

Legalities of Screening at the Three Stages of Employment

SAFETY EXPO 15: TAKE THE JOURNEY TO SAFETY

Sponsored By

Colorado Division of Human Resources

Lone Tree, Colorado

September 8, 2015

Presented by

Gregory B. Cairns, Esq.

Legalities of Screening at the Three Stages of Employment

Learning Objectives

1. Learn about the three stages of employment according to the EEOC.
2. Discuss which screening methods are compliant with the ADA.
3. Learn fundamentals of essential function descriptions (job analyses).
4. Learn basic do's and don'ts of hiring.
5. Explore differences between a physical agility test and a medical exam.
6. Enumerate ten bases for withdrawing a conditional job offer.
7. Identify do's and don'ts for firing



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Biography:

Mr. Cairns' practice focuses on workers' compensation defense and related employment law. Mr. Cairns attended the University of Wisconsin at Madison where he received a Bachelor of Arts degree with honors in Psychology in 1975. He also attended the University of Wisconsin at Milwaukee where he pursued a Master's in industrial psychology. Following graduate school, he obtained his law degree from the University of Texas at Austin in 1982. Mr. Cairns has been licensed to practice law in the State of Colorado since 1982.

Mr. Cairns has 33 years of experience as a defense attorney in matters relating to workers' compensation and employment law. He has published several articles in The Colorado Lawyer concerning employment issues and pre-judgment interest, and has been a frequent speaker concerning workers' compensation, pre-employment testing, the American with Disabilities Act of 1990, and the Family and Medical Leave Act of 1993. He has taught basic legal research in the paralegal training programs for Metropolitan State College in Denver and the Denver Paralegal Institute. In addition, he is the founder and principal instructor for The Center for Workers' Compensation Training, a private occupational school.

Mr. Cairns, who hails from Wisconsin, currently practices as principal shareholder in Cairns & Associates, P.C. in Denver, Colorado.

Would You Hire This One?



- PORTER ADVENTIST HOSPITAL
- 2525 S. DOWNING – DENVER, CO 80210
 - 303-778-5630
 - CT SCAN

•

» DOB:

AGE: 50

• MR #: 0000446349

SEX: M

RACE:

• REQUISITION #: 1253-0071

SSN #:

• AFN #: 004463490002

DOCUMENT #: 457885.ljd

• LOCATION: CTSN
1XOPT

STATUS:

•

• ATTENDING PHYSICIAN:

Michael J. Guese, MD

• PRIMARY CARE PHYSICIAN:

Michael J. Guese, MD

• ORDERING PHYSICIAN:

Michael J. Guese, MD

• PRIMARY DIAGNOSIS: SCIATICA

• INDICATION FOR EXAM: SCIATICA

Would You Hire This One?



- PORTER ADVENTIST HOSPITAL
- 2525 S. DOWNING – DENVER, CO 80210
 - 303-778-5630
 - CT SCAN (*Continued*)

•

• IMPRESSION:

- 1. Broad-based annular disk bulges L2-3, L3-4, L4-5, and L5-S1.
- 2. Degenerative neural foraminal narrowing particularly on the left at L4-5 with mild impingement on the exiting left L4 root.
- 3. Incidentally note is made of what appear to be multiple left-sided renal cysts. Characterization of these lesions is difficult in the absence of intravenous contrast. Renal ultrasound or CT scan might prove helpful in further evaluation.

- READING RADIOLOGIST: Peter E. Ricci, MD
- DICTATED AND AUTHENTICATED BY: Peter E. Ricci, MD/*R
- D: 09/10/2002 T: 09/10/2002
- 457855.10/000027914

• CT SCAN

Page 2 of 2

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PHYSICIAN'S

The Ten Goals/Uses/Benefits of Medical Employment Testing

1. *Self-Screening*

2. *Screening*

3. *Baselining*

4. *Safety Training*

5. *Wellness Education*

6. *ADA Analysis*

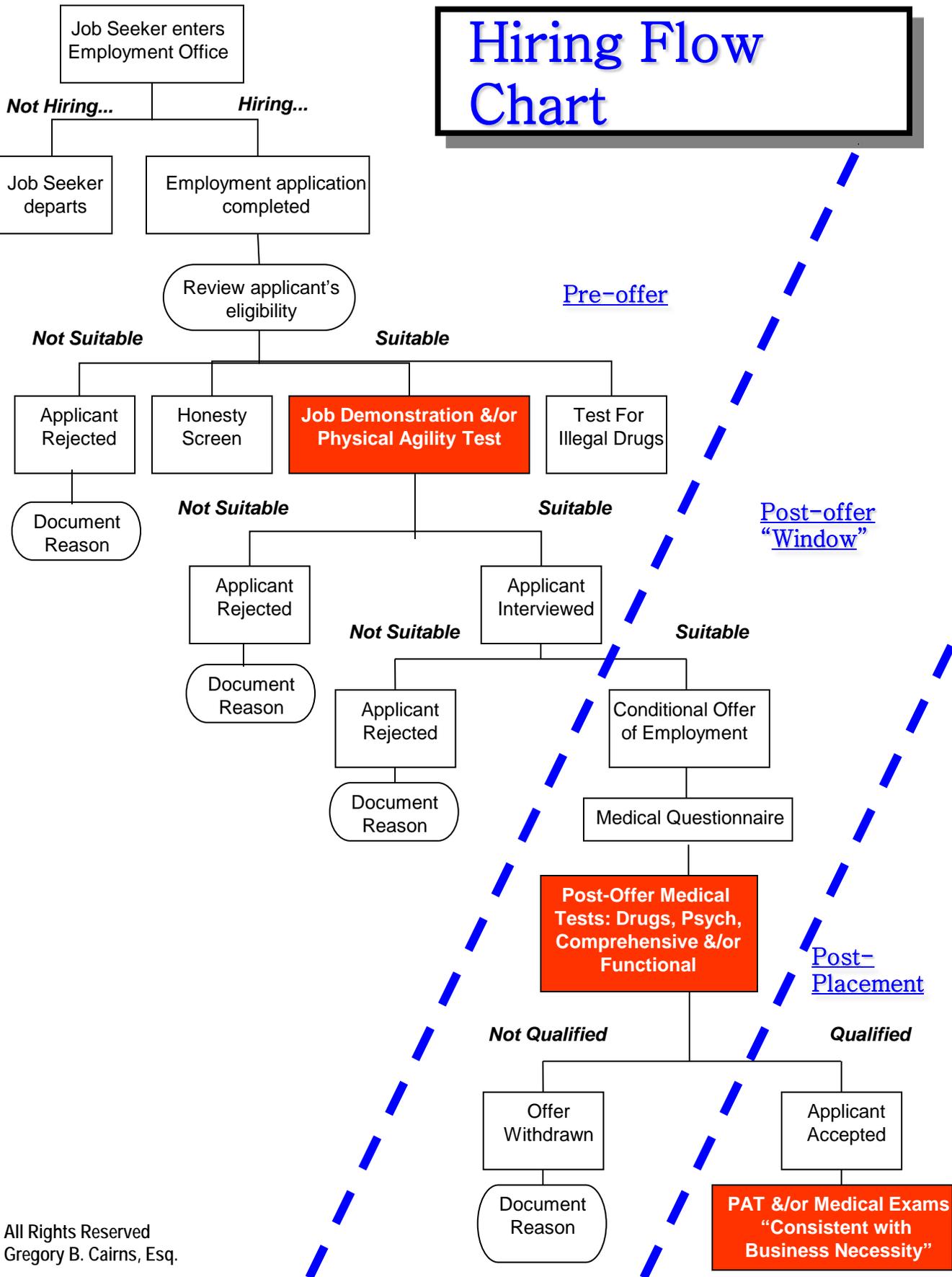
7. *Ergonomic Fit*

8. *Safety Contracting*

9. *Cognitive Assessment*

10. *Communication of Employer Concern*

Hiring Flow Chart



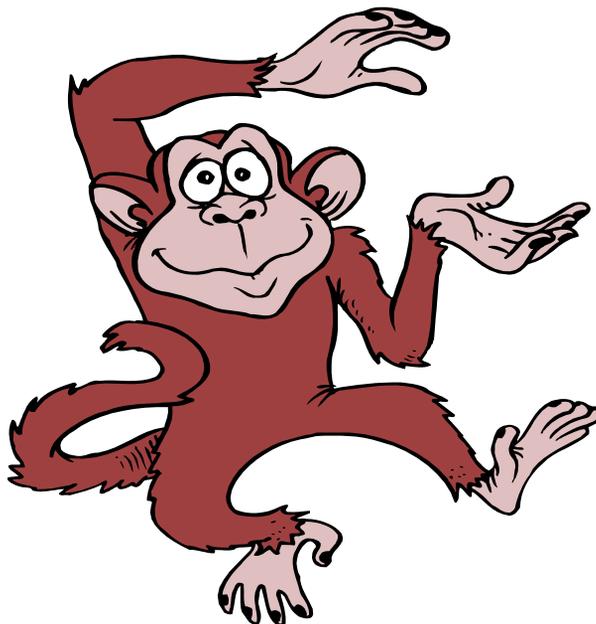
**PAT &/or Medical Exams
"Consistent with
Business Necessity"**



Screening Out Unfit or Unqualified Applicants Through Pre-Offer Non-Medical Testing (Before Conditional Job Offer)

HABIT

- H** Honesty Screen (Model Three)
- A** Agility Testing (Model Two)
- B** Background Checking
- I** Illegal Drug Testing (Model Four - not recommended)
- T** Testing for Specific Skills and Abilities (Job Demonstration - Model One)



BACKGROUND CHECKING PRE-OFFER

1. Education
2. Licensure
3. Work History
4. Credit
5. Addresses
6. Terrorist Activity
7. Motor Vehicle
8. Civil Actions
9. Criminal Activity
10. Other



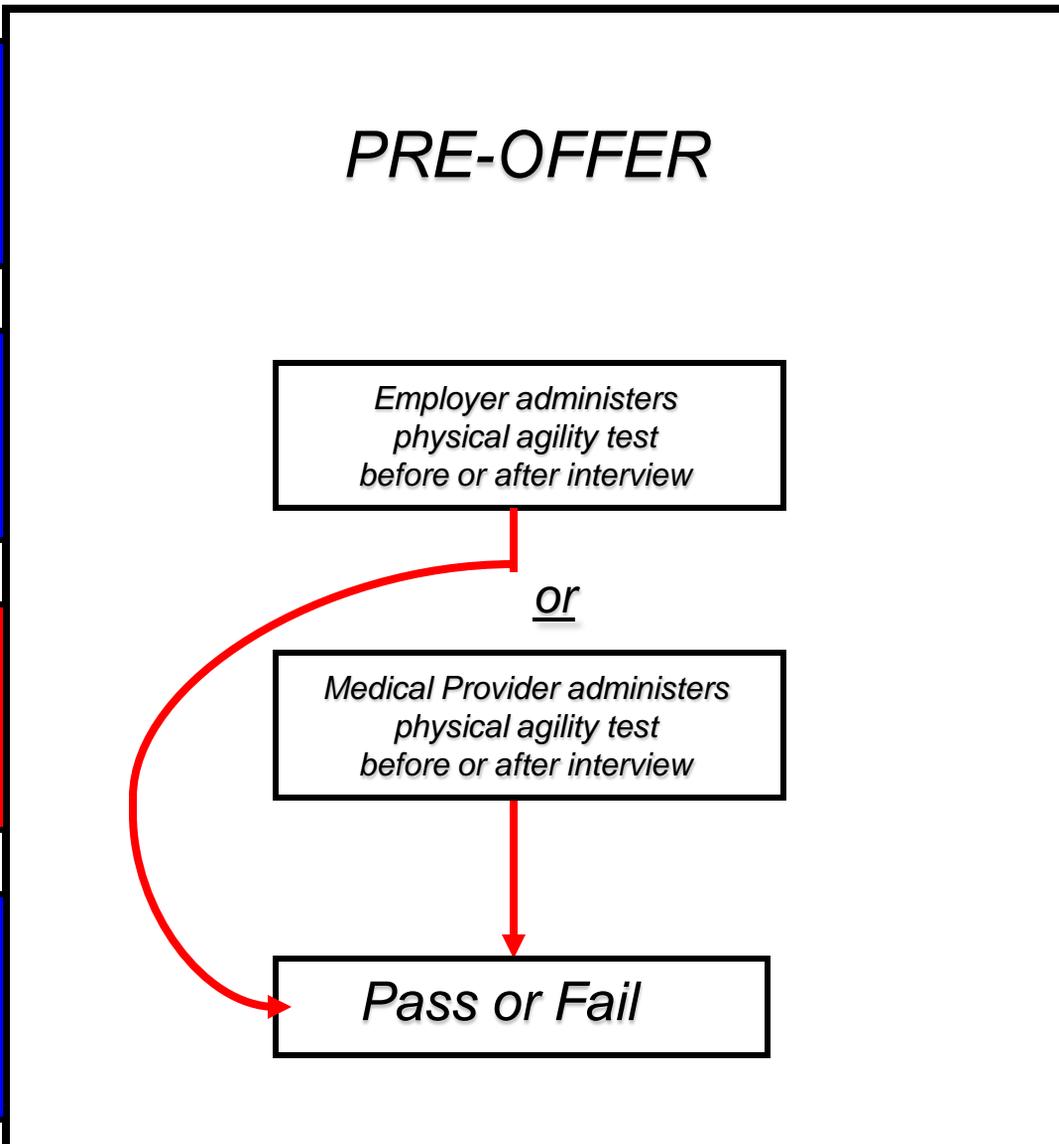
**DO NOT SEARCH FOR MEDICAL INFORMATION
DURING THE PRE-OFFER STAGE OF EMPLOYMENT**

MODEL ONE: JOB DEMONSTRATION

Employment Stage	<h2>PRE-OFFER</h2> <pre>graph TD; A[Employer administers job demonstration test before or after interview] -- or --> B[Medical Provider administers job demonstration test before or after interview]; A --> C[Pass or Fail]; B --> C;</pre>
Employment Action	
Medical Provider Participation	
Employment Decision	
Cost Per Applicant	0 -- \$100
Advantages	<ol style="list-style-type: none">1. Avoid interviewing/hiring those who cannot perform essential functions of job.2. Self-screening & Screening3. Most legally defensible type of job-specific screening available
Disadvantages	None
When Recommended	When high turnover; when have limited human resources time for interviews

MODEL TWO: PHYSICAL AGILITY TEST

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Applicant
Advantages
Disadvantages
When Recommended

