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Use Personality Tests Legally and Effectively

By Lisa Daniel

Many companies misuse personality tests or use the wrong tests altogether, some experts say.

While other lawyers had sued against personality tests on constitutional grounds and failed in federal court, Seligman cited California privacy laws to show that the PsychScreen questions crossed a line between Target's interests and Soroka's privacy. Target's parent company, Dayton Hudson Corp., settled for \$1.3 million.

In his most recent personality test case, Seligman collected a \$2.1 million settlement from Burns International Security Services, part of the nation's largest security guard company, on behalf of 8,000 job applicants who were given a flawed personality test. "It was a fairly bizarre test about your attitudes toward employers," Seligman says. The Burns test included questions such as "Most companies make too much profit" and "Marijuana should be legalized."

Seligman showed that the test violated California law against employment discrimination based on political beliefs. The fact that the position was in a security field did not exempt it from this law.

"Asking whether drugs should be legalized is asking whether you think a law should be changed," Seligman says. "That's political."

Not Whether but How

The threat of lawsuits over personality tests presents a quandary for hiring managers, some of whom say pre-employment testing is the only way to make good and efficient hiring decisions.

Most hiring experts agree, though, that the issue is not whether to test, but how. It is an issue of both quantity and quality. The ease of Internet-based resume filing over paper and mail contact has caused a huge increase in applicants, many of whom apply for positions about which they are not serious—and for which they are not qualified, says Lisa D.G. Harpe, an industrial organizational psychologist (IOP) with Peopleclick Research Institute, a Raleigh, N.C.-based workforce acquisitions company. Harpe suggests using prescreening methods. Otherwise, she says, "The cost to employers of processing unqualified applicants can be substantial."

Companies lose millions of dollars per year from bad hires, says Wendell Williams, an IOP who designs and assesses tests for his Atlanta-based firm, Scientific Selection. "It's the result of costly mistakes, two people doing the job of one, social loafing, turnover, [and] low morale and productivity," Williams says. "For a company with 200 employees and a \$30 million payroll, it's typically a \$1

More Tips

Peopleclick's Lisa D.G. Harpe has these additional suggestions for employers pursuing personality tests:

- Determine whether a job seeker becomes an applicant before, during or after prescreening tests to know when to collect EEO information.
- Keep records of applicants' EEO information to prove that tests aren't adversely impacting protected groups.
- Have all applicants to a position take the same tests under the same standards.
- Be able to justify your questions.
- Avoid questions related to protected status, including less obvious ones like date of

million loss per year." Jeff Furst is the president of FurstPerson, a recruitment outsourcing firm in Chicago that specializes in hiring temporary workers for call centers, mostly in the financial industry. Furst discovered early on that it was not unusual for his clients to have a 40 percent attrition rate of new hires in the first 30 days. The problem was that "too many employees were not up to the training," he says.

Furst believes too many companies rely only on an interview to try to predict an applicant's job performance. "A well-structured behavioral-based interview can be very effective," he says. "But it won't measure personality factors or a willingness to do the work."

In an effort to get better results for his clients, Furst contracted Williams to develop and oversee a battery of tests to assess personality, as well as skills and cognitive abilities to screen applicants.

Furst says his focus on testing has provided great benefits to his clients. "We've reduced attrition by as much as 40 percent," he says.

Use and Misuse

While personality tests were in the workplace more than 60 years before Seligman's groundbreaking lawsuit, they were not without controversy. They sparked such outrage on the heels of the McCarthy era of intolerance in the late 1950s and early '60s that a congressional committee that oversaw civil liberties tried to have them banned in the federal workplace, says Annie Murphy Paul, author of *The Cult of Personality* (Simon and Schuster, 2004.)

Today, personality testing is a \$400 million industry that is expanding at a rate of 8 percent to 10 percent per year with some 2,500 tests on the market, says Paul, a former editor of *Psychology Today* magazine.

A 2003 survey by Management Recruiters International found that 30 percent of American companies, from tiny independents to giants like Wal-Mart and General Motors, use personality tests.

Even with so much use, Williams says, company misuse of tests "is the norm." Most often, Williams and others say, companies buy tests off the shelf from vendors they don't know enough about. Then, they send their company's human resource specialists to a day of training with the vendor. Test results are incorrectly interpreted, and a company wastes a couple of years' time and money before determining that the test isn't valid.

