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Decision Reminds Employers: Minimalist Medical Inquiries Are A Must

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Employers need input from employees' doctors in order to determine their and their employees' respective rights and obligations under the Americans with Disabilities Act (ADA), Family and Medical Leave Act, disability plans, and workers' compensation statutes. Yet employers potentially violate the ADA's restrictions on medical inquiries if they ask for too much medical information about employees. A decision last week from the U.S. District for the District of Colorado underscores this tension, and reminds all employer to ensure that their forms for obtaining medical information are focused as narrowly as possible on obtaining the medical professional's assessment of the employee's ability to perform job duties, and that it have a carefully designed program establishing what parts of the company, acting in which capacities, have which information about employees.

In *Fraser v. Avaya, Inc*., the Court determined among other things whether the employer's medical authorization form might not be "job related and consistent with business necessity" as required for medical inquiries under the ADA. The purpose of the form was to determine the employee's eligibility for a short term disability plan administered by the plan. The form included the language:

> I understand that the Medical Information will be used only to evaluate whether or not my medical condition satisfies the requirements of federal, state or local FMLA and disability laws, state Workers' Compensation and/or Avaya's welfare benefit plans.

While the court recognized that the employer in its capacity as plan administrator might need this information, it found that a jury could find that the form created the risk that medical information could be provided to employer representatives acting in other capacities, and therefore might exceed the job related/business necessity standard. The language seems very appropriate, and one wonders if this issue might be challenged on appeal to the court of appeals. Perhaps if the form had not attempted to cover several purposes at once (though the efficiency in doing so is understandable), it might have withstood the court's scrutiny. Regardless, employers are reminded yet again of the delicate balance between exercising their rights under statutes implicated by employee health issues without running afoul of the ADA's restrictions on medical inquiries.