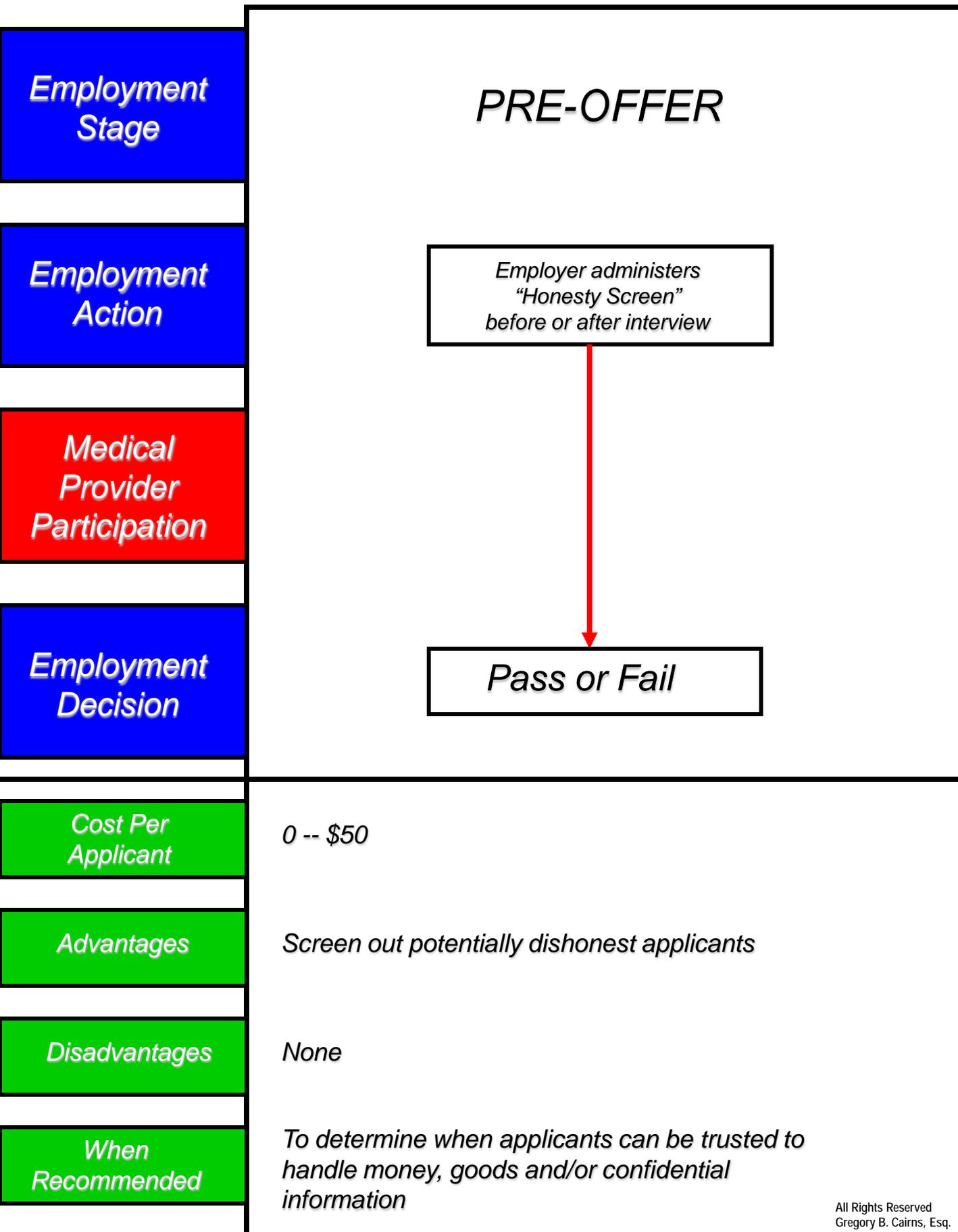
0 -- \$100

1. Avoid interviewing/hiring those who cannot perform essential functions of job
2. Self-screening & Screening
3. Legal as long as there is no medical examination/questionnaire

None

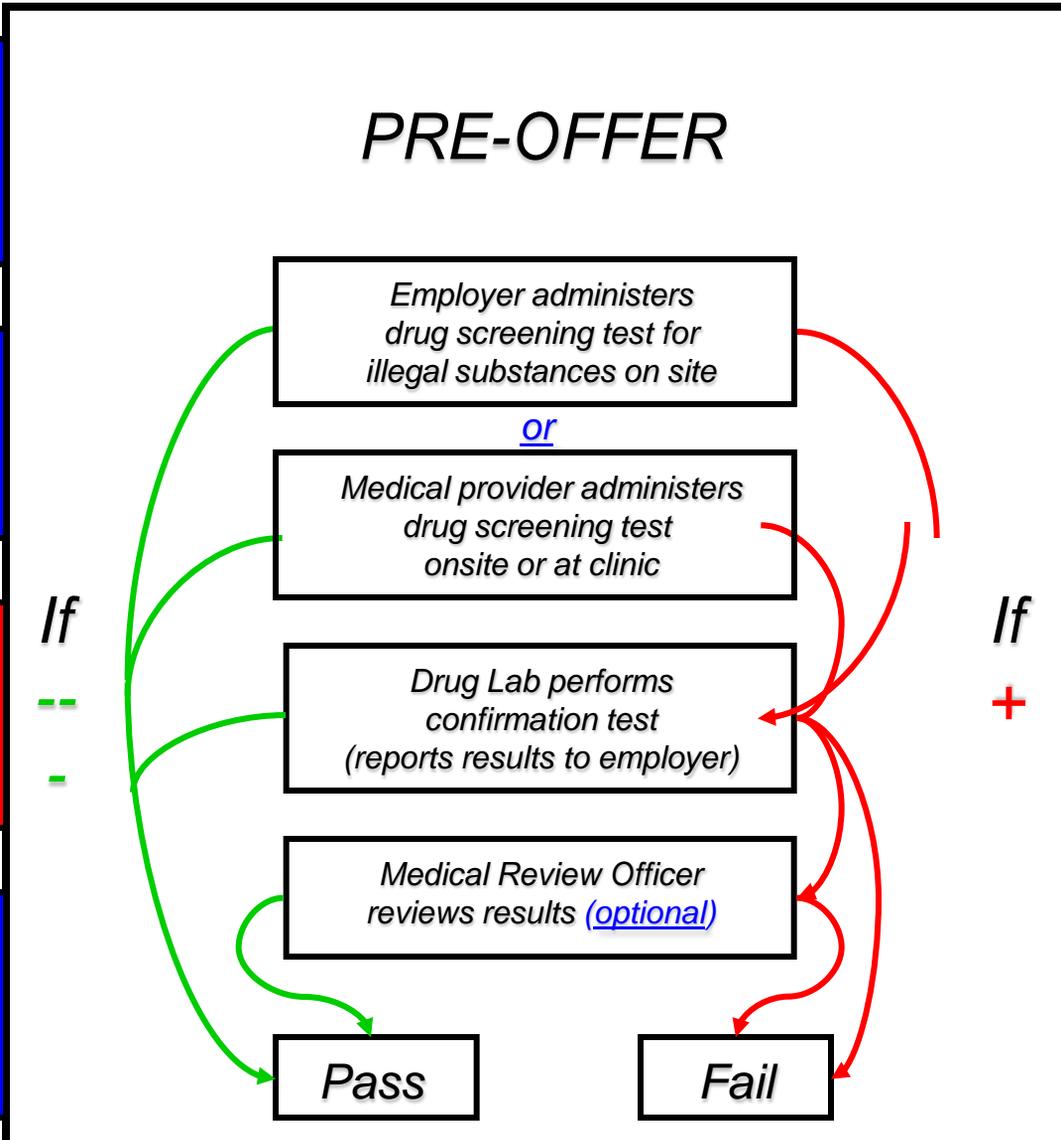
When high turnover; when have limited Human Resources time for interviews

MODEL THREE: "HONESTY SCREEN"



MODEL FOUR: PRE-OFFER DRUG SCREEN

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Applicant
Advantages
Disadvantages
When Recommended

Cost Per Applicant
\$10 -- \$35

Advantages

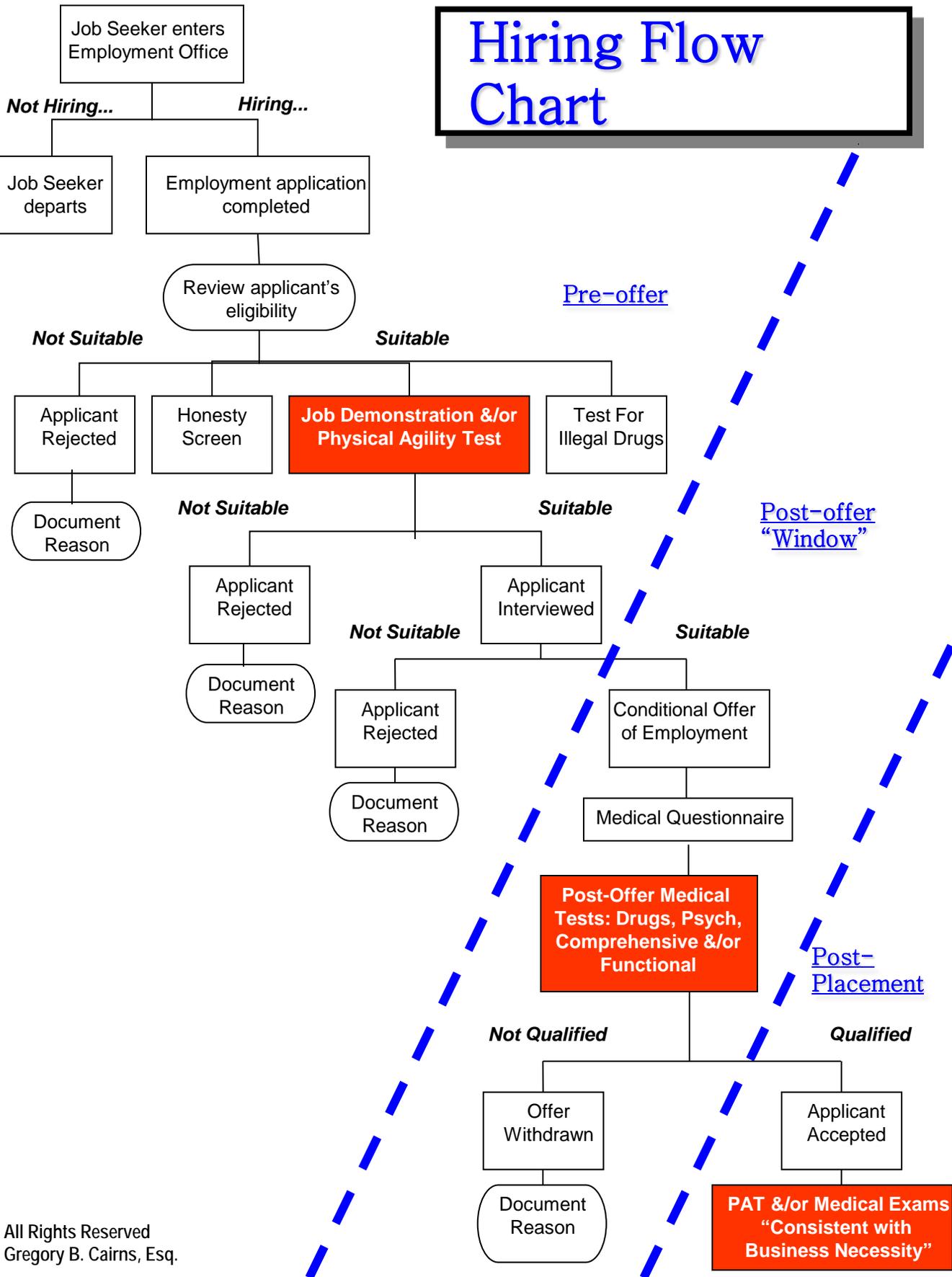
1. Self-screening
2. Screen out illegal drug users

Disadvantages

1. Can only test for illegal drugs
2. Some illegal drugs mimic legal drugs; employer must ask about legal drug usage
3. Cost prohibitive to test all applicants

When Recommended
Rarely; only when employer has limited human resource time for interviews and when technology to identify illegal drugs is highly sophisticated

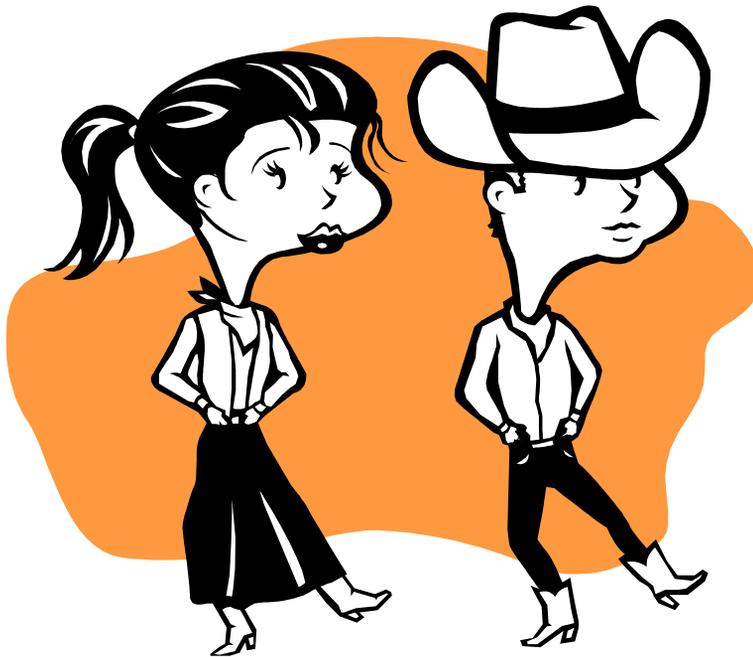
Hiring Flow Chart



**PAT &/or Medical Exams
"Consistent with
Business Necessity"**

Post –Offer Evaluation

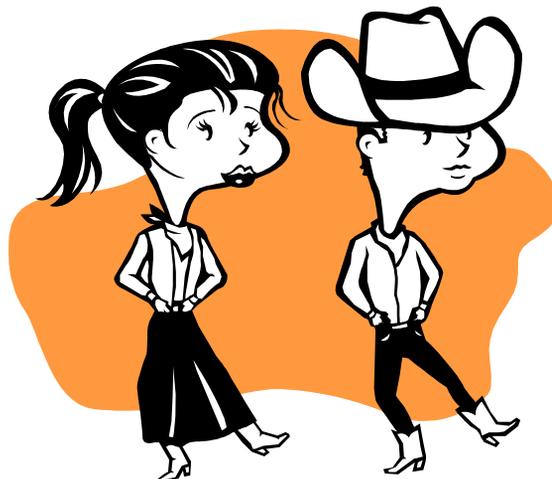
**The “Texas Two-Step”:
An Employer’s Right to Second Stage Evaluation
If “Consistent with Business Necessity”**



Post –Offer Evaluation

The “Texas Two-Step”: An Employer’s Right to Second Stage Evaluation If “Consistent with Business Necessity”

“At the post-offer stage, the employer asks new hires whether they have had back injuries and learns that some of the individuals have had such injuries. The employer may give medical examinations designed to diagnose back impairments to persons who stated that they had prior back injuries as long as these examinations are medically related to those injuries”. **EEOC Final Enforcement Guidance in Pre-Employment Inquiries, pp 19-20**



Screening Out and Base Lining Applicants Through Post-Offer-Pre-Placement Testing (POPP Testing)

After a conditional job offer is made, before job placement, an employer may do **any one or combination of** the following:

- H** **H**istory: Administer a medical questionnaire (Models Five and Six)
- E** **E**xam: Administer a comprehensive medical examination (Physician Exam – Model Seven; Physical Therapy Exam - Model Eight)
- A** **A**gility Tests: Administer physical agility and job demonstration tests (Model Fifteen)
- D** **D**rug Testing: Mandate drug and alcohol screening (Model Thirteen)
- S** **S**econd Stage Evaluation: Require second stage questionnaires and evaluation as necessary (e.g., Model Eleven)
- T** **T**esting for Psychological Fitness: Require psychological testing (Model Fourteen)
- A** **A**nswer Verification: Conduct full background checking of any answer given by the applicant during the POPP process, including about past workers' compensation claims, personal injuries, etc. (e.g., Model Twelve)
- R** **R**ecord Collection: Either applicant, employer or its agent collects relevant records before placement
- T** **T**esting at Will: Any testing of strength, endurance (cardiovascular stamina), flexibility or any other measure of fitness or physical condition (e.g. HIV, epilepsy, etc.)

