



EEOC Challenges Yale New Haven Hospital's "Late Career Practitioner Policy" in Discrimination Suit

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The U.S. Equal Employment Opportunity Commission (the "EEOC") sued Yale New Haven Hospital ("Hospital") on February 11, 2020, alleging the hospital is in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et. seq.*, the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, *et. seq.*, and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a, by adopting and implementing a "Late Career Practitioner Policy" in 2016. Specifically, this policy requires any medical provider age 70 and older who applies for, or seeks to renew, medical staff privileges at the hospital to take both an ophthalmologic and a neuropsychological medical examination. The suit alleges medical providers under the age of 70 are not subject to this requirement.

Since the policy's implementation, the hospital has subjected approximately 145 medical providers, age 70 or older, to these medical examinations, most of whom have passed. The hospital has since disputed the allegations in the lawsuit stating, "Yale New Haven Hospital's late career practitioner policy is designed to protect our patients from potential harm while including safeguards to ensure that our physicians are treated fairly." The EEOC, however, believes that "while Yale New Haven Hospital may claim its policy is well-intentioned, it violates antidiscrimination laws...[and]

there are many other nondiscriminatory methods already in place to ensure the competence of all of its physicians and other health care providers, regardless of age."

Specifically, the EEOC contends that the additional medical examinations are solely due to the age of the provider with no particularized suspicion that the provider's eyesight or neuropsychological ability may have declined. The EEOC believes the policy violates the ADEA because it "subjects employees to the stigma of being singled out due to their age" which ultimately has the "effect of depriving medical providers age 70 and older from equal employment opportunities." The EEOC also contends that the additional medical examinations violate the ADA's prohibition against subjecting employees to medical examinations that are not job-related and consistent with business necessity.

The EEOC is seeking a permanent injunction enjoining the hospital from engaging in any employment practice that discriminates based on age, an injunction against the hospital's Late Career Practitioner Policy, as well as reinstatement, reinstatement, front pay, back wages, liquidated damages, punitive damages, and costs. It is unclear if the Hospital employs physicians or merely credentials them as independent contractors.

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While the EEOC has implied it will continue to scrutinize the adoption and implementation of policies that utilize age-based assumptions, it is not clear how the court will rule.

Polsinelli will continue to monitor developments in this case and are advising clients to allow the issues raised by this case to be decided by the courts before making any substantive changes to their own medical staff policies. Interested readers are encouraged to check back for a future e-alert.

¹ *EEOC v. Yale New Haven Hospital Inc.*, D. Conn., No. 3:20-cv-00187.

² 42 U.S.C. § 12112(d)(4)(A).

