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ARCH Profile: Legal issues in psychological testing

The guidelines, as they relate to validation of employee selection and evaluation procedures, are both extensive and complex. Employers should use caution in selection and evaluation procedures. When planning personality testing or aptitude and behavioral assessments, we suggest employers confer with counsel knowledgeable in the area before initiating the use of devices that test for qualities such as intelligence, aptitude, and personality.

1) Discriminatory issues

Abide by anti-discriminatory laws. That is, be sure that administration or action upon the results of a test is not designed, intended, or used to discriminate because of skin color, gender, disability, race, national origin, pregnancy, or religion. Additional types of discrimination include discrimination on the basis of marital status, care-taker status

(responsibility for dependents), sexual orientation, and weight. To learn about the anti-discrimination laws in your area, contact your labor department.

Treat all candidates equally. Administer the same test battery to all employees concerned (require the test for all employees or candidates who are or will be doing the same job) and under similar conditions.

Accommodate candidates with disabilities. Administer tests in a manner that ensure that test-takers with a disability are accurately and fairly tested. Accommodate people with disabilities by giving them a test that is neutral as to their disability whenever possible. For example, employers can make special provisions such as providing additional time, special lighting, giving a written test orally or an oral test in writing, giving the test in Braille or providing a reader, and ensuring accessibility to the location where the test is administered.

Avoid unsuitable tests. Familiarize yourself with assessments that are not suitable for use as pre-employment assessments. Specifically this applies to psychological assessments that were designed for clinical or diagnostic use. Psychological tests are treated like medical tests when they elicit answers that suggest a mental disorder or impairment. This fact puts such tests clearly within the purview of the Americans with Disabilities Act (ADA) (or equivalent acts) and all of its restrictions.

2) Relevancy issues

Use only tests relevant to the job. Carefully consider if the test truly tests the requirements of the job for which it is being used. Any tests used, must measure the fit of the person for a particular job and the assessment must be relevant to the position. It is helpful for employers to have well thought out job descriptions in place.

Avoid test with unreasonably intrusive questions (e.g., questions about sexual preferences, religious, or political views.) Individuals have a right to employment privacy.

3) Privacy and confidentiality issues.

Guarantee confidentiality. Test takers are informed that administrators have access to final scores/sub scores and interpretation of results but not to the answers to individual items on the test. Nevertheless, it is highly recommended that test takers be briefed on the HR practices of your company and guaranteed that their test results will be reviewed only by authorized personnel.

Respect "access to information" rights. Depending on state or provincial laws, a test-taker may have the right to see or obtain a copy of personal information stored in his/her personnel file, including the results of psychological and skill assessments. Managers should ensure that identification be adequately verified before complying with a request for access to personal information.