BACKGROUND CHECKING POST-OFFER/ PRE-PLACEMENT

1. Education
2. Licensure
3. Work History
4. Credit
5. Addresses
6. Terrorist Activity
7. Motor Vehicle
8. Civil Actions
9. Criminal Activity
10. Workers' Compensation History
11. Confidential Medical Files in
Employment Records
12. Other



**YOU MAY SEARCH FOR MEDICAL INFORMATION
DURING THE POST-OFFER/PRE-PLACEMENT
STAGE OF EMPLOYMENT**

MODEL FIVE: MEDICAL QUESTIONNAIRE W/O VERIFICATION

Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT

Employer administers medical questionnaire immediately after job offer

No follow-up: accept answers as honest

All Pass

Cost Per Applicant

\$0

Advantages

- 1. Self-screening*
- 2. In Colorado, possibly obtain 50% penalty if there is resultant workers' compensation injury*

Disadvantages

You now know medical information, but you do not use it. What's the use?

When Recommended

If the employer has no budget for functional testing whatsoever, has limited time before placement, and/or does not care about applicant honesty

MODEL SIX: MEDICAL QUESTIONNAIRE W/ VERIFICATION

*Employment
Stage*

*Employment
Action*

*Medical
Provider
Participation*

*Employment
Decision*

POST-OFFER/PRE-PLACEMENT

*Employer administers
medical questionnaire
after conditional job offer*

*Verify answers, usually through
background checking company*

*Pass -- if answers verified
Fail -- if false answer and no
reasonable excuse*

*Cost Per
Applicant*

- \$0 for Employer-administered questionnaire
- \$25-\$55 for background check

Advantages

1. Self-screening
2. Screen out frauds

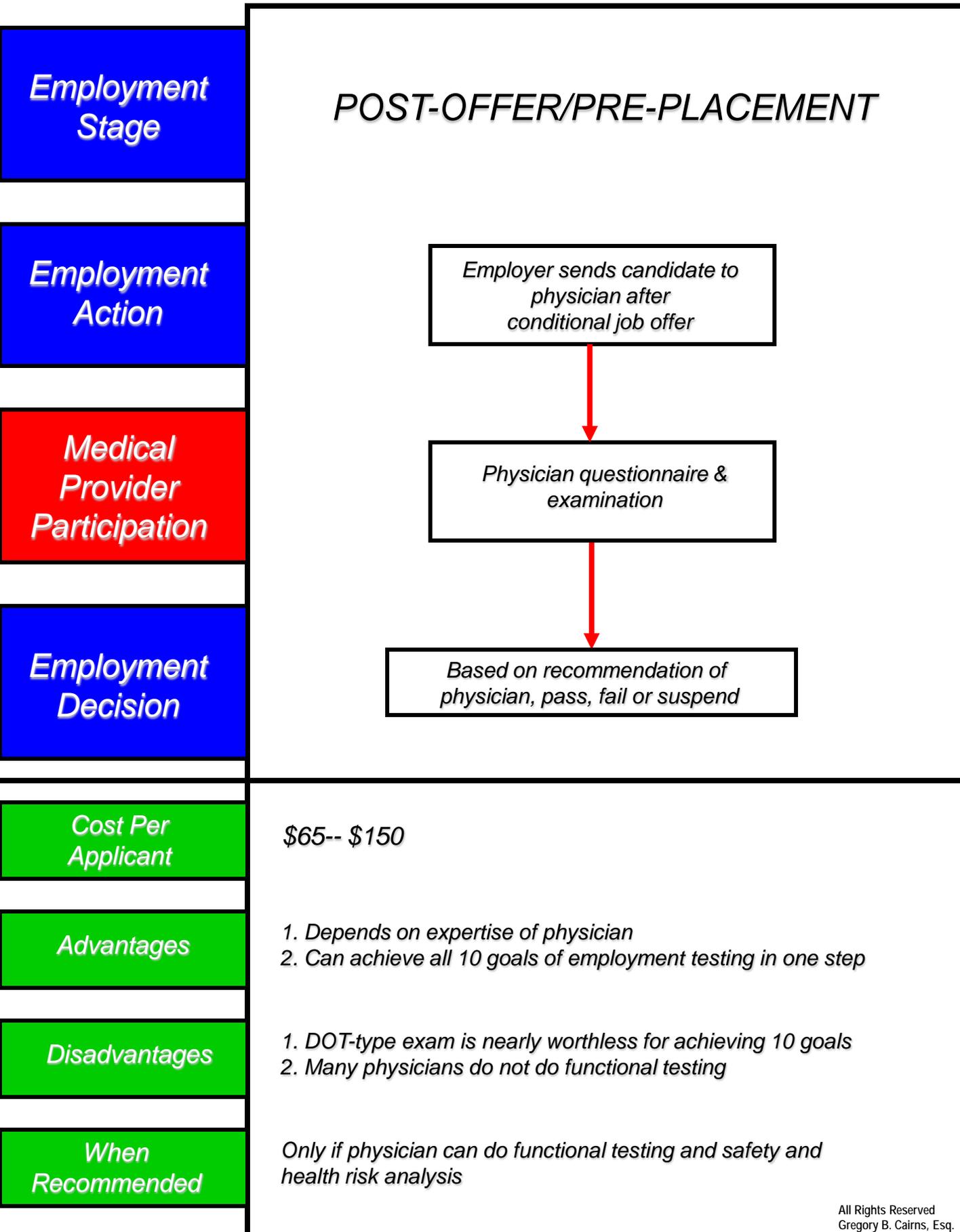
Disadvantages

Limited data for baselining; no safety training, wellness educating, ergonomic fitting, ADA analysis, or safety contracting

*When
Recommended*

If concerned only about frauds

MODEL SEVEN: PHYSICIAN EXAM



MODEL EIGHT: PHYSICAL THERAPIST EXAM

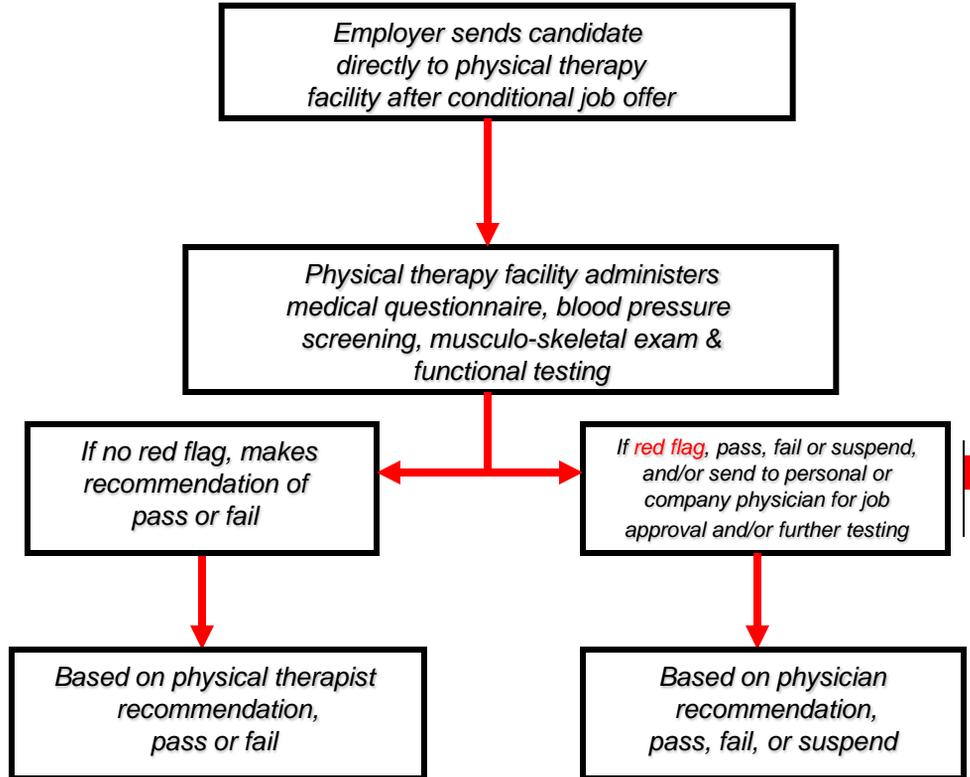
Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT



Cost Per Applicant

\$45-- \$150

Advantages

1. For same price or less than a physician, physical therapists do better hands-on evaluations and functional testing
2. Can achieve all 10 goals of employment testing in one step

Disadvantages

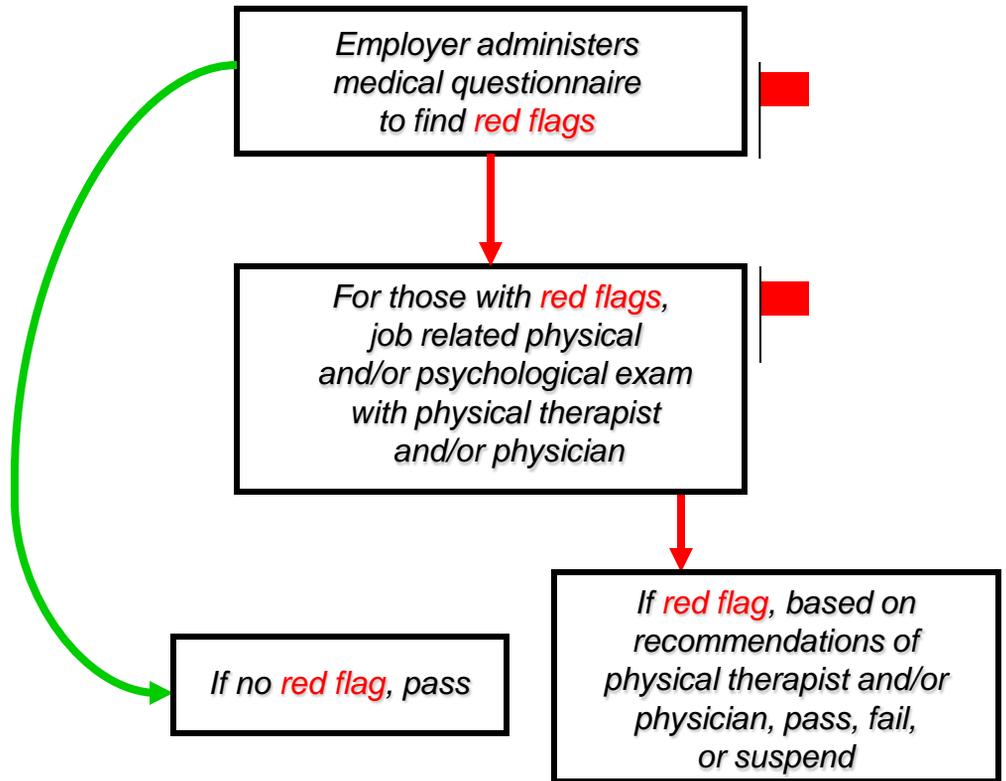
In some cases, puts burden on applicant to pay for personal physician's approval

When Recommended

Highly recommended when employer wants cost effective testing which achieves all 10 goals of employment testing

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision

POST-OFFER/PRE-PLACEMENT



Cost Per Applicant

No red flag -- No cost
 Red flag -- \$50 -- \$200, depending on what exams are ordered

Advantages

1. Save expense since only red-flagged applicants get medical exam
2. Can achieve all 10 goals of employment testing in two steps for red flagged applicants

Disadvantages

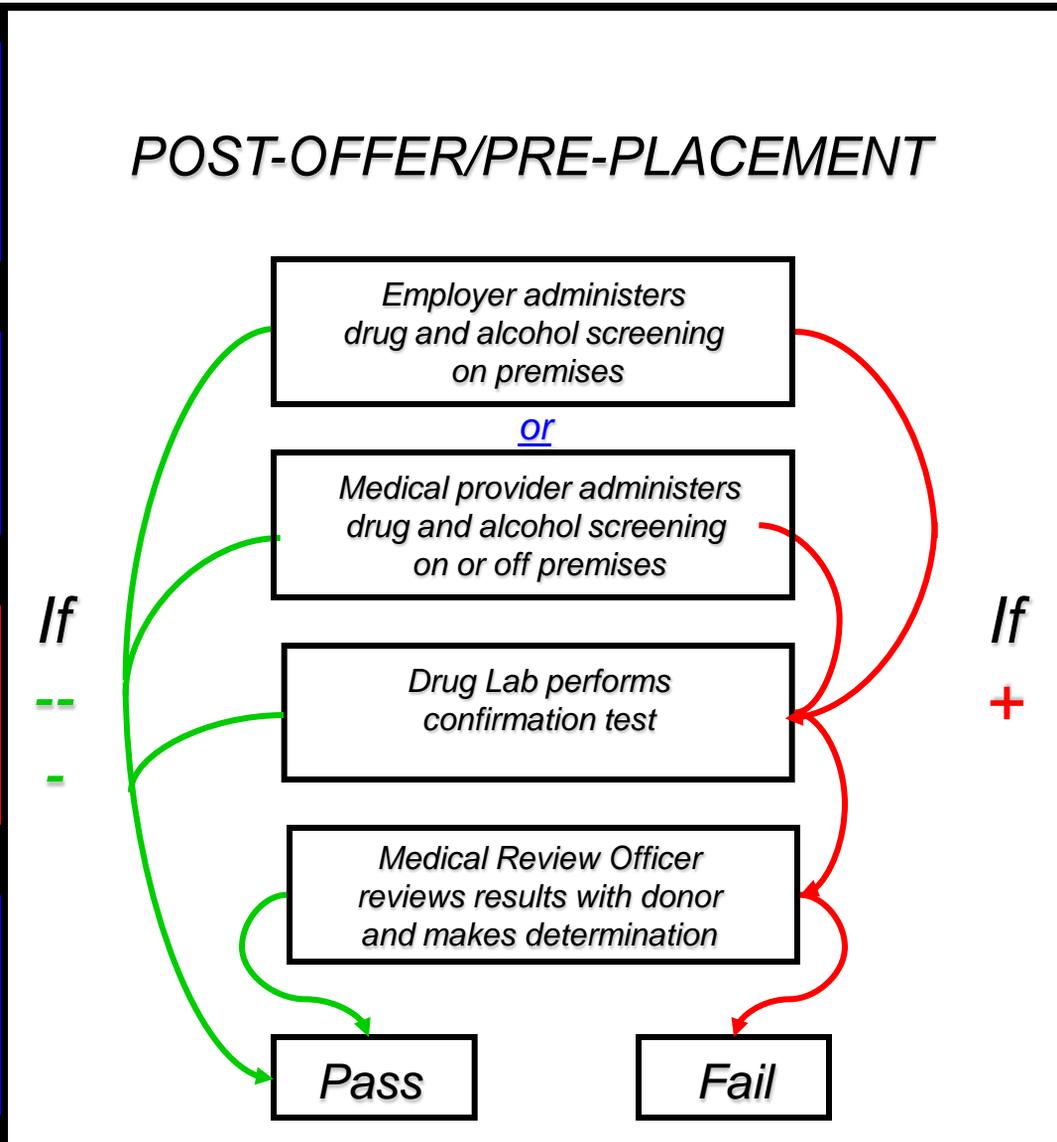
Employer is counting on applicants to be truthful when taking medical questionnaire since there is no verification of negative answers; some frauds will slip through; second stage exam must be job-related and limited to red-flagged condition(s)

When Recommended

Limited budget for testing

MODEL THIRTEEN: POST-OFFER DRUG AND ALCOHOL SCREEN

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Applicant
Advantages
Disadvantages
When Recommended

Cost Per Applicant \$20 -- \$50

Advantages

1. Self-screening
2. Screen out current illegal drug and alcohol abusers
3. Can test for legal and illegal controlled substances