"People are out there putting on amateur psychologist hats and using personal opinions, memory and other unscientific types of processes," Williams says.

The movement of the MMPI, the Myers-Briggs personality type indicator and other tests into popular culture has exacerbated the problem of misuse, experts say. For example, Paul found that 60 percent of police departments use the MMPI, which was developed in the 1930s to test mental patients, as a prescreening tool even though IOPs and the test's creator dismiss its use for anything other than the clinical assessment of mental patients. The Myers-Briggs is so generic that it characterizes all the world's population into just 16 personality categories—hardly useful as a job-screening tool.

Start with an IOP

With so many tests on the market and so many vendors to choose from, "It's a true case of buyer beware," Williams says. Employment tests run the gamut of "excellent to pitiful," he says.

The first step, experts say, is to contract or hire a reputable IOP to oversee any testing. Of six lawsuits

graduation.

- Focus on work and job requirements.
- Ask objective questions. If you want to know if someone is accomplished at using a certain software program, ask how many years he or she has used it.
- Ask job seekers to verify truthfulness either by signing a declaration at the end of the test or by supplying references who know the answers.
- Prescreen the test on subject matter experts, legal counsel and EEO representatives.

Seligman has filed over personality testing, all tests were bought off-the-shelf and none was overseen by an IOP or an attorney. In the Target case, a contracted psychologist—not an IOP, who has a doctorate degree—was paid based on how many times a test was given. “It was a golden egg for the psychologist,” Seligman says.

William Shepherd, an IOP for PsyMax Solutions in Cleveland, says it is no wonder companies try to cut corners with personality testing. Basic-level tests are available to anyone on the Internet and can be bought off-the-shelf for prices ranging from \$15 to about \$150 for a high-level test. Compare that to the cost of an IOP, who may charge \$3,000 to conduct the testing of a single hire from beginning to end.

Asking why employers use off-the-shelf products so frequently, Shepherd says, is like asking “Why do kids play with fireworks? Because they’re readily available and they’re fun to play with.”

Seligman notes that investment in an IOP could curb his litigation.

“If every employer had an industrial psychologist, every test would be much more valid,” he says. An IOP is trained to prevent violations of federal disability and discrimination laws, nullifying the need for additional legal review. “Your corporate legal office may be able to tell you if there is a legal risk, but very few lawyers know this area of law.”

Referrals for IOPs can be made through the Society for Industrial and Organizational Psychology in Bowling Green, Ohio, or online at www.siop.org.

Validation Standards

Besides following the 1978 Uniform Guidelines for federal discrimination law, every test should adhere to The Standards of Educational and Psychological Testing, published by the American Psychological Association in 1999, Williams says.

“A test should be based on some theory of job performance, it should have integrity and reliability, and it should accurately predict what it’s supposed to predict and be backed up by studies.” Furthermore, he says, every test should come with a technical manual that proves the rigors it went through in development and should have studies to vouch for its validity.

In Seligman’s experience, it took a court order to get such information. Vendors refused to provide it and held that the information was proprietary. Such a denial of information should be a red flag to employers, experts say.

Personality tests should assess whether an applicant is conscientious, reasonably extroverted and not neurotic. “Those are the three main personality traits that research shows relate to high performance in almost all jobs,” Williams says.

Test questions should be specifically tailored to job relevance and should be put in context for the position. A custodial position probably requires only a very few questions to assess integrity and timeliness, whereas an executive position requires a more in-depth assessment of character.

How To Test Effectively

However, simply adhering to the legalities of workplace testing does not ensure that your tests are effective. The most common personality tests are integrity tests, which pose less legal threat because the questions are less invasive, Seligman says. But are they effective? A 1995 report by the federal Office of Technology Assessment found that more than 95 percent of people who failed integrity tests were incorrectly labeled as dishonest. A good vendor should be able to demonstrate how a test has been improved over the last 10 years.

Because most tests are administered via the web, companies have new responsibilities such as using reliable technology and ensuring that the applicant is actually taking the test and is not being helped by anyone else. Beyond that, IOPs say web-based tests are more efficient and have few differences from paper tests. The

vendor should prove the validity and confidentiality of each method of testing that an employer uses.

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