

Title VII and the Uniform Guidelines on Employee Selection Procedures
(What Do We Do About Testing and Assessment Centers)
by Richard Stokes

Introduction

Title VII of the Civil Rights Act is the federal mandate that attempts to eliminate employment bias in the workplace. The Act makes it unlawful for an employer:

- (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify the employees or applicants for employment in any way which would deprive or tend to deprive any individual or employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex, or national origin. 1

Employment Testing

Title VII of the Civil Rights Act permits the use of **professionally developed ability tests** as long as they are not designed, intended, or used to discriminate. Section 703(h) of Title VII states that:

... it shall be an unlawful employment practice for an employer to give and act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin.

Pre-employment selection procedures, including tests and inquiries used to screen out prospective applicants, are but one method of determining who is qualified for a job and who is not. They must be reliable in measuring what it is suppose to measure and objective in its results. The primary guideline for any employment testing is that the test must be job-related and given to all applicants for the job for which the test applies.

Pre-employment selection procedures, however, can be particularly vulnerable to adverse impact charges. As a result, most Title VII challenges to scored test are brought under the disparate impact theory established in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)

The EEOC requires employers using selection tests to justify them with "**data demonstrating that the test is predictive of or significantly correlates with important elements of work behavior which comprise or are relevant to the job or jobs which candidates are being evaluated.**"² The EEOC has adopted six (6) testing guidelines to help employers establish objective standards for selection, screening, and promotion of workers:



1. Job descriptions should be examined and their critical requirements established before tests are selected for screening applicants.
2. Tests used should be developed by reputable psychologists. Such test should be administered by professionally qualified personnel who have had training in occupational testing in an industrial setting.
3. Rigidly inflexible minimum scores should be reexamined in light of the considerable research under way on differential selection.
4. Test scores must be considered as only one source of information and must be combined with other available information on performance, such as motivation, leadership, organizational experience, self-sufficiency, and dependability.
5. Test should be validated within the setting where they will be used. Validation should be for as many separate groups as possible in preference to one large heterogeneous group.
6. It may be advisable for employers who deal with applicants from culturally deprived backgrounds to offer retests to candidates who are unsuccessful on their first test, since these people are less familiar with the testing situation and may not do as well as they are able.

The EEOC has also published very technical and complicated standards for validating such test.³ According to the EEOC, there are three methods of validation which are acceptable under the *Uniform Guidelines on Employee Selection Procedures*: (1) criterion-related validation; (2) content validation; and (3) construct validation.

Criterion-related validation is established by showing a significant statistical correlation between success in a scored test and a measure of success in some aspect of job performance. There are two types of criterion-related validation (predictive and concurrent). Predictive validation involves testing individuals prior to hiring but hiring without considering the test score; job performance is later compared to the test scores. Concurrent validation involves testing incumbents and comparing their current job performance with the test results. Criterion-related validation is best used for measuring intelligence, aptitude, education and experience.

According to the Uniform Guidelines, **content validation** is established by showing the "the content of the selection procedure is representative of important aspects of performance on the job for which candidates are to be evaluated. For example, a typing test would be a valid test for a typist position. In *Guardian Assoc. v. Civil Service Commission, supra*, the second circuit set forth criteria for evaluating a test for content validity. Accordingly, there must be a job analysis showing the importance to the job of the job activities being tested; the test must have been constructed with "reasonable competence"; the test must be scored in such a way that those who can in fact perform the job are successful on the test. Content validation is best used for measuring knowledge, skills, education, and experience.

Construct validation requires a showing that the selection procedure measures a trait or characteristic which is important for job performance. Construct validity, however, is rarely used, complex and difficult to defend. It is best used for measuring intelligence aptitude, education, experience, personality, and interest.

Assessment Centers

Another selection instrument is an assessment center. An assessment process is a method of performance evaluation using multiple job-related simulations to allow candidates to demonstrate, under standardized conditions, their job related knowledge, skills, and abilities. Using job simulation exercises tailored specifically for a particular jurisdiction not only increases candidate acceptance and the agency's compliance with the legal requirements for content validity, but allows candidates to demonstrate the extent to which they possess the appropriate managerial behaviors.

The essentials of the assessment center method are described in the standards and ethical statement of the Third International Congress on the Assessment Center Method (Quebec, Canada, 1975; revised in Miami, Florida, 1988; revised in Pittsburg, Pennsylvania, 1989). To be considered an assessment center, the following minimal requirements must be met:

1. The dimensions, characteristics and qualities to be evaluated are determined by an analysis of job behaviors.
2. Multiple assessment techniques must be used, at least one of which must be a simulation to showcase the participants behavior as he responds to a situation related to the target job.
3. Simulation exercises are job-related and pretested to ensure validity and reliability. These exercises must be scored objectively and indicate the relevant behavioral information.
4. Multiple assessors - "content experts" who have received prior training in these techniques - must be used.
5. Judgements on the behaviors must be based on pooled information from both the assessors and the exercises.
6. The final integration of information by the group of assessors occurs at a separate time from the observation of the behavior.

Assessment centers have gained widespread acceptance and the use of assessment centers is directly related to an emphasis on sound validation research. However, ascertaining the validity of an Assessment Center program is a complicated technical process. In evaluating the validity of assessment center programs, it is particularly important to document the selection of the dimensions. The technical standards and principles for validation of assessment centers appears in

Principles for the Validation and Use of Personnel Selection Procedures (Society for Industrial and Organizational Psychology, Inc. 1987) and *Guidelines for Educational and Psychological Testing*(APA, 1985)

Conclusion

This brings us to the fork in the road that MTAS now faces. My advise to a city that could not statistically tie a pre-employment test to specific characteristics necessary for successful job performance and/or the city does not desire to perform a validity study, would be that the test should be discontinued or changed. It's clear to me that we must discontinue or change our current testing policy within the MTAS organization.

In my opinion, the MTAS position on employment testing should be that we will assist in administering/proctoring/monitoring the test site, and score the test and present the results to the city, however, it is the city's responsibility to insure that the tests used are validated in some fashion. I think it is also important that we encourage the use of "professionally developed test"(IPMA or Wonderlick). While the cost might be prohibitive to some small communities, the cost is off-set by the cost of litigating an employment discrimination law suit.

EMPLOYEE TESTING PROPOSAL

for the TENNESSEE ASSOCIATION OF CHIEFS OF POLICE

During the discussion of employee testing at the retreat Mike Tallent mentioned the possibility of the state Association of Chiefs of Police becoming involved in developing and validating a bank of questions for testing. I have approached Chief Kinser of Greeneville about this concept. Chief Kinser is the president of the state association. He expressed interest and is allowing me to make a presentation at the board of director's meeting on June 15.

Pending the outcome of our meeting on June 5, I hope to make a proposal, or series of proposals to the chiefs. If the chiefs will become involved in developing and validating a bank of questions for entry level testing, MTAS could become the custodian of the tests. I assume that most departments will want MTAS to administer and grade the tests, and this may be necessary for all departments to maintain the legitimacy of the process. Ownership and the responsibility for continuous validation of the tests would remain with the chiefs' association.

Most departments test a larger number of entry level candidates than promotional candidates. From a cost standpoint entry level testing will probably be a higher priority than promotional testing. Of course, the chiefs' association may have the opposite priority.

When I meet with the board, I hope to have more details about this concept. I'm sure they will want to know about the process of selecting test questions, the validation process, and some idea of cost. Will we be able to address any of those issues at our meeting on June 5? Also, how involved can MTAS become in setting up this testing system?