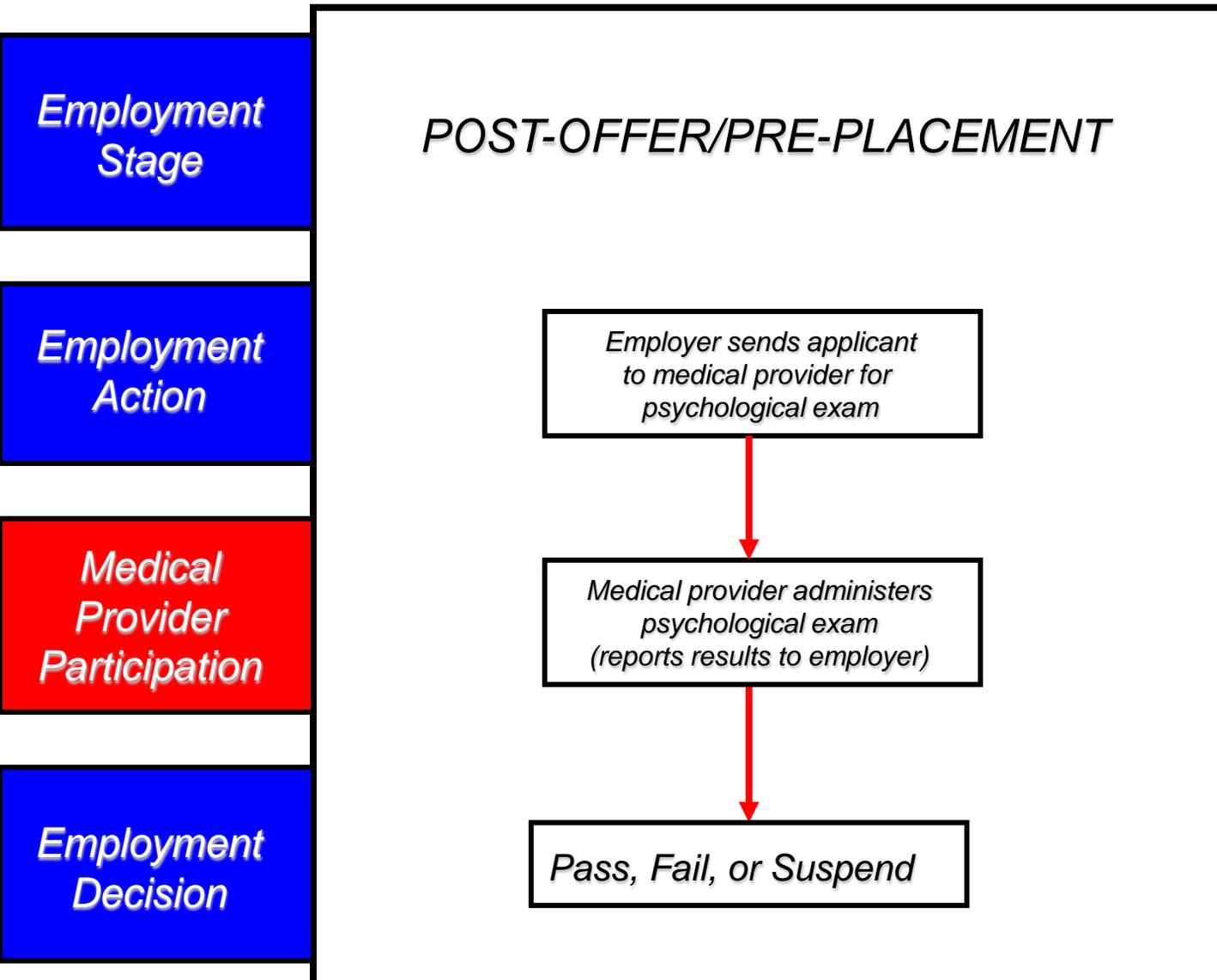
Disadvantages

None, as long as testers are competent and results are kept confidential

When Recommended

1. When required by law
2. When budget permits and want drug-free workplace

MODEL FOURTEEN: PSYCHOLOGICAL EXAM



Cost Per Applicant	\$20 -- \$125
Advantages	<ol style="list-style-type: none">1. Determine if applicant is psychologically capable of performing the requested position2. Self-screening
Disadvantages	None
When Recommended	<ol style="list-style-type: none">1. When required by law2. When budget permits and want psychological screening or baselining

Screening Out and Base Lining Applicants Through Post-Offer-Pre-Placement Testing (POPP Testing)

The employer may withdraw the conditional job offer if it can show one or more of the following:

1. The applicant cannot perform one or more of the essential functions of the job.
2. The applicant will pose a direct and substantial threat to him or herself or others which cannot be reduced to an acceptable level or eliminated by a reasonable accommodation.
3. The accommodation requested by the applicant is not reasonable, will not work, or will create an undue hardship for the employer.

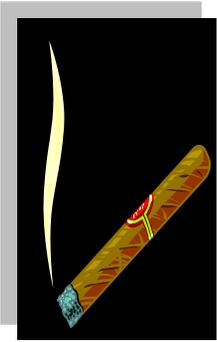
and / or

4. The applicant has lied to the employer about anything.



LEGAL BASES FOR WITHDRAWING A CONDITIONAL JOB OFFER:

HUMIDORS



H HONESTY IMPAIRED
The applicant misrepresents, conceals or withholds relevant medical information.

U UNREASONABLE ACCOMMODATIONS & UNDUE HARDSHIP
The accommodation requested to safely perform the essential functions will not be effective, or it will create undue hardship on the employer.

M MISSED APPOINTMENT
The applicant is late, or misses the appointment completely, without reasonable excuse.

I INCAPABLE/INCOMPLETE
The applicant is not capable of performing the essential functions as tested, or is not able to finish the test.

D DEADLINE MISSED
The applicant misses a reasonable deadline for submitting medical certifications to take the test(s) or safely perform the essential functions of the job.

O OBNOXIOUS BEHAVIOR
The applicant is intoxicated or uncooperative (obnoxious, bellicose, threatening, angry, abusive).

R RELEASE REFUSED
The applicant chooses not to sign requested releases.

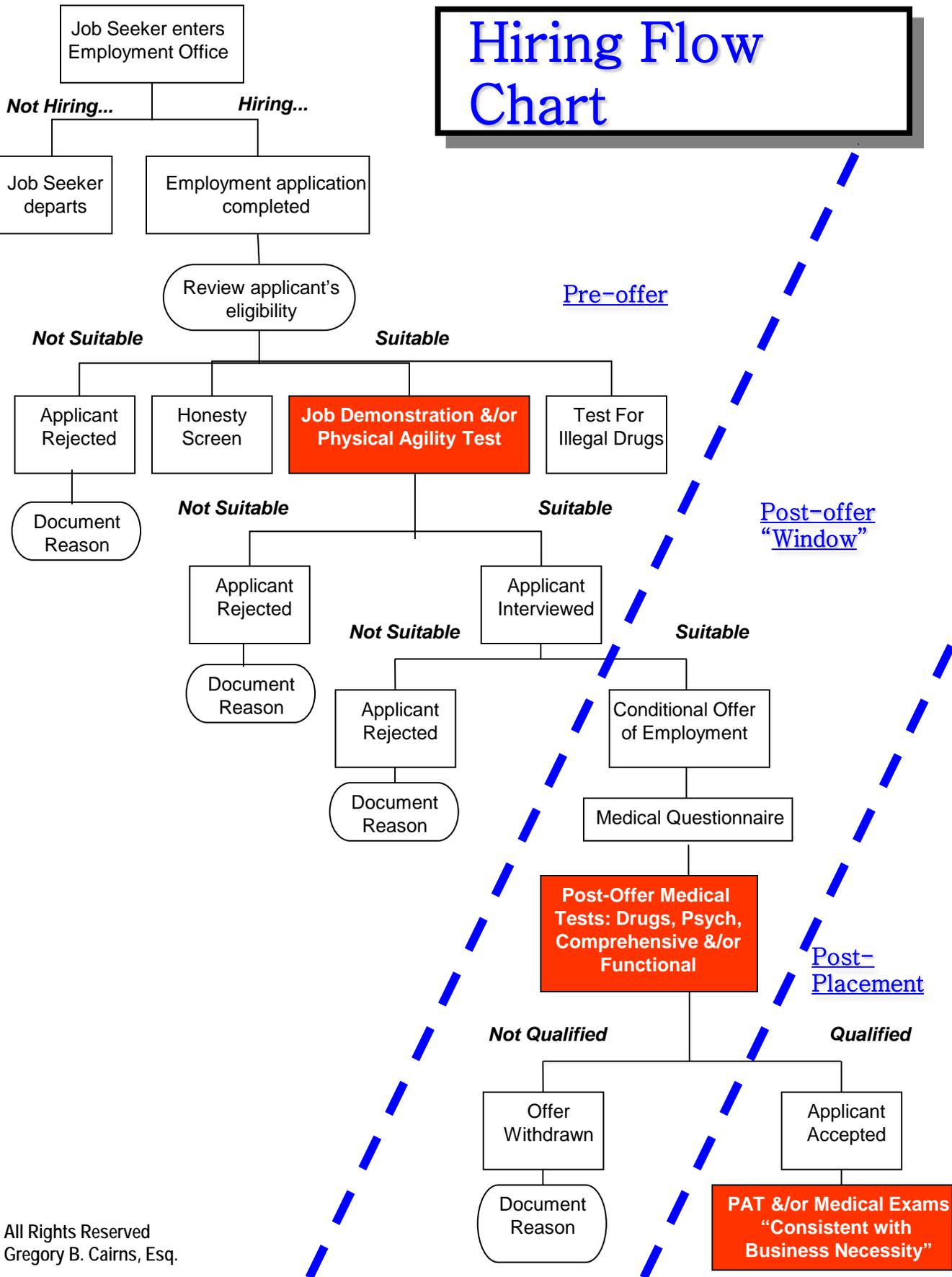
S SAFETY OR HEALTH RISK
The applicant poses "a direct threat" to themselves or others which cannot be eliminated or reduced to an acceptable level by a reasonable accommodation.



Use Base Line Data for a HEADSTART in Your Workers' Compensation Program



Hiring Flow Chart



Seven Exceptions to the “No Medical Test” Rule of The Americans With Disabilities Act (ADA)



The ADA prohibits medical examinations and other inquiries of current employees except under seven specific situations, all of which are “consistent with business necessity”:

W **W**ellness Programs

A **A**DA/Accommodation Analysis and **A**gility Testing

F **F**unctional Capacity **E**valuation

E **F**itness for Duty **E**valuation

R **R**egulations and Laws

S **S**afety Sensitive Positions



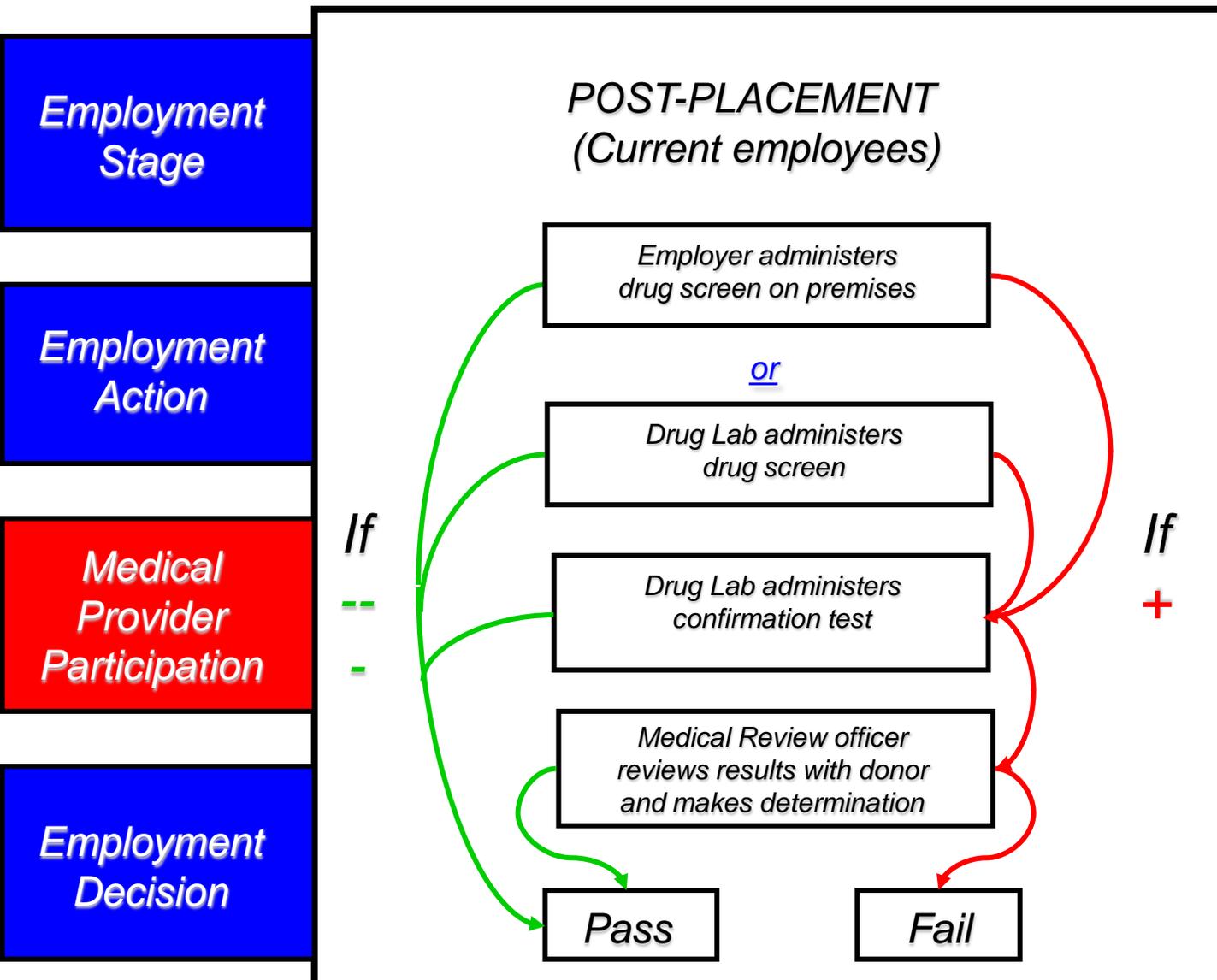
MODEL SIXTEEN: NON-JOB-SPECIFIC MEDICAL EXAMS

Employment Stage	<p style="text-align: center;">POST-PLACEMENT <i>(Current employees)</i></p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"><p style="text-align: center;"><i>Employer finds exception to "No-Medical Test" rule of ADA: voluntary wellness program, statutorily required, ADA analysis, etc.</i></p></div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"><p style="text-align: center;"><i>Physical and/or psychological exam with M.D., P.T., and/or Psy.D. which is not job specific</i></p></div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"><p style="text-align: center;"><i>Based on medical opinions, keep in regular job with or without accommodation, transfer to another job, or terminate</i></p></div>
Employment Action	
Medical Provider Participation	
Employment Decision	
Cost Per Applicant	<p>\$45 -- \$200</p>
Advantages	<p><i>All 10 benefits of testing can be realized</i></p>
Disadvantages	<p><i>None</i></p>
When Recommended	<p><i>When statutorily required (e.g., OSHA or DOT), pursuant to voluntary wellness program, or whenever "consistent with business necessity"</i></p>

