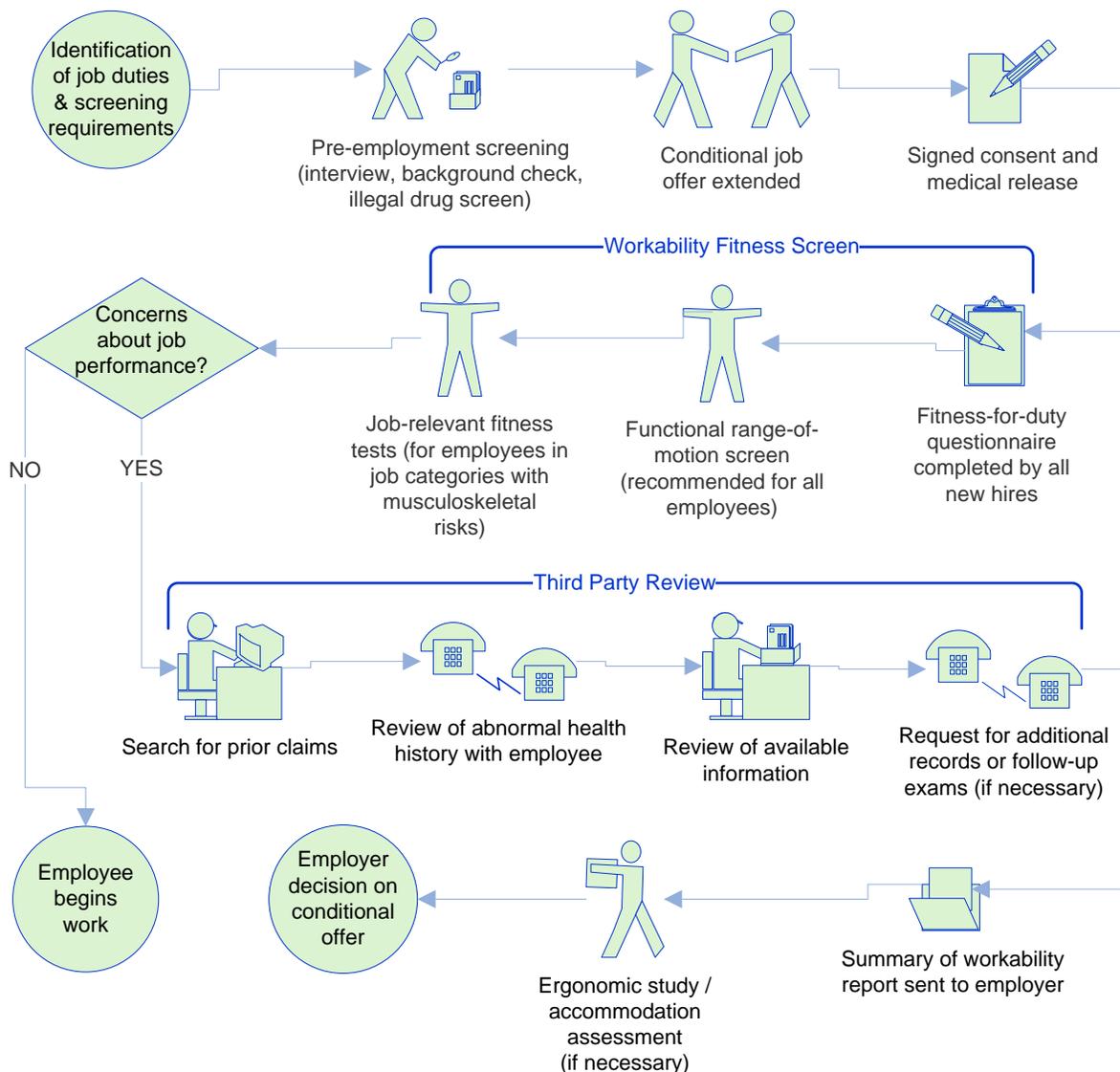
1. **Functional Job Description:** a description of essential functions, physical job demands and environmental conditions for successful job performance.
2. **Fitness-For-Duty Questionnaire:** a health history questionnaire completed by the employee that provides a mechanism for capturing baseline health status and lifestyle functional abilities. Failure of the worker to provide honest and accurate responses on the health questionnaire may provide grounds for withdrawal of the job offer, claim denial or termination.
3. **Medical Examination:** The initial scope of the medical examination must be consistent for all persons entering a given job category; however, other follow-up inquiries, tests or exams are permitted to investigate a health problem that may impact job performance. For example, if the initial exam identifies concerns about a ability to safely perform job functions, the subject may be scheduled for follow-up Workability Injury Assessment by a licensed physical or occupational therapist to



