

INTEGRITY TESTS: TO TEST OR NOT TO TEST, THAT IS THE HIRING QUESTION

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Employers often use tests and other selection procedures to screen applicants for hire and employees for promotion. There are many different types, but the tests that seem to be asked about more and more are personality or integrity tests. Personality tests and integrity tests assess the degree to which a person has certain traits or dispositions (e.g., dependability, cooperativeness, risk aversion) or aim to predict the likelihood that a person will engage in certain conduct (e.g., theft, absenteeism).

The use of tests and other selection procedures can be a very effective means of determining which applicants or employees are most qualified for a particular job. However, you must be cautious in using integrity tests. Use of hiring tests can violate federal anti-discrimination laws if the tests disproportionately exclude people based on race, sex, or another covered basis. As a result, these tests must be job-related and consistent with business necessity.

IS THERE A DISPARATE IMPACT?

Under Title VII of the Civil Rights Act of 1964, integrity tests are permitted as long as they are not “designed, intended or used to discriminate because of race, color, religion, sex or national origin.” 42 U.S.C. § 2000e-2(h). Title VII also imposes restrictions on how to score tests. Employers are not permitted to (1) adjust the scores of, (2) use different cutoff scores for, or (3) otherwise alter the results of employment-related tests on the basis of race, color, religion, sex, or national origin. *Id.* at § 2000e-2(l).

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While you may believe an integrity test is just such a neutral test that should not be found to violate Title VII, that law also prohibits employers from using neutral tests or selection procedures that have the effect of disproportionately excluding persons based on race, color, religion, sex, or national origin. This is called “disparate impact” discrimination.

In disparate impact cases, courts examine whether the employer uses a particular employment practice that has a disparate impact on the basis of race, color, religion, sex, or national origin. For example, if you require that all applicants pass a physical agility test, does the test disproportionately screen out women? Determining whether a test or other selection procedure has a disparate impact on a particular group ordinarily requires a statistical analysis.

THE TEST FOR THE TEST

One way to determine if a hiring test has a disparate impact on a certain group is to validate the test based on the Uniform Guidelines on Employee Selection Procedures (UGESP) which the EEOC has adopted. See 29 C.F.R. Part 1607. UGESP outlines three different ways you can validate your hiring tests through a validation process:

- **Criterion-related validation:** a statistical demonstration of a relationship between scores on a selection procedure and job performance of a sample of workers.
- **Content validation:** a demonstration that the content of a selection procedure is representative of important aspects of performance on the job.
- **Construct validation:** a demonstration that (a) a selection procedure measures a construct (something believed to be an underlying human trait or characteristic, such as honesty) and (b) the construct is important for successful job performance.

UGESP provides detailed guidance about each method of test validation.

If the test that you are using is shown to have a disparate impact based on a protected characteristic – such as sex in the above physical agility example – you must be able to show that the test is job-related and consistent with business necessity. This standard is met by showing that it

is necessary to the safe and efficient performance of the job. In deciding whether to adopt a hiring test, such as an integrity test, you should make sure the test is associated with the skills needed to perform the job successfully. Validation under the UGESP guidelines sufficiently demonstrates the job-relatedness of the test.

However, even if you can show that a test is job-related, it can still be found to be discriminatory if it can be shown that a less discriminatory alternative would meet your business need. As a result, you should stay abreast of changes in job requirements and update testing specifications as new testing techniques are developed.

TAKEAWAYS IN IMPLEMENTING INTEGRITY TESTS

- Ensure that the integrity tests and other selection procedures are properly validated for the positions and purposes for which they are used.
- The test must be job-related and its results appropriate for your purpose. While a test vendor's documentation supporting the validity of a test may be helpful, you are still responsible for ensuring that your tests are valid under UGESP.
- If using the construct validation measure, define which personality trait is being measured and why it is important for successful job performance.
- If a selection procedure screens out a protected group, you should determine whether there is an equally effective alternative selection procedure that has less adverse impact and, if so, adopt the alternative procedure.

Hiring tests, such as integrity tests, can be effective tools to screen applications for hire and promotion. However, you must remain careful in adopting integrity tests, as it is each employer's own obligation to prove that their selection criteria do not have a disparate impact on certain groups and, further, that they are job-related, consistent with business necessity, and the least discriminatory alternative(s) available.

[Contact the author](#) for more information.