MODEL SEVENTEEN: FITNESS FOR DUTY EXAM

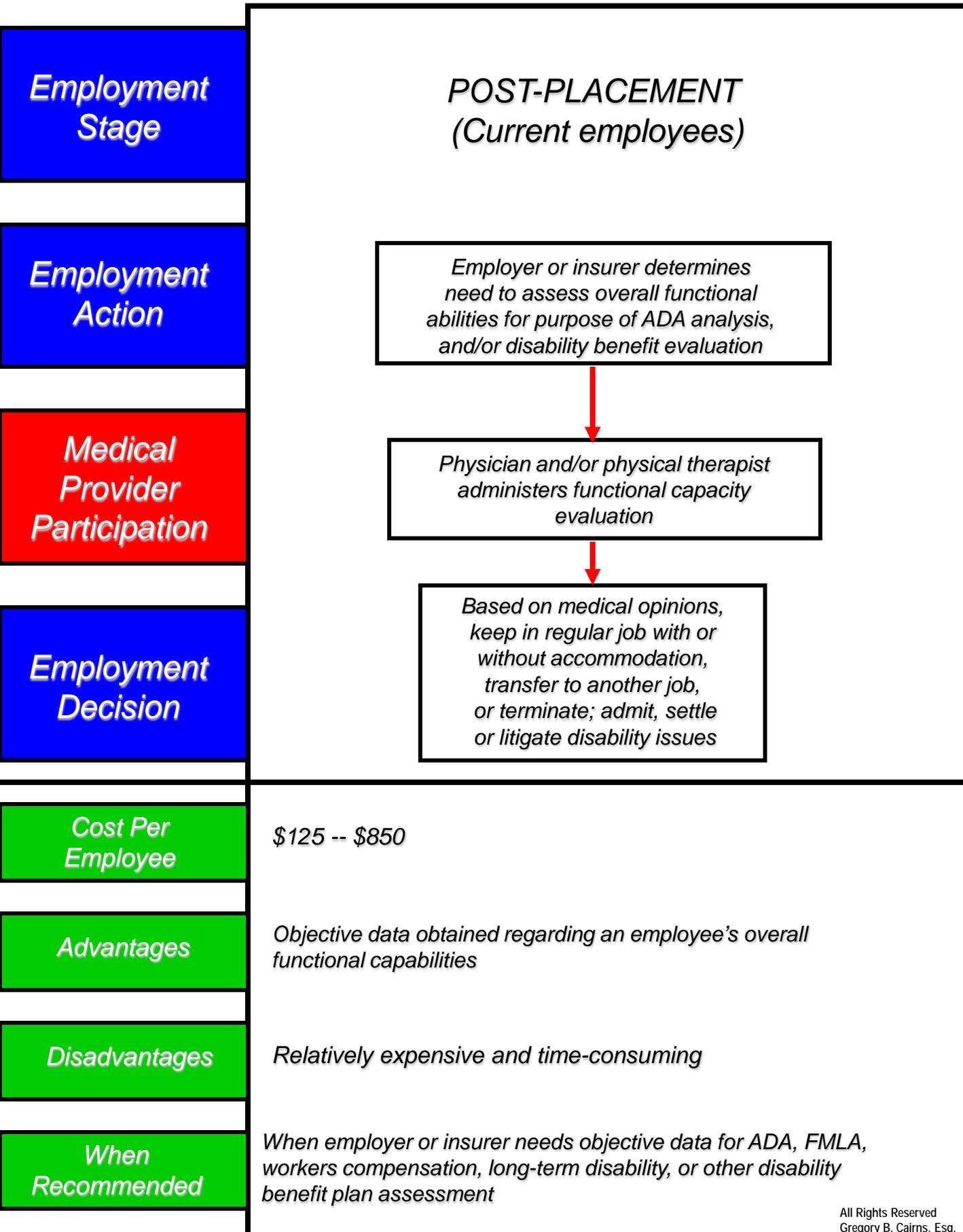
Employment Stage	<p style="text-align: center;">POST-PLACEMENT <i>(Current employees)</i></p> <p style="text-align: center;"><i>Employer determines "Fitness for Duty" issue because of job absence, injury, reduced performance, accidents, etc.</i></p> <p style="text-align: center;">↓</p> <p style="text-align: center;"><i>"Fitness for Duty" physical and/or psychological exam with M.D., P.T., and/or Psy.D. which is job specific</i></p> <p style="text-align: center;">↓</p> <p style="text-align: center;"><i>Based on medical opinions, keep in regular job with or without accommodation, transfer to another job, or terminate</i></p>
Employment Action	
Medical Provider Participation	
Employment Decision	
Cost Per Employee	\$45 -- \$200
Advantages	<i>All 10 benefits of testing can be realized</i>
Disadvantages	<i>Need written employer policy if require after Family and Medical Leave Act leave; also may have to limit test and/or contend with personal physician's release</i>
When Recommended	<i>Always after extended absence, serious work-related accident, or whenever "consistent with business necessity"</i>

MODEL NINETEEN: POST-PLACEMENT DRUG TESTING



Cost Per Applicant	\$20 -- \$50
Advantages	Control drug usage in the workplace
Disadvantages	<ol style="list-style-type: none"> 1. Can only test for illegal drugs 2. Must have employer policy, competent testers and confidentiality
When Recommended	<ol style="list-style-type: none"> 1. When required by law 2. When you want a drug-free workplace

MODEL TWENTY: FUNCTIONAL CAPACITY EVALUATION



Seven Exceptions to the “No Medical Test” Rule of The Americans With Disabilities Act (ADA)



The ADA prohibits medical examinations and other inquiries of current employees except under seven specific situations, all of which are “consistent with business necessity”:

W **W**ellness Programs

A **A**DA/Accommodation Analysis and

F **F**unctional Capacity **E**valuation

Agility Testing

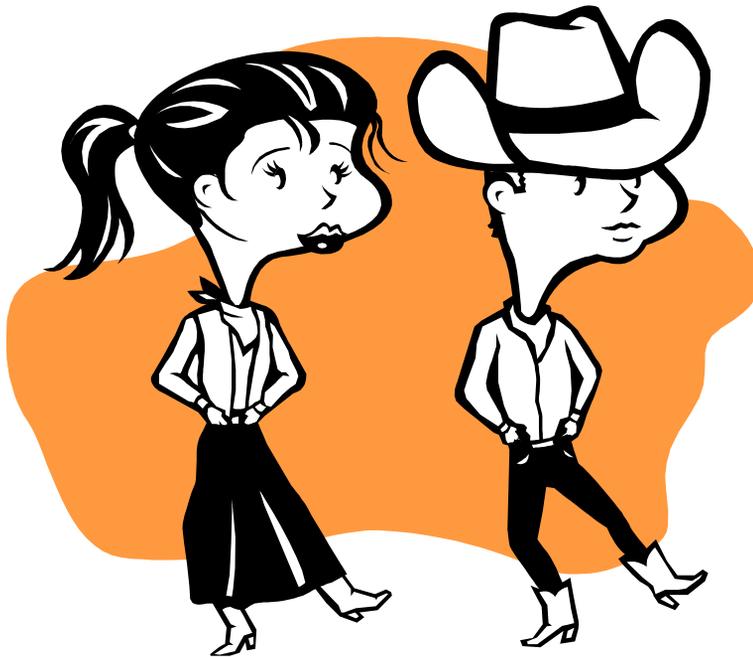
E **F**itness for Duty **E**valuation

R **R**egulations and Laws

S **S**afety Sensitive Positions

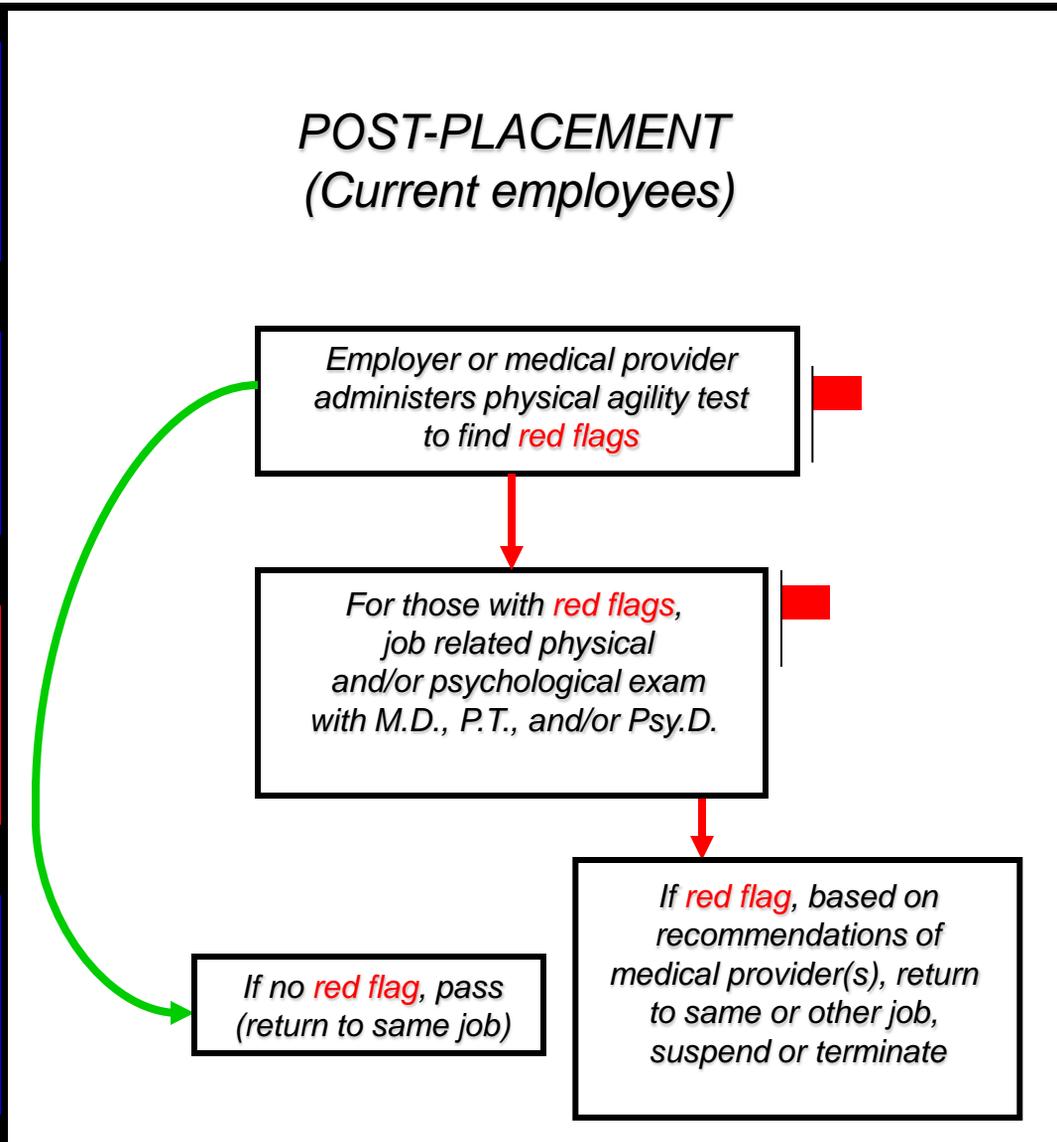


**The “Texas Two-Step”:
An Employer’s Right to Second Stage Evaluation
If “Consistent with Business Necessity”**



MODEL EIGHTEEN: PHYSICAL AGILITY TEST, THEN JOB-RELATED MEDICAL EXAM(S)

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Employee
Advantages
Disadvantages
When Recommended

Physical agility test -- \$0 -- \$75
Second-step medical exam -- \$75 -- \$150

Cost-effective, legal way to test all current employees in a job category

1. Second-stage exam must be job-related
2. Employer must be prepared to explore accommodation by modifying job, transfer, or suspension before termination

1. Problems with an aging workforce
2. Rash of injuries in a specific job category
3. Whenever “consistent with business necessity”

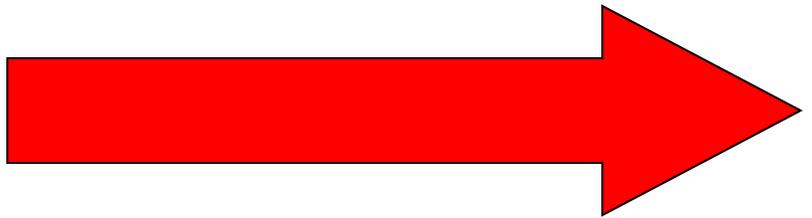
Give Your Employees A Fair SHAKE:

A Simple Plan for Evaluating An Employee's Ability to Return To Work After Illness or Injury

- S** Solicit the Employee's Request
for Accommodation (even if they
are not covered by the ADA)

- H** Hear Them Out

- A** Analyze the Employee's Requests
and All Options for Return to Work



Issues to Analyze

- A. ADA Eligibility**
- B. FMLA Eligibility**
- C. Medical Stability (Maximum Medical Improvement)**
- D. Permanent Restrictions**
- E. Conditioning**
- F. Job Modification**
- G. Ergonomic Training and Fitting**
- H. Job Transfer**
- I. Time Off Without Pay**
- J. Last Chance Agreements**
- K. Accommodation Committee (including peers)**
- L. Safety Contract**
- M. Benefits Available, e.g., Unemployment Compensation, LTD, SSDI, etc.**
- N. Termination After Exhaustion of All Other Options**



Give Your Employees A Fair SHAKE:

A Simple Plan for Evaluating An Employee's Ability to Return To Work After Illness or Injury

- S** Solicit the Employee's Request
for Accommodation (even if they
are not covered by the ADA)

- H** Hear Them Out

- A** Analyze the Employee's Requests
and All Options for Return to Work

- K** Kindly Deliver Your Decision

- E** Evaluate the Results of Your Decision
(Repeat Steps **S-H-A-K** above, as necessary)



MODELS OF ADA-COMPLIANT EMPLOYMENT TESTING

By

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WARNING: The enclosed materials were prepared by Gregory B. Cairns, Esq. and are intended for educational use only and should not be construed as legal advice. For specific fact patterns, please consult your attorney.

