

THE DIVERSITY-VALIDITY DILEMMA: OVERVIEW AND LEGAL CONTEXT

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Many employers desire staffing procedures that simultaneously identify high-quality candidates and help them acquire a diverse workforce. Hiring high-quality candidates is essential for maximizing individual job performance and economic utility. Many people believe that hiring a diverse workforce is important for social, ethical, and business reasons. But, due to racioethnic and sex subgroup differences on predictor scores in many selection procedures, it is difficult for organizations to simultaneously maximize the validity of their selection procedures and hire a diverse workforce.

Both private and public sector employers face the diversity-validity dilemma. Under the current law, private and public sector employers may use “preferences” for the “remedial” purpose of eliminating manifest imbalances in their workforce. Unfortunately, the Supreme Court remains substantively divided and has not clearly defined (a) what is a sufficient compelling interest to justify affirmative action preferences in the public sector; and (b) what is required to demonstrate that plans are sufficiently narrowly tailored and do not unnecessarily trammel the interests of the other group (in both the public and private sectors).

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Robert E. Ployhart is from the University of South Carolina, and David A. Kravitz is from George Mason University.