

Agility Screenings v. Post Offer Screenings ADA Compliance

	Agility Screening	Post-offer Screening
Purpose	<ul style="list-style-type: none"> To aid employer in selecting applicants with the highest qualifications, including the selection of applicants with the greatest ability to perform the essential job functions. 	<ul style="list-style-type: none"> To ensure that there are no medical or physical reasons why a chosen applicant cannot perform the essential job functions without being at imminent risk of harm to himself/herself or others. To collect baseline medical data and identify pre-existing conditions for future reference should an injury or illness occur.
When can you do it?	Before the offer of employment	After the offer of employment
What can you test?	<ul style="list-style-type: none"> <u>Selection</u> procedures only Tests that produce data that cannot legally be used as selection criteria should not be performed at this stage through an agility screening. Selection procedures must comply with EEOC's Uniform Guidelines on Employee Selection Procedures (job-related, consistent with business necessity, and have content, construct or criterion validity that proves the selection procedure is valid for testing important aspects of the job) No medical tests, therefore cannot be administered by a medical professional 	<ul style="list-style-type: none"> Can test anything you want to, but revocation of offer can only be based on tests that are job-related and consistent with business necessity (i.e. inability to perform essential job functions) Cannot revoke offer for medical condition or disability that does not pose a direct threat to the employee or others
How can test results be used?	<ul style="list-style-type: none"> To select applicants who perform best among all applicants who may meet minimum qualification standards 	<ul style="list-style-type: none"> Can only be used to exclude applicants who are a direct threat to themselves or others Cannot be used to select highest performers because

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		applicant has already been offered the job before being tested
How is “passing” criteria set?	<ul style="list-style-type: none"> Employers use the Agility Screen to select applicants with the best abilities Minimum “passing” criteria is the ability to perform the essential job functions but meeting minimum qualification standards is not a guarantee of a job offer. 	<ul style="list-style-type: none"> “Passing” criteria is set at the minimum qualification standards (minimum skills/abilities required to safely perform the essential job functions. Applicant passes unless he/she is a direct threat. Direct threat defined as more likely than not for risk of imminent harm.
Can screening procedures be changed, added or deleted? (Distinguish between Procedures and Qualification Criteria)	<ul style="list-style-type: none"> Yes, as long as they still meet EEOC Guidelines for having validity with regard to testing important job-related skills (essential job functions), however.... <i>Selection</i> procedures (essential functions agility screening items) should only change if the job demands change or a more valid selection procedure is developed/discovered. Procedures to test essential functions may be added if they were not previously tested 	<ul style="list-style-type: none"> Screening procedures can be changed as long as hiring decisions are only made on data that is job-related and consistent with business necessity. <i>Selection</i> procedures (essential job function tests) should only change if the job demands change. <i>However</i>, other medical screening procedures that are done to collect baseline data but are not used as selection criteria can be

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		changed at any time.
Can “passing” scores (criteria for selection) be changed?	<ul style="list-style-type: none"> • Employer can set selection criteria higher than minimum qualification criteria because no job has been offered yet. • Selection criteria must be consistently applied so no discrimination occurs. (For instance, inconsistently applied selection criteria looks like discrimination if an employer decides to hire all male applicants who meet minimum qualification criteria on one day but only hires those who meet higher criteria on a subsequent day, denying jobs to females who met minimum qualifications) • Minimum selection criteria should not be set below the essential job functions! • Essentially, Employer can be more selective (because no job offer has been given) but cannot select those who are unable to perform essential job functions. 	<ul style="list-style-type: none"> • Employer has already offered the job and therefore can only revoke offer if applicant is a direct threat (does not meet minimum qualification criteria). • Minimum selection criteria must be used. Employer cannot set higher selection criteria unless job demands increase.