MODEL ZERO: NO TESTING

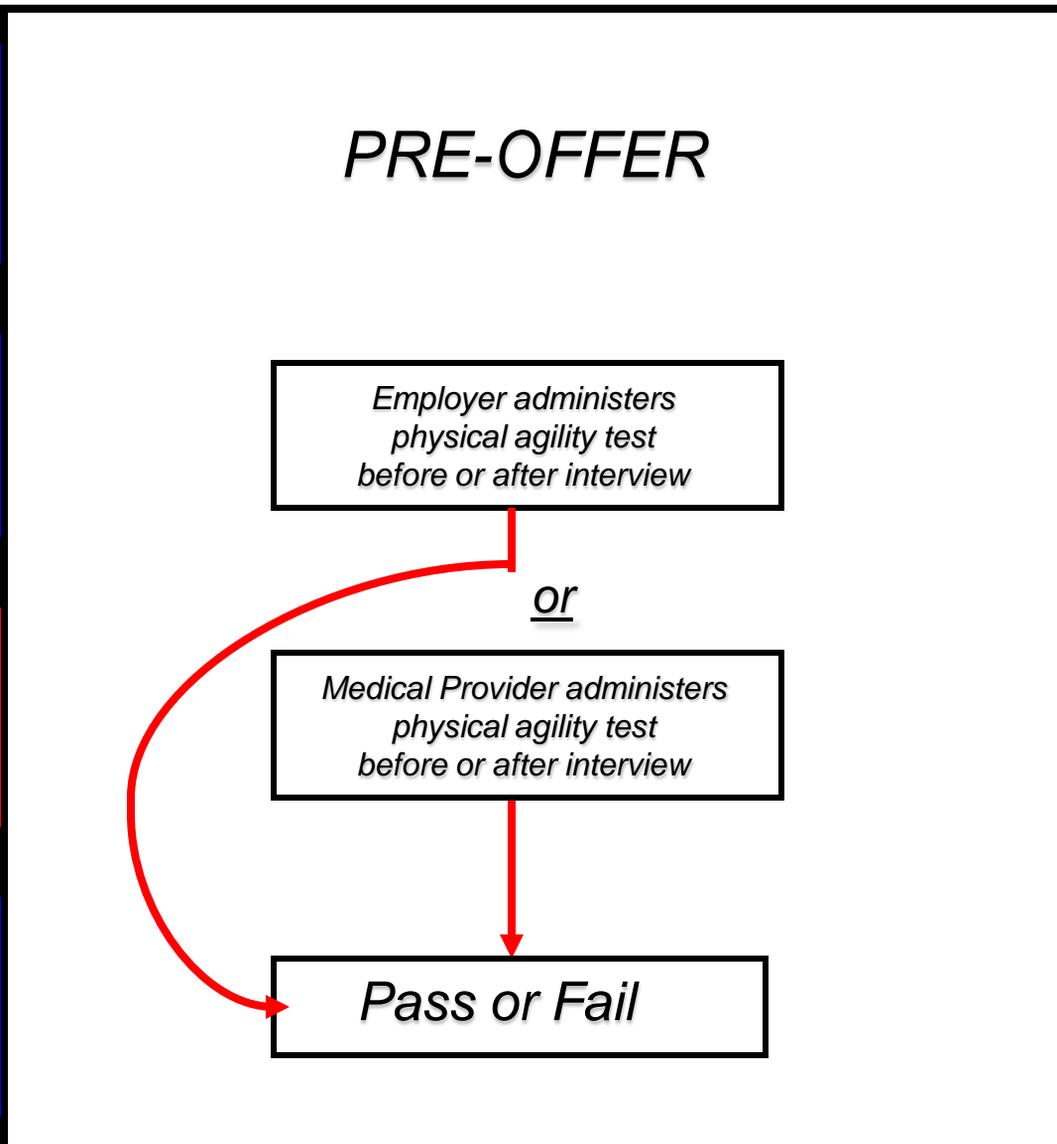
Employment Stage	<p><i>Pre-offer, Post-offer/Pre-placement, Post-Placement</i></p> <p>Nothing</p> <p>Nothing</p> <p>All Pass</p>
Employment Action	
Medical Provider Participation	
Employment Decision	
Cost Per Applicant	<p><i>Nothing</i></p>
Advantages	<ol style="list-style-type: none"><i>1. No money spent on testing</i><i>2. No violation of the ADA</i>
Disadvantages	<p><i>None of 10 Benefits of testing obtained</i></p>
When Recommended	<p><i>Never</i></p>

MODEL ONE: JOB DEMONSTRATION

Employment Stage	<h2>PRE-OFFER</h2> <pre>graph TD; A[Employer administers job demonstration test before or after interview] -- or --> B[Medical Provider administers job demonstration test before or after interview]; A --> C[Pass or Fail]; B --> C;</pre>
Employment Action	
Medical Provider Participation	
Employment Decision	
Cost Per Applicant	0 -- \$100
Advantages	<ol style="list-style-type: none">1. Avoid interviewing/hiring those who cannot perform essential functions of job.2. Self-screening & Screening3. Most legally defensible type of job-specific screening available
Disadvantages	None
When Recommended	When high turnover; when have limited human resources time for interviews

MODEL TWO: PHYSICAL AGILITY TEST

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Applicant
Advantages
Disadvantages
When Recommended

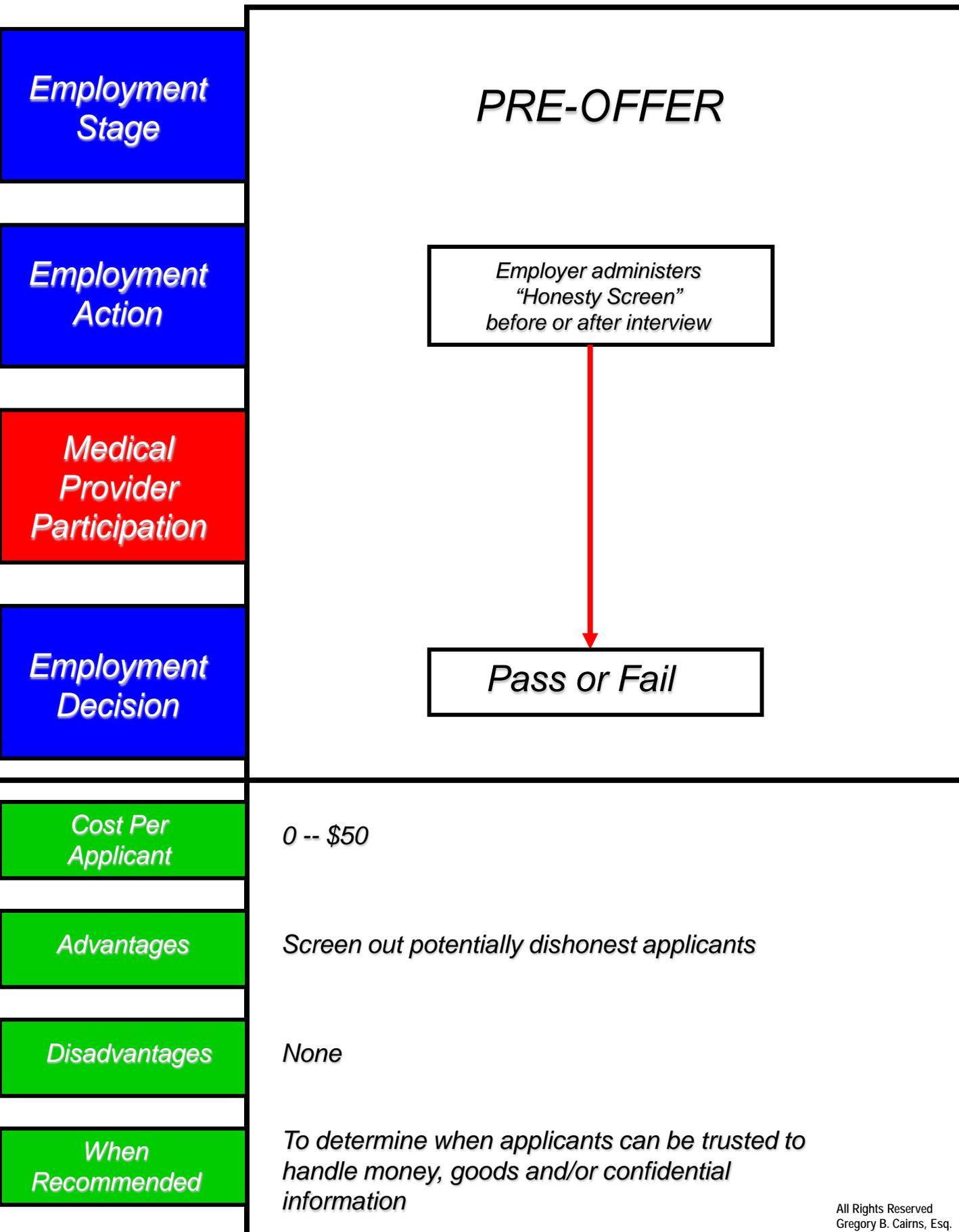
0 -- \$100

1. Avoid interviewing/hiring those who cannot perform essential functions of job
2. Self-screening & Screening
3. Legal as long as there is no medical examination/questionnaire

None

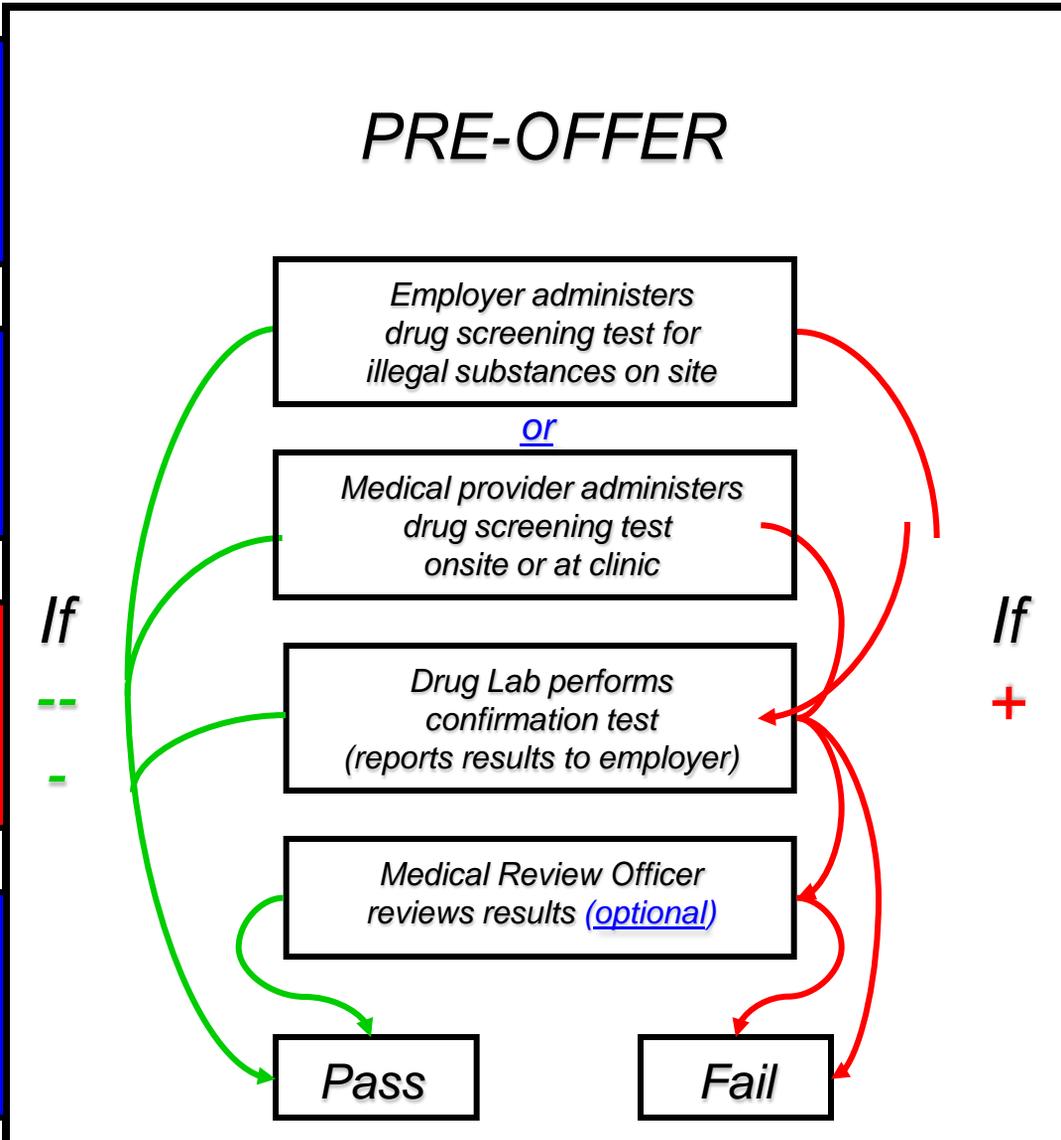
When high turnover; when have limited Human Resources time for interviews

MODEL THREE: "HONESTY SCREEN"



MODEL FOUR: PRE-OFFER DRUG SCREEN

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Applicant
Advantages
Disadvantages
When Recommended

Cost Per Applicant
\$10 -- \$35

Advantages

1. Self-screening
2. Screen out illegal drug users

Disadvantages

1. Can only test for illegal drugs
2. Some illegal drugs mimic legal drugs; employer must ask about legal drug usage
3. Cost prohibitive to test all applicants

When Recommended
Rarely; only when employer has limited human resource time for interviews and when technology to identify illegal drugs is highly sophisticated

MODEL FIVE: MEDICAL QUESTIONNAIRE W/O VERIFICATION

Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT

Employer administers medical questionnaire immediately after job offer

No follow-up: accept answers as honest

All Pass

Cost Per Applicant

\$0

Advantages

- 1. Self-screening*
- 2. In Colorado, possibly obtain 50% penalty if there is resultant workers' compensation injury*

Disadvantages

You now know medical information, but you do not use it. What's the use?

When Recommended

If the employer has no budget for functional testing whatsoever, has limited time before placement, and/or does not care about applicant honesty

MODEL SIX: MEDICAL QUESTIONNAIRE W/ VERIFICATION

*Employment
Stage*

*Employment
Action*

*Medical
Provider
Participation*

*Employment
Decision*

POST-OFFER/PRE-PLACEMENT

*Employer administers
medical questionnaire
after conditional job offer*

*Verify answers, usually through
background checking company*

*Pass -- if answers verified
Fail -- if false answer and no
reasonable excuse*

*Cost Per
Applicant*

- \$0 for Employer-administered questionnaire
- \$25-\$55 for background check

Advantages

1. Self-screening
2. Screen out frauds

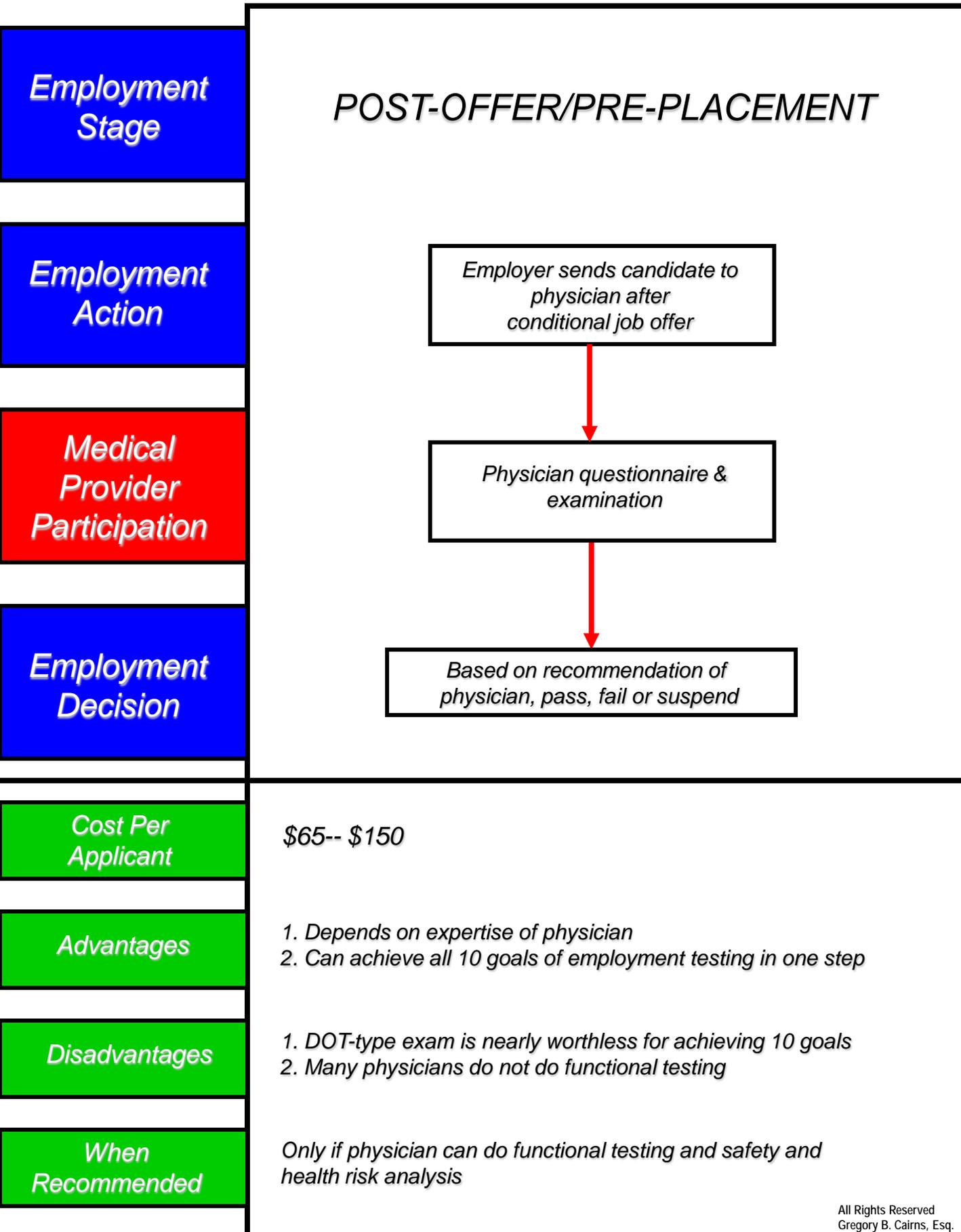
Disadvantages

Limited data for baselining; no safety training, wellness educating, ergonomic fitting, ADA analysis, or safety contracting

