

## **Employment Testing in the Workplace**

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When the job market is tight and unemployment is low, employers often look for ways to add value to hiring decisions. Some consider employment testing as an added measure of identifying job fit, either by assessing task performance, reasoning skills, physical ability, personality, or illegal drug or alcohol use.

When tests are introduced as part of a hiring process, legal issues relating to equal employment opportunity must be considered. A test may not discriminate against any protected group, may not cause disparate treatment or disparate impact, and must comply with the ADA's limitations on medical inquiries.

Disparate treatment in testing occurs when there is intentional discrimination. In a recent case, *EEOC v. Daimler Chrysler Corp.*, an applicant test failed to accommodate those with learning disabilities who needed reading accommodations during the pre-employment test given for nonexempt manufacturing jobs. The case resulted in the ruling that applicants should have the opportunity to take the hiring test with the assistance of a reader if they have proof of an ADA disability.

When an employer is not motivated by discriminatory intent, but the result of the test has a disproportionate effect on persons in a protected group, disparate impact may have occurred. *EEOC v. Dial Corp.* involved a strength test that disproportionately eliminated women from specific employment positions. Dial Corporation implemented a strength test for entry level jobs. The jobs were physically demanding, requiring lifting, and the company stated that the test was needed to reduce injuries from the difficult work in the workplace. Women had been successfully performing the job for years, but males passed the test at a 97 percent rate, compared to 40 percent for female applicants. The EEOC sued Dial Corporation on behalf of a class of women that had taken and failed the strength portion of the pre-employment test, alleging sex discrimination. The validity of the strength test was rejected, as it was noted that women had been no more likely than men to be injured prior to the introduction of the test. The test was also found to be more difficult than the actual job, thus failing to accurately represent job needs.

These two recent examples illustrate that employment testing in the pre-employment context must be continually evaluated to determine if the tests create potential disparate effects and to ensure that the tests are legitimately related to the requirements of the positions for which they are developed/provided.



The following is a list of best practices for employment testing that may help eliminate discrimination claims in this arena:

- Conduct a thorough job analysis to ensure that you understand the job duties and performance factors associated with the position.
- Ensure test content is job related.
- Validate that test measures are related to performance success on the job (professionally developed tests should have validity evidence).
- Conduct statistical analyses to ensure there is no disparate impact.
- If drug and alcohol testing is performed, have a clear policy stating when the test is to be given, and remember that it cannot be performed prior to a job offer.
- Properly train testers and evaluators.

Employment testing can be legal when done right. Tests that meet validity criterion and are consistent with business necessity may strengthen a selection process to help ensure the right fit for the right job.

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