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HOSPITAL'S AGE-BASED PHYSICIAN SCREENING POLICY UNDER ATTACK

On October 23, 2026, the U.S. District Court for the District of Connecticut (the "Court") denied cross-motions for summary judgment in a closely watched challenge to a hospital's age-based physician screening policy. In *EEOC v. Yale New Haven Hospital, Inc.*, No. 3:20-cv-00187 (KAD) (D. Conn. Oct. 23, 2026), the Court concluded that factual disputes precluded a determination at summary judgment of whether the hospital's policy violates the Age Discrimination in Employment Act ("ADEA") or Americans with Disabilities Act ("ADA").

THE POLICY AND THE EEOC'S CHALLENGE

The hospital's Late Career Practitioner Policy requires physicians and other practitioners age 70 and older who seek or maintain clinical privileges to undergo ophthalmic and neuropsychological examinations at appointment and every two years thereafter. If testing identifies potential impairment, additional evaluation may follow before the hospital determines whether the practitioner's clinical privileges should be affected.

The Equal Employment Opportunity Commission ("EEOC") filed a lawsuit against the hospital in February 2020, alleging that the hospital's Late Career Practitioner Policy violates the ADEA because it imposes employment requirements based on age and violates the ADA because it requires medical examinations that are not job-related and consistent with business necessity. The hospital contends that the policy does not violate the ADEA because it falls within the bona fide occupational qualification ("BFOQ") exception, and it does not violate the ADA because it is "job-related and consistent with business necessity." After nearly three years of discovery, summary judgment motions were fully briefed in May 2023, more than three years before the Court ruled.

THE COURT'S DECISION

The Court emphasized that patient safety is a legitimate and important concern. The parties did not genuinely dispute that age is the single greatest indicator of cognitive decline, that such decline is often difficult to detect or that "safety matters." But as the Court put it, "[t]his is, unfortunately, where the agreement ends." The Court concluded that factual disputes remain as to whether the hospital's particular policy satisfies the requirements of the ADEA and ADA.

Relying on the second of the two BFOQ pathways recognized by the U.S. Supreme Court, the hospital must establish that age is a legitimate proxy for the relevant safety-related job qualifications because individualized assessment would be "impossible or highly impractical." *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 414 (1985). Here, the Court found factual disputes over whether age 70 is an appropriate proxy and whether the hospital could adequately address competency concerns through individualized assessment. For example, the hospital's expert estimated that cognitive impairment may affect as many as 28% of physicians age 70 and older, while the EEOC's expert opined that the rate among 70-year-olds is likely below 5%.

Under the ADA, employee medical examinations generally must be "job-related and consistent with business necessity." 42 U.S.C. § 12112(d)(4). Although workplace safety may constitute a business necessity, the employer must show that the examination "genuinely serves" that necessity and is "no broader or more intrusive than necessary." *Conroy v. N.Y. State Dep't of Corr. Servs.*, 333 F.3d 88, 97-98 (2d Cir. 2003). In this case, the Court found disputed questions concerning the effectiveness of the hospital's testing and whether the policy is appropriately tailored, including because it applies to practitioners with significantly different responsibilities**,** such as those who teach but do not treat patients. The EEOC also pointed to evidence that the hospital granted extensions and allowed some practitioners to continue practicing despite troubling test results, arguing that inconsistent enforcement undermines any claim of business necessity. *See Wright v. Ill. Dep't of Child. & Fam. Servs.*, 798 F.3d 513, 526 (7th Cir. 2015). The Court found that this argument likewise "underscores the intensely factual nature of the issue."

The Court therefore concluded that the case "cannot be tried on the papers." According to the Court, the determinative factual disputes concern the policy's "purpose; its function; its implementation; its efficacy; [and] its impact." Both parties' motions were denied, and the Court indicated that the case would proceed toward trial.

The Court also observed that the case is significant to the health care industry and to other industries where age is arguably a "legitimate proxy" for safety-related job qualifications, but that a ruling for either side would offer limited guidance on what type of policy might

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withstand scrutiny. The Court described the parties' "inability or unwillingness to work together to devise an appropriate, perhaps even age-based, plan or process" that protects patients from physicians who may be experiencing cognitive decline, while remaining sufficiently tailored to comply with the ADEA and ADA, as "extraordinarily and frustratingly unfortunate."

PRACTICAL TAKEAWAYS

This case underscores the difficult balance health care entities face between protecting patient safety and complying with anti-discrimination laws. Health care entities with existing late-career practitioner policies, or those considering implementing such policies, should consult with counsel regarding compliance with the ADEA, ADA and other applicable laws. In particular, health care employers should understand the following:

- **Age-based screening policies remain legally unsettled.** The Court did not hold that late-career practitioner policies are categorically lawful or unlawful. Instead, the Court's decision indicates that the defensibility of such policies may be fact specific and depend on the evidence supporting the age threshold, the nature and effectiveness of the testing and how the policy operates in practice.
- **Patient safety alone does not end the analysis.** Health care entities should be prepared to demonstrate why age-based testing is necessary to address identified patient-safety concerns, why the testing is appropriately tailored to practitioners' actual duties and whether individualized alternatives are available.
- **Consistent enforcement matters.** Granting extensions or allowing practitioners to continue practicing despite concerning results may undermine an argument that testing is a business necessity. Organizations with these policies should apply them consistently and document the basis for any exceptions.
- **Hospitals and health systems should review existing late-career practitioner policies.** In particular, organizations should consider whether age automatically triggers medical or cognitive testing and whether concerns about cognitive decline could instead be addressed through individualized assessment, such as existing peer review and competency processes.

If you have any questions on issues discussed in or related to this topic, please contact:

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