*When
Recommended*

If concerned only about frauds

MODEL SEVEN: PHYSICIAN EXAM



MODEL EIGHT: PHYSICAL THERAPIST EXAM

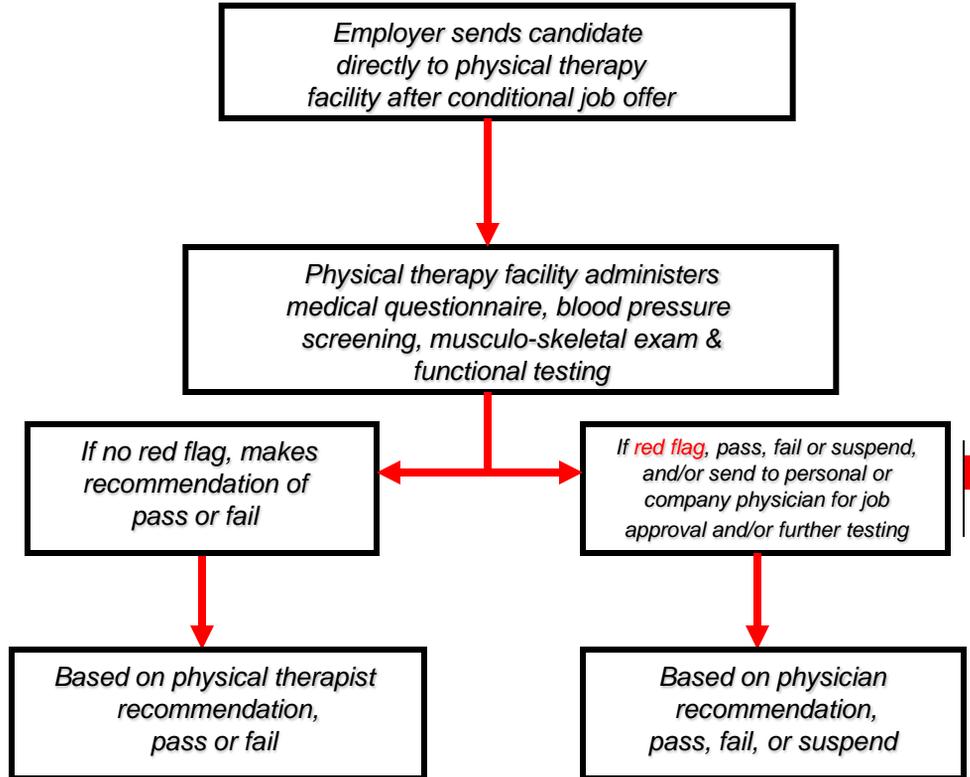
Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT



Cost Per Applicant

\$45-- \$150

Advantages

1. For same price or less than a physician, physical therapists do better hands-on evaluations and functional testing
2. Can achieve all 10 goals of employment testing in one step

Disadvantages

In some cases, puts burden on applicant to pay for personal physician's approval

When Recommended

Highly recommended when employer wants cost effective testing which achieves all 10 goals of employment testing

MODEL NINE: PHYSICIAN THEN PHYSICAL THERAPIST EXAMS

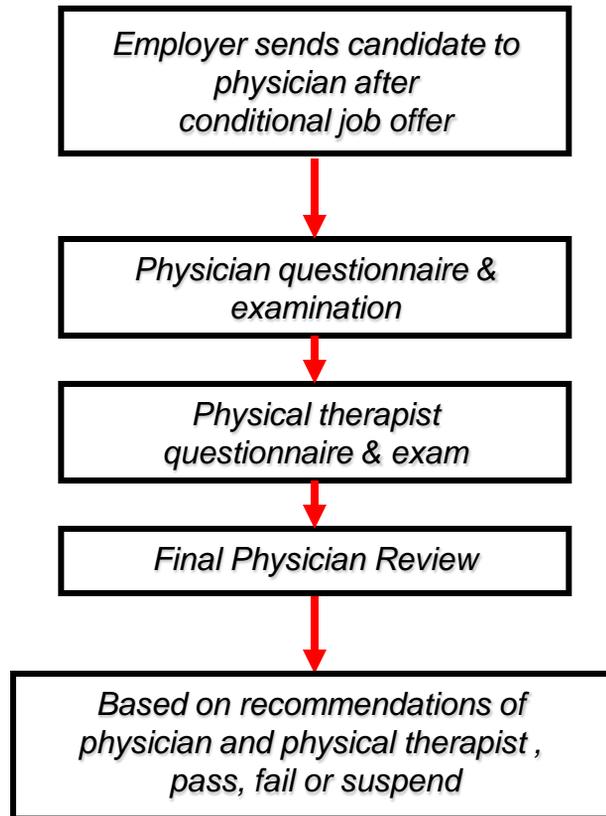
Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT



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Cost Per Applicant

Physician -- \$45-- \$100
Physical Therapist -- \$45 -- \$150

Advantages

1. Obtain opinions from two sets of experts
2. Very comprehensive overall exam, including functional testing
3. Can achieve all 10 goals of employment testing in three steps

Disadvantages

1. More expensive
2. More time consuming

When Recommended

1. When have cooperation between physician and physical therapy clinic
2. When physician has traditionally performed exams, but unable to administer musculo-skeletal and functional components
3. When employer wants physician to identify **red flags**

firm

MODEL TEN: PHYSICAL THERAPIST THEN PHYSICIAN EXAMS

Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT

Employer sends candidate to physical therapist after conditional job offer

Physical therapist questionnaire & exam

Physician questionnaire & exam

Based on recommendations of physician and physical therapist, pass, fail or suspend

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Cost Per Applicant

*Physician -- \$45-- \$100
Physical Therapist -- \$45 -- \$150*

Advantages

- 1. Obtain opinions from two sets of experts*
- 2. Very comprehensive overall exam, including functional testing*
- 3. Can achieve all 10 goals of employment testing in two steps*

Disadvantages

- 1. More expensive*
- 2. More time consuming*

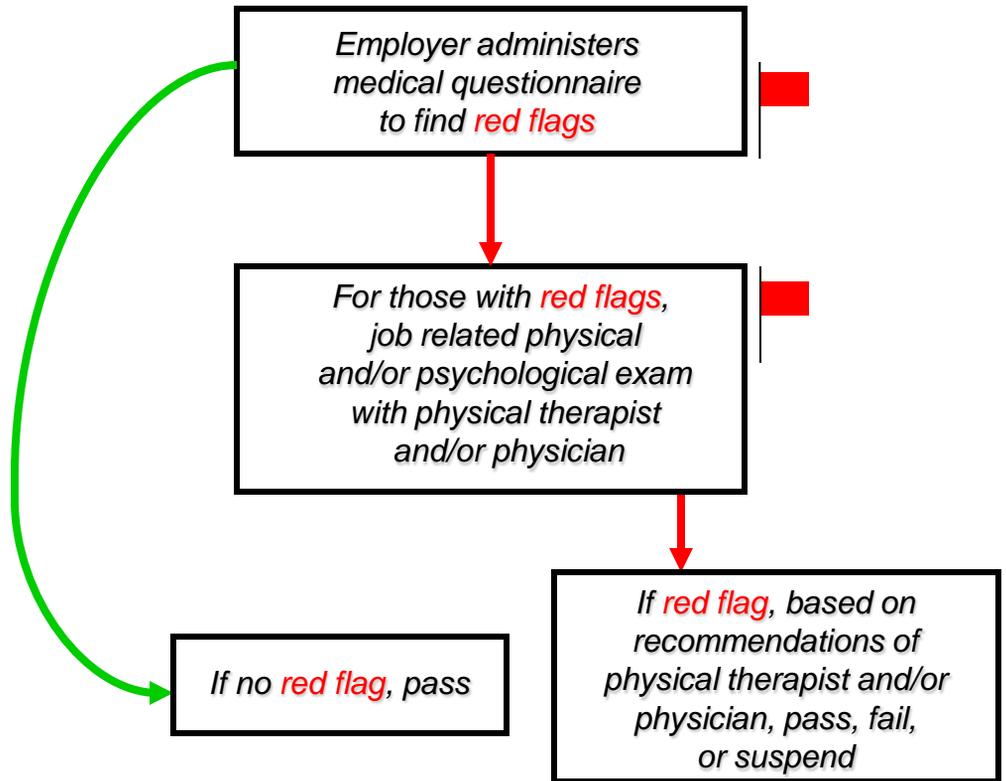
When Recommended

- 1. When have cooperation between physician and physical therapy clinic*
- 2. When physician has traditionally performed exams, but unable to administer musculo-skeletal and functional components*
- 3. When employer wants physical therapist to identify red flags*

first 

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision

POST-OFFER/PRE-PLACEMENT



Cost Per Applicant

No red flag -- No cost
 Red flag -- \$50 -- \$200, depending on what exams are ordered

Advantages

1. Save expense since only red-flagged applicants get medical exam
2. Can achieve all 10 goals of employment testing in two steps for red flagged applicants

Disadvantages

Employer is counting on applicants to be truthful when taking medical questionnaire since there is no verification of negative answers; some frauds will slip through; second stage exam must be job-related and limited to red-flagged condition(s)

When Recommended

Limited budget for testing

MODEL TWELVE: EMPLOYER QUESTIONNAIRE (W/VERIFICATION) THEN MEDICAL EXAM(S)

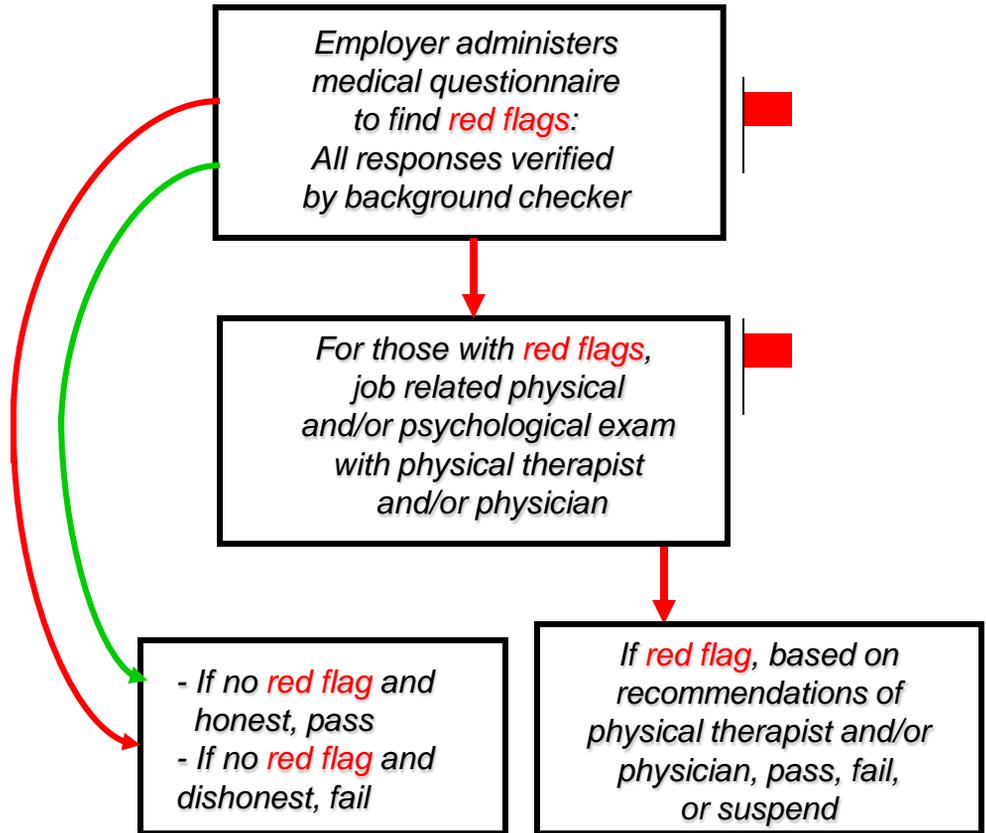
Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT



Cost Per Applicant

No red flag -- No cost for medical exam
Background checker -- \$25 -- \$50
Red flag medical exam -- \$50 -- \$200

Advantages

1. Save expense since only red-flagged applicants get medical exam
2. Can achieve all 10 goals of employment testing in two steps for red flagged applicants
3. Frauds are screened out early

Disadvantages

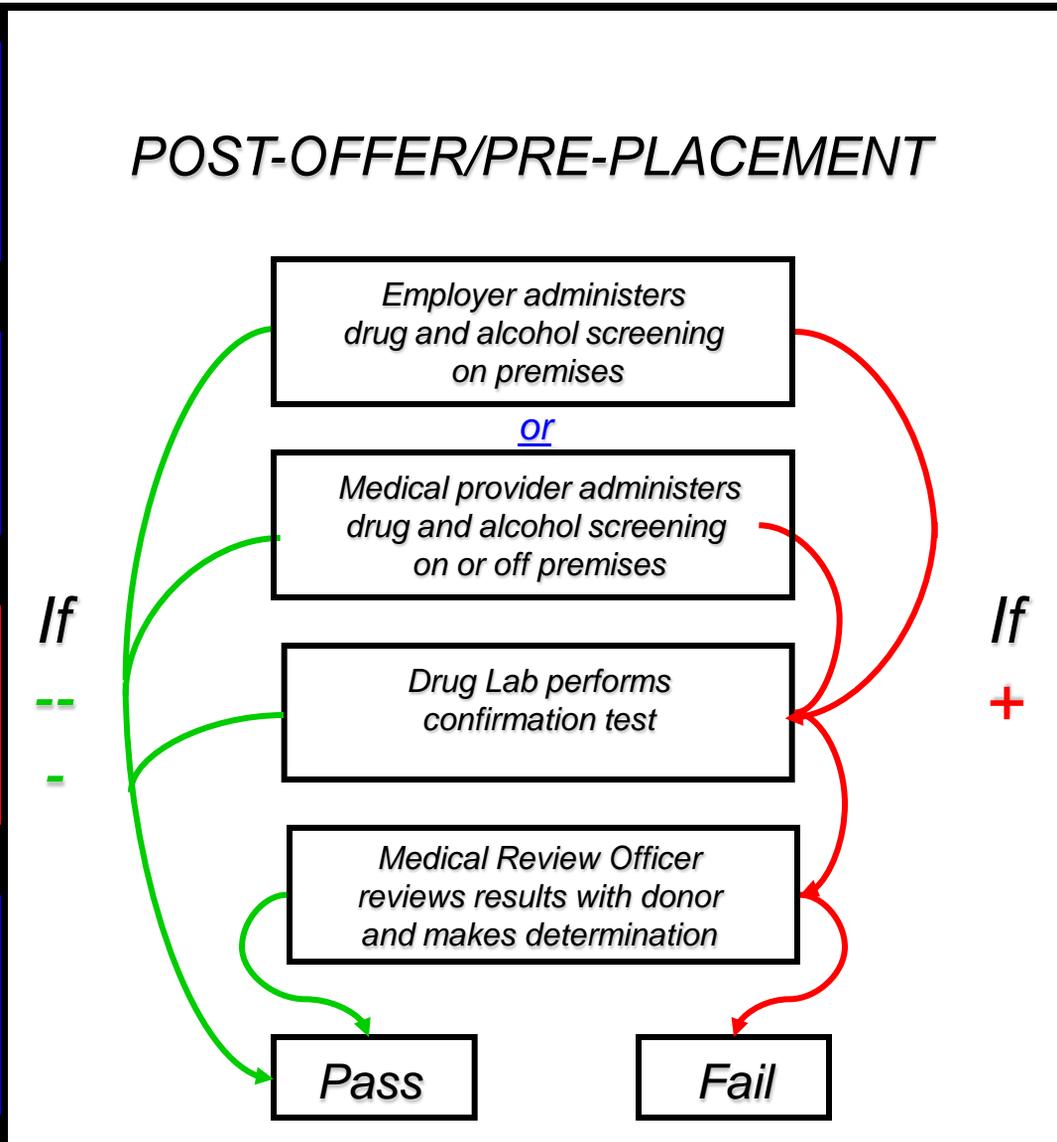
Second stage exam must be job-related and limited to red-flagged condition(s)

