

# Affirmative Action – A Primer and Retrospective on Where We’ve Been on The Subject... Where We Are and Where We Seem to be Headed

Is the Path We Take Today Really Any Different Than the Paths Taken Before?



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- **Affirmative Action** strives to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity (EEOC, 1979).
- While legal and scientific approaches to fairness are concerned with treating individuals equally (to create equality), the social viewpoint attempts to treat individuals *unequally* to adjust for prior or current injustices (to create equity).
- Title VII of the 1964 Civil Rights Act strives to create a "blind" system of making employment decisions

- Many people have an opinion about **Affirmative Action** even though they may not fully understand what "actions" take place.

## Affirmative action means...

- recruiting underrepresented groups
- changing management attitudes toward underrepresented groups

# Affirmative action means... cont.

- removing discriminatory obstacles  
allowing (in extreme cases)  
preference for qualified minorities over  
equally qualified non-minorities
- Note this last action requires  
documentation of unequal treatment in  
the past 2 years based on eligible  
workforce, and there must be a  
predetermined ending to any  
preferential hiring.

# Affirmative action DOES NOT mean

- hiring based on quotas...

This is not affirmative action...  
it is illegal.

- hiring a less qualified applicant...

This concept is NEVER discussed  
in the context of an affirmative  
action principal, goal or intent.

# Laws, Rules, Regulations Governing the Development and Use of Civil Service Tests

- Title VII of the Civil Rights Act (CRA) of 1964 prohibits unfair discrimination due to race, color, religion, sex, or origin
  - Tower Amendment (1972) professionally developed tests can be used for employment selection
- Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination against those age 40 or older

- Uniform Guidelines on Employee Selection Procedures (1978)...set forth principles for the fair and unbiased employment decisions; prohibits use of selection procedure with an adverse impact on members of a protected group unless procedure can shown to be job-related ...References “4/5 Rule” as evidence of adverse impact...
- Americans With Disabilities Act (ADA) 1990 ensures individuals with disabilities equal opportunity in all aspects of employment
- Title I of the Civil Rights Act of 1991 requires demonstration of both job-relatedness and business necessity if selection procedure results in adverse impact; prohibits race norming, i.e. race based selection (scoring) decisions made illegal...

# The Standards for Educational and Psychological testing (1999). “The Standards”

- American Psychological Association
- American Educational Research Association
- National Council on Measurement in Education

Purpose of the Standards: “...to provide criteria for the evaluation of tests, testing practices, and the effects of test use...”

# Chapter 7 of the Standards reference fairness in testing and test use...

## Selected statements from Standards...

- absolute fairness to all impossible...
- the term “fairness is used many different ways and has no technical meaning...

fairness definitions may include subjects as:

- (1) no bias
- (2) equitable treatment in process
- (3) equal outcomes
- (4) equal opportunity to learn content

## Selected statements from Standards cont.

- bias: where irrelevant factors lower or raise scores for identifiable groups
- conduct Differential Item Function studies when feasible
- however, Differential Item Functioning studies show little progress in identifying underlying causes...
- use only validated tests
- make use of Sensitivity Reviews
- keep verbal level of tests to minimum valid level
- check that group differences aren't based on content irrelevancies
- equitable treatment of all candidates needed during the testing process
- fair treatment of all candidates promotes validity

## Selected statements from Standards cont..

- Validation: congruent with testing objectives and include relevant research based on adequate and representative sample, good criterion and takes statistical artifacts into account...In English...was the test professionally developed and does the test measure what the test was designed to measure...
- job analysis needed to focus the test upon important work behaviors
- base content of test upon evidence resulting from on thorough, explicit definition of test domain drawn from job analysis evaluation and link job and test content closely...

# Chapter 8 of the Standards reference

## RIGHTS AND RESPONSIBILITIES OF TEST TAKERS

- test takers should get information on: nature of test, use of the test, confidentiality, available accommodations...
- test takers should read the announcement, read the announcement, and finally...  
**READ THE ANNOUNCEMENT!**
- test takers have responsibilities to:
  - (1) prepare for test...become familiar with process
  - (2) follow directions
  - (3) answer honestly
  - (4) not violate test security...not cheat...not steal test material...

# CHAPTER 9 of Standards Refers to Testing of Persons with Diverse Linguistic Backgrounds ...

- any test using language is partly a test of language skill
- lack of language requirement would invalidate measure of Knowledge Skill or Ability being measured by test...
- ok to test in language and at level needed for job, that is, test language level not to exceed job need
- design test to reduce invalidity based on language differences

