





Legal considerations when credentialing programs are interpreted as employment tests

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Overview



- Context of the case
- Court's interpretation of *Standards*
- Psychometric response
- Credentialing program response



Context of the case

- Class action suit against New York City
- Focus on exams (LAST, ALST) required for all educators
- Adverse impact for Black and Hispanic candidates
- Court's interpretation as employment tests



Court's interpretation of *Standards*

- Reliance on precedent, dated guidance (1978 *Uniform Guidelines*), and court's appointed expert
- Methods for evaluating adverse impact
- Dismissed the authority and value of the *Standards*

Reactions to the decisions



- Psychometric considerations
 - Which set of standards, regulations, or guidelines should I follow?
 - What is adverse impact and should we care?
 - What implications does this have for the psychometric elements of my program?
- Program considerations
 - Are there different requirements for mandatory versus voluntary certifications?
 - How should credentialing programs react to this information?

Standards, Regulations, and Guidelines



- NCCA and other accreditation standards
- Standards for Educational and Psychological Testing (AERA, APA, NCME)
- Uniform Guidelines on Employee Selection Procedures (EEOC)
- Principles for the Validation and Use of Personnel Selection Procedures (SIOP)

Accreditation Standards



- NCCA Standards help ensure the health, welfare, and safety of the public. They highlight the essential elements of a high-quality program.
- The NCCA Standards are consistent with the *Standards* and are applicable to all professions and industries.
- ISO/IEC 17024:2012 specifies requirements ensuring that certifying bodies operate in a consistent, comparable, and reliable manner.

Standards for Educational and Psychological Testing



- Provide criteria for the development and evaluation of tests and testing practices and to provide guidelines for assessing the validity of interpretations of test scores for the intended test uses.
- The *Standards* is not a statement of legal requirements, and compliance with the standards is not a substitute for legal advice.



Uniform Guidelines

- The *Guidelines* incorporate a single set of principles designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting discriminatory employment practices.
- Provide a framework for determining the proper use of tests and other selection procedures.
- Apply to tests and other selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hiring, promotion, demotion, membership, referral, retention, and ***licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law.***



SIOP Principles

- The *Principles* specify established scientific findings and generally accepted professional practice in the field of personnel selection psychology in the choice, development, evaluation, and use of personnel selection procedures designed to measure constructs related to work behavior, with a focus on the accuracy of the inferences that underlie employment decisions.
- Federal, state, and local statutes, regulations, and case law regarding employment decisions exist, but the *Principles* are not intended to interpret them.
- Principles are intended to be consistent with the *Standards*.



Conclusion

- **The *Guidelines* interpret Federal equal employment opportunity law.**
- The *Guidelines* are designed specifically for *employers* who are subject to Title VII and are used to evaluate validity when an employer's testing practices have adverse impact.
- Professional testing standards and principles are primarily written by, and designed for, *testing professionals* in the test development field. They constitute a set of technical standards and best practices for developing and evaluating tests.
- If differences exist between particular provisions of the *Guidelines* and other professional testing standards and principles, the *Guidelines* will be given precedence by enforcement agencies.

Adverse (Disparate) Impact



- Title VII of the Civil Rights Act of 1964
- Employment practices that have an unintentionally discriminatory effect on a protected class
- Members of a protected class have a substantially different rate of selection based on an employment practice
- Statistical evidence is generally required

Should I Care About Adverse Impact?



- To rebut a *prima facie* case of discrimination, a defendant must demonstrate that an exam is *job related* (i.e., validated properly)
 - Suitable job analysis
 - Reasonable competence in test construction
 - Test content related to job content
 - Test content representative of job content
 - Scoring system that usefully selects better-performing individuals

Programmatic Considerations



- Awareness
- Risk Management
- Approach to meeting 2016 NCCA Standards

Credentialing Program Observations



- NCCA's Standards are strong evidence that the certification program has been adequately validated as job-related, reliable, and indicative of relevant proficiency levels



HOWEVER.....

- Standards were not developed for the purpose of defending against employment discrimination claims



Key Standards

- Standard 13 – Panel Composition
- Standard 14 – Job Analysis
- Standard 15 – Exam Specifications
- Standard 16 – Exam Development
- Standard 17 – Standard Setting



Standard 13

- Qualifications and representativeness of expert panels.
 - Appropriate representation from relevant demographics
 - Prevention of undue influence from any individual or group
 - Qualifications of panelists
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- This is a new Standard effective 2016

Standard 14



- Job analysis elements and documentation requirements, frequency of analysis as related to current practice in the field, and rationale if using a non-quantitative approach
- This 2016 Standard provides additional clarity about job analysis elements and documentation requirements, frequency of analysis as related to current practice in the field, and rationale if relying on a non-quantitative approach



Standard 15

- Specific requirements for establishing examination specifications to build examination forms. The certification program must establish specifications that describe what the examination is intended to measure as well as the design of the examination and requirements for its standardization and use, consistent with the stated objectives of the certification program.
- Outlines specific requirements for establishing examination specifications to build examination forms.



Standard 16

- Development of appropriately designed examinations and across multiple forms and appropriate content.
- Certification examinations must be developed and assembled in accordance with the established examination specifications and with sound examination development principles and practices.



Standard 17

- Valid process for standard setting
- Documentation of procedures, results, participation, frequency of standard setting

Questions?

