



Legal Issues in Employment Selection

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I. Introduction and Overview

- Focus on Legal Issues Related to Assessments
- Importance of Perceptions
- Validity Issues
- Frequency of Litigation
- Americans with Disabilities Act (“ADA”)
- Privacy
- Negligent Hiring
- Electronic Recruitment / Selection
- Legislative Trends



II. How Important are Perceptions?

- Objectivity
- Fairness
- Standardization
- Expectations
- Appropriateness



III. Validity Issues

- Legally Based
 - Construct
 - Criterion-related
 - Content
- Perceptually Based
 - Face



IV. Frequency of Litigation

Are Assessments a Lightning Rod for Litigation?

EEOC Complaints Involving Assessments

| Year | Total Complaints | Testing Complaints |
|------|------------------|--------------------|
| 1998 | 79,591 | 228 |
| 1999 | 77,444 | 325 |
| 2000 | 79,896 | 325 |
| 2001 | 80,840 | 314 |
| 2002 | 84,442 | 175 |
| 2003 | 81,293 | 246 |



V. ADA Litigation

- Reasonable Accommodation
- *EEOC v. Echo Star Communications Corp.*, filed by Denver District (2002).
- Pre v. Post Offer Administration
 - Disability-based/medical testing must be post-offer
 - Area of ADA that is widely recognized and relatively straightforward
 - Disability not required for standing



VI. Privacy

- Basis of Complaints
- Judicial Analysis
 - How Substantial in Invasion (Expectations)
 - Basis of Justification
- Impact of 9/11
- *Soroka v. Dayton Hudson*, 235 Cal. App. 3rd 654 (1991).
- *Loder v. City of Glendale*, 59 Cal. Rpt. 2nd 696 (1997).



VI. Privacy (cont.)

- *Staples v. Rent-a-Center*, C 99-2987 (1999).
- *Karraker v. Rent-a-Center*, 02-CV-2026 (2002).
- *Brent et al. v. The Municipality of Anchorage, Law Enforcement Services, Inc., Richard Lenhart, et al.*, No. 3AN-02-7375CI (2002).



VII. Negligent Hiring

- Basis of Complaints
- Impact of 9/11
- *Doe v. American Airlines*, 173 Daily Lab. Rep. (1986)



VIII. Electronic Recruitment / Selection Issues

- Standardization
- Reasonable Accommodation
- Disparate Impact / Treatment

*-Hightower v. Walt Disney World,
No. 97-661-CIV-ORL (M.D. Fla. 1997).*



Digital Divide

| Group | IVR | WEB |
|------------------|------|------|
| Native American | 25.3 | 74.7 |
| African American | 24.7 | 75.3 |
| Hispanic | 16.1 | 83.9 |
| Asian | 11.8 | 88.2 |
| White | 11.6 | 88.4 |



IX. Legislative Trends

- Greater demand to protect vulnerable audiences
- Greater interest in protecting transportation and utilities against terrorism



Summary and Questions

Solutions