COUNTY OF LOS ANGELES
DEPARTMENT OF HUMAN RESOURCES

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MICHAEL J. HENRY
DIRECTOR OF PERSONNEL

November 22, 2005

To: All Department Heads

From: Michael J. Henry
Director of Personnel

Subject: **TIMING OF PRE-EMPLOYMENT MEDICAL EXAMINATIONS**

This memorandum is to clarify that as part of the hiring process, medical examinations are not to commence until all non-medical, pre-employment processing is completed. The authority for the Director of Personnel to require medical examinations is contained in the "Medical Standards for Employment" (Civil Service Rule 9). In addition, the Americans with Disabilities Act (ADA), states that employers "may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant."

Recently, in *Leonel v. American Airlines Inc.* (03-15890) (see attached summary from the Equal Employment Opportunity Commission), the United States Court of Appeals for the Ninth Circuit clarified the ADA protection. In ruling on this case, the Court explained that medical examinations are prohibited until after the employer has made a "real" job offer. A job offer is considered to be real if the employer has evaluated all relevant non-medical information which it reasonably could have obtained and analyzed prior to giving the offer. This includes background and reference checks. Further, the Court rejected arguments based on expediting the process due to competitive hiring markets and/or convenience to the applicants.

Based upon this clarification of ADA requirements, departments must ensure that medical examinations do not commence until all non-medical components of the pre-employment process are completed (i.e., reference checks, background clearances, etc.). To ensure that departmental practices are consistent with these requirements, DHR will be issuing a policy on this subject and ensuring compliance during our operational audits of departments.

The information contained in this memorandum has been reviewed and cleared with County Counsel.

Please contact me if you have any questions or your staff may contact Sandra K. Taylor, Human Resources Manager, at (213) 974-2616.

MJH:STS
SKT:KK

Attachment

c: Each Supervisor
Administrative Deputies
Personnel Officers

I: Knox: MJH memo re Med Exams

ADA Legal Update 2005

Prepared by the Equal Employment Opportunity Commission
for the 2005 Job Accommodation Network (JAN) Conference

Leonel v. American Airlines, 400 F.3d 702 (9th Cir. 2005). Applying the ADA rule that prohibits disability-related inquiries and medical exams until after the employer has made a "real" job offer, the court held that a job offer is "real" if the employer has either completed all non-medical components of its hiring process or can demonstrate that it could not reasonably have done so before issuing the offer. Here, the employer's offer of jobs as flight attendants to the plaintiffs was contingent not only on their successfully completing the medical component of the hiring process but also on the completion of background checks, including employment verification and criminal history checks. The court held that the employer was not entitled to summary judgment on applicants' ADA challenge to the medical exams administered, because there was a question of fact as to whether the employer could have reasonably completed the background checks before initiating the medical examination process. In response to the employer's alternative argument that it did not consider the medical exam results until after it completed plaintiffs' background checks, the court stated that the statute regulates "the sequence in which employers collect information, not the order in which they evaluate it." Thus, "[w]hether or not it looked at the medical information it obtained. . ., American was not entitled to get the information at all until it had completed the background checks."