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THE HAZARDS OF RÉSUMÉ SCREENING

It is popular now for employers to use screening tests, often administered on the Internet, to weed out a large portion of applicants for job openings before making the more difficult selections from among those who survive that first cut. Such tests are supposed to measure cognitive ability, personality characteristics, or, in fewer instances, the ability to perform in a simulation of the duties that the job requires. The easily administered and scored screening tests have their appeal, especially if you are charged with filling, say, 10 positions from 100 people who have submitted résumés.

A downside to screening tests is the risk that rejected applicants may persuade a court that the tests essentially were a tool to accomplish prohibited discrimination, even though that may not have been the employer's intent. For example, an employment test that impacts racial minorities or women disproportionately could lead to liability unless the employer can show that the test is sufficiently related to the job and is necessary to the employer's business.

Another potential pitfall stems from the prohibition in the Americans with Disabilities Act (ADA)

against medical testing of job applicants. There sometimes is a fine distinction between acceptable personality or psychological tests and prohibited medical tests. The screening of applicants also could run afoul of some state statutes that protect against invasions of privacy.

When individuals adversely affected by a personality test challenged the test in federal litigation under the ADA, an appellate court struck down the test. The test, at least in some of its 502 questions, was a prohibited examination of the applicants' mental health. Its true or false questions went much farther than the acceptable lines of inquiry about matters such as working well in groups or in a fast paced office. Instead, they ventured into the realm of psychiatric disorders. In this case, a prospective manager of a rent to own store could not be required to give true or false answers to statements such as: "I see things or animals or people around me that others do not see"; "At times I have fits of laughing and crying that I cannot control"; or "My soul sometimes leaves my body."

RESTAURANT HAS NO DUTY TO PROVIDE MEDICAL RESCUE

A Pennsylvania man recently sued a restaurant after he choked on a piece of chicken and was not rescued or treated by any of the restaurant employees. The patron was able to walk and speak but had difficulty breathing. The restaurant's employees first tried to have the patron drink water and then summoned an ambulance.

The patron had to undergo emergency surgery to treat a tear in his esophagus. He later sued the restaurant and claimed that, since restaurant owners should expect that patrons may choke on food, owners should train their staff in performing

the Heimlich maneuver and in the administration of general emergency treatment for people who are choking.

The Pennsylvania court dismissed the case, finding that restaurants cannot be expected to keep their staffs trained in emergency medical treatment. The court ruled that a restaurant whose employees are on notice that a customer is in distress and in need of emergency medical attention has a legal duty to come to the assistance of that customer. However, a restaurant does not have a duty to provide medical training to its food service personnel or

medical rescue services to its customers who become ill or injured. A restaurant meets its legal

duty to a customer in distress when it summons medical assistance within a reasonable time.

REPORT ACCIDENTS TO PROTECT YOUR INSURANCE CLAIM

“Underinsured” motorist coverage is insurance that you purchase from your own insurance company to pay for your losses if you are injured by someone who does not have enough of his or her own liability insurance to pay for all of the injuries you may suffer. “Uninsured” motorist coverage is insurance that you purchase to pay for your own losses if you are injured by an uninsured driver or by a hit and run driver.

Recently, a Pennsylvania highway worker was frustrated to find that she lost her entitlement to make a claim for uninsured motorist benefits because she did not report the accident to the police. The worker was injured when she was forced to jump out of the way of an unidentified vehicle while working as a flagger on the highway. She promptly reported the incident to her employer and to the insurance company, faxing the insurance company a copy of the written report that she filled out for her employer. The insurance company later denied the claim on the grounds that its policy and Pennsylvania law both require that all uninsured motorist accidents must be reported to the police.

The Pennsylvania court acknowledged that the insurance company was correct. Both the policy and the Pennsylvania automobile insurance laws require that persons who are injured or who make any claims for uninsured motorist benefits must

report the accident to the insurance company within 30 days and also must report the accident to the police “or proper governmental authority” as soon as possible.

Unless you make a prompt police report, you will lose any claims you have for uninsured motorist benefits. Remember that your uninsured motorist coverage pays you for claims you have against individuals without any insurance and also for claims you have against a phantom driver who injures you and flees the scene. If a negligent driver cannot produce reliable written evidence of current insurance coverage, assume that he or she has none and treat the incident as one involving an uninsured driver.

Unless your injuries prevent you from waiting at the accident scene, you should do so, even if it seems unnecessary or annoying. Reporting the accident after leaving the scene could be deemed untimely. If no police are available to come to the scene, you should go to the police department if possible. If your injuries prevent you from staying at the scene, take all the steps you can to be sure someone else reports the incident to the police for you. Furthermore, since the law does not define any other “proper governmental authority,” it is wisest to report such incidents only to the police and to be sure to make arrangements to get a copy of the police report.

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*For more information, please contact **Vlad Tinovsky** at vtinovsky@tinovsky.com or 215.568.6862.*

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