When Recommended

Limited budget for testing, but want to screen out frauds who deny prior conditions; when combined with drug testing, is near perfect "budget" model for medical testing

MODEL THIRTEEN: POST-OFFER DRUG AND ALCOHOL SCREEN

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Applicant
Advantages
Disadvantages
When Recommended

Cost Per Applicant \$20 -- \$50

Advantages

1. Self-screening
2. Screen out current illegal drug and alcohol abusers
3. Can test for legal and illegal controlled substances

Disadvantages

None, as long as testers are competent and results are kept confidential

When Recommended

1. When required by law
2. When budget permits and want drug-free workplace

MODEL FOURTEEN: PSYCHOLOGICAL EXAM

<i>Employment Stage</i>	<p style="text-align: center;"><i>POST-OFFER/PRE-PLACEMENT</i></p> <pre>graph TD; A[Employer sends applicant to medical provider for psychological exam] --> B[Medical provider administers psychological exam (reports results to employer)]; B --> C[Pass, Fail, or Suspend];</pre>
<i>Employment Action</i>	
<i>Medical Provider Participation</i>	
<i>Employment Decision</i>	
<i>Cost Per Applicant</i>	\$20 -- \$125
<i>Advantages</i>	<ol style="list-style-type: none">1. Determine if applicant is psychologically capable of performing the requested position2. Self-screening
<i>Disadvantages</i>	None
<i>When Recommended</i>	<ol style="list-style-type: none">1. When required by law2. When budget permits and want psychological screening or baselining

MODEL FIFTEEN: POST-OFFER PHYSICAL AGILITY TEST

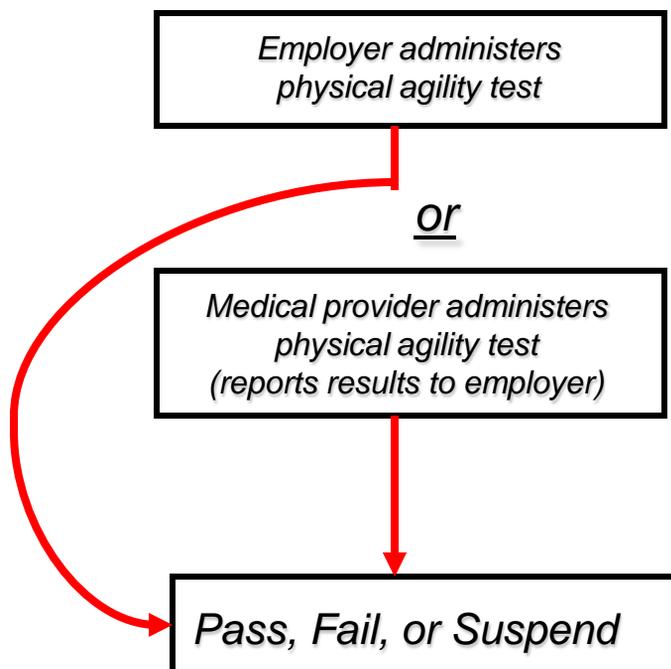
Employment Stage

Employment Action

Medical Provider Participation

Employment Decision

POST-OFFER/PRE-PLACEMENT



Cost Per Applicant

\$0 -- \$75

Advantages

1. Test for ability to perform some of the essential functions of the job
2. Can be combined with blood pressure checks and other medical exams and questionnaires (optional)

Disadvantages

If physical agility test has no medical components, only testing benefits will be self-screening and employer screening

When Recommended

When limited by budget and/or do not want medical data

MODEL SIXTEEN: NON-JOB-SPECIFIC MEDICAL EXAMS

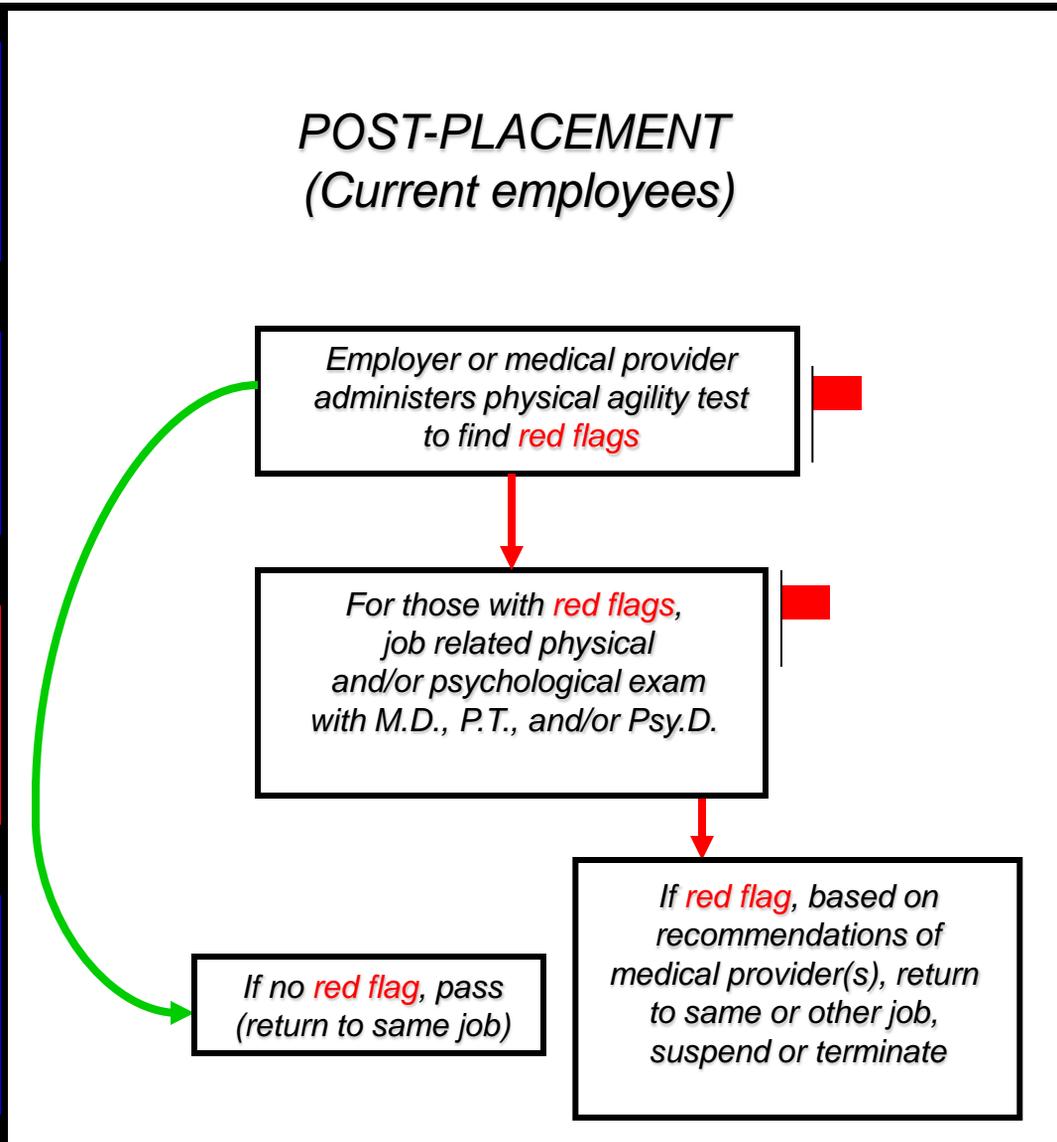
Employment Stage	<p style="text-align: center;">POST-PLACEMENT <i>(Current employees)</i></p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"><p style="text-align: center;"><i>Employer finds exception to "No-Medical Test" rule of ADA: voluntary wellness program, statutorily required, ADA analysis, etc.</i></p></div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"><p style="text-align: center;"><i>Physical and/or psychological exam with M.D., P.T., and/or Psy.D. which is not job specific</i></p></div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"><p style="text-align: center;"><i>Based on medical opinions, keep in regular job with or without accommodation, transfer to another job, or terminate</i></p></div>
Employment Action	
Medical Provider Participation	
Employment Decision	
Cost Per Applicant	<p>\$45 -- \$200</p>
Advantages	<p><i>All 10 benefits of testing can be realized</i></p>
Disadvantages	<p><i>None</i></p>
When Recommended	<p><i>When statutorily required (e.g., OSHA or DOT), pursuant to voluntary wellness program, or whenever "consistent with business necessity"</i></p>

MODEL SEVENTEEN: FITNESS FOR DUTY EXAM

Employment Stage	<p style="text-align: center;">POST-PLACEMENT <i>(Current employees)</i></p> <p style="text-align: center;"><i>Employer determines "Fitness for Duty" issue because of job absence, injury, reduced performance, accidents, etc.</i></p> <p style="text-align: center;">↓</p> <p style="text-align: center;"><i>"Fitness for Duty" physical and/or psychological exam with M.D., P.T., and/or Psy.D. which is job specific</i></p> <p style="text-align: center;">↓</p> <p style="text-align: center;"><i>Based on medical opinions, keep in regular job with or without accommodation, transfer to another job, or terminate</i></p>
Employment Action	
Medical Provider Participation	
Employment Decision	
Cost Per Employee	\$45 -- \$200
Advantages	<i>All 10 benefits of testing can be realized</i>
Disadvantages	<i>Need written employer policy if require after Family and Medical Leave Act leave; also may have to limit test and/or contend with personal physician's release</i>
When Recommended	<i>Always after extended absence, serious work-related accident, or whenever "consistent with business necessity"</i>

MODEL EIGHTEEN: PHYSICAL AGILITY TEST, THEN JOB-RELATED MEDICAL EXAM(S)

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Employee
Advantages
Disadvantages
When Recommended

Physical agility test -- \$0 -- \$75
Second-step medical exam -- \$75 -- \$150

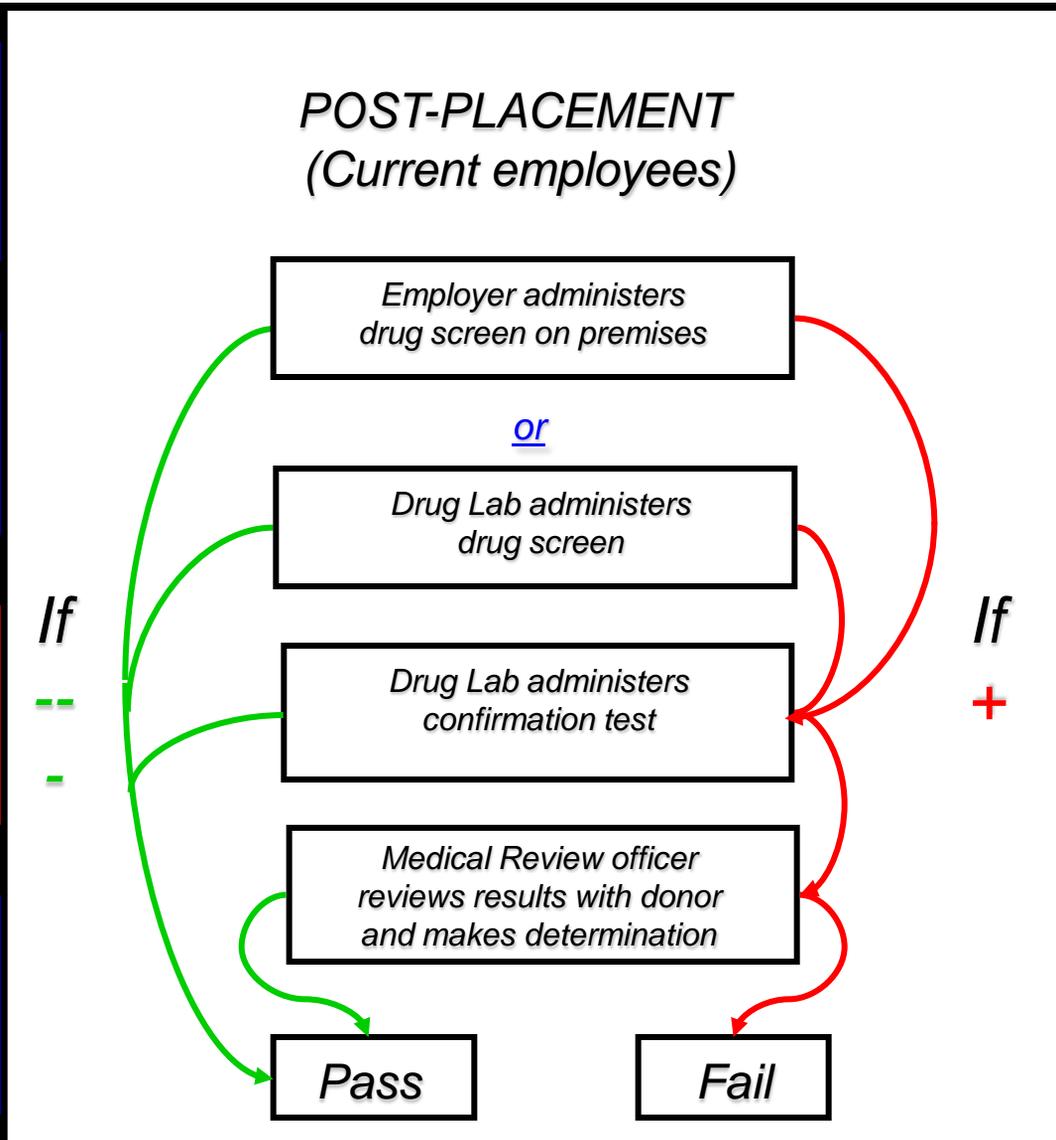
Cost-effective, legal way to test all current employees in a job category

1. Second-stage exam must be job-related
2. Employer must be prepared to explore accommodation by modifying job, transfer, or suspension before termination

1. Problems with an aging workforce
2. Rash of injuries in a specific job category
3. Whenever “consistent with business necessity”

MODEL NINETEEN: POST-PLACEMENT DRUG TESTING

Employment Stage
Employment Action
Medical Provider Participation
Employment Decision



Cost Per Applicant
Advantages
Disadvantages
When Recommended

Cost Per Applicant \$20 -- \$50

Advantages Control drug usage in the workplace

Disadvantages

1. Can only test for illegal drugs
2. Must have employer policy, competent testers and confidentiality

When Recommended

1. When required by law
2. When you want a drug-free workplace

MODEL TWENTY: FUNCTIONAL CAPACITY EVALUATION