objectively measure a worker's functional capacities relative to job demands and investigate possible accommodation options.

- 4. Third-Party Review:** Because of HIPPA regulations, many employers have an independent healthcare provider function as the reviewer and gatekeeper of all medical tests and inquiries. Additionally, the reviewer can follow-up with the job candidate to encourage appropriate healthcare or wellness interventions that lower a person's risk for future health problems. In the event of a future work-related injury claim, the reviewer may also be consulted to review pre-existing health problems and evaluate the appropriateness of requested claims allowances. Employers should review third party relationships with knowledgeable legal counsel.

Typical Evaluation Process



❖ Conclusion

Well-tuned organizations that view post-offer fitness screens as an effective strategy for cost reduction have a substantial advantage over the competition. Some of the many benefits to be gained from a post-offer fitness screening program include:

- ❖ Establishing a baseline fitness status (post-offer) to prevent fraudulent or inappropriate injury claims.
- ❖ Verifying employees are capable of safely performing marginal or essential job duties.
- ❖ Encouraging employees to reduce personal health risk factors that contribute to escalating benefits costs.

Well-tuned organizations that view employee health screens as an effective strategy for cost reduction have a huge advantage over the competition.

Employers' post-offer procedures and third party review procedures can be effective cost-containment strategies so long as they comply with statutory and regulatory requirements. These measures help companies make informed and impartial job placement decisions and help insure proper placement for qualified individuals with disabilities. Armed with the right tools, services, and internal cooperation, employers can successfully mitigate health risks related to hiring and retaining employees.

❖ References

Equal Employment Opportunity Commission (2000). Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA). Publication Number 915.002.

Equal Employment Opportunity Commission (2001). Uniform Guidelines on Employee Selection Procedures, Code of Federal Regulations Title 29, Part 1607.

About the Author

Rick Wickstrom, PT, CPE, TWD is a Licensed Physical Therapist, a Certified Professional Ergonomist, and a BWC-Certified Transitional Work Developer. He earned his bachelors degree in Physical Therapy from the Ohio State University and completed his Ph.D. coursework in Occupational Ergonomics at the University of Cincinnati Department of Environmental Health. As President and owner of Workability Systems, Rick has been a consultant in occupational health and ergonomics for over twenty years. He has provided expert testimony and published many articles and technical papers related to functional capacities evaluation, work injury management, and ergonomics. Rick has several inventions to his credit, including the patented Physical Agility Tester (PAT), Total-Body Dexterity Ring, Ergo-Kit Dynamometer, Ergo-Totes Set and PAT Agility Mat. Rick has also developed worker assessment protocols, software and training to support Workability Network's services. He serves as Membership Chair for the Ohio Physical Therapy Association.

WorkAbility Network (WAN) provides professional therapy services at work and clinic locations, emphasizing objective fitness-for-duty exams and safe transitioning of injured workers back to productive duty. With over 100 work-site providers and therapy clinics in Ohio, WAN supports companies in their efforts to reduce OSHA-recordables and shorten the recovery time from date of injury to return to FULL DUTY or Maximum Medical Improvement.

For a complimentary review of your company's screen program, call 866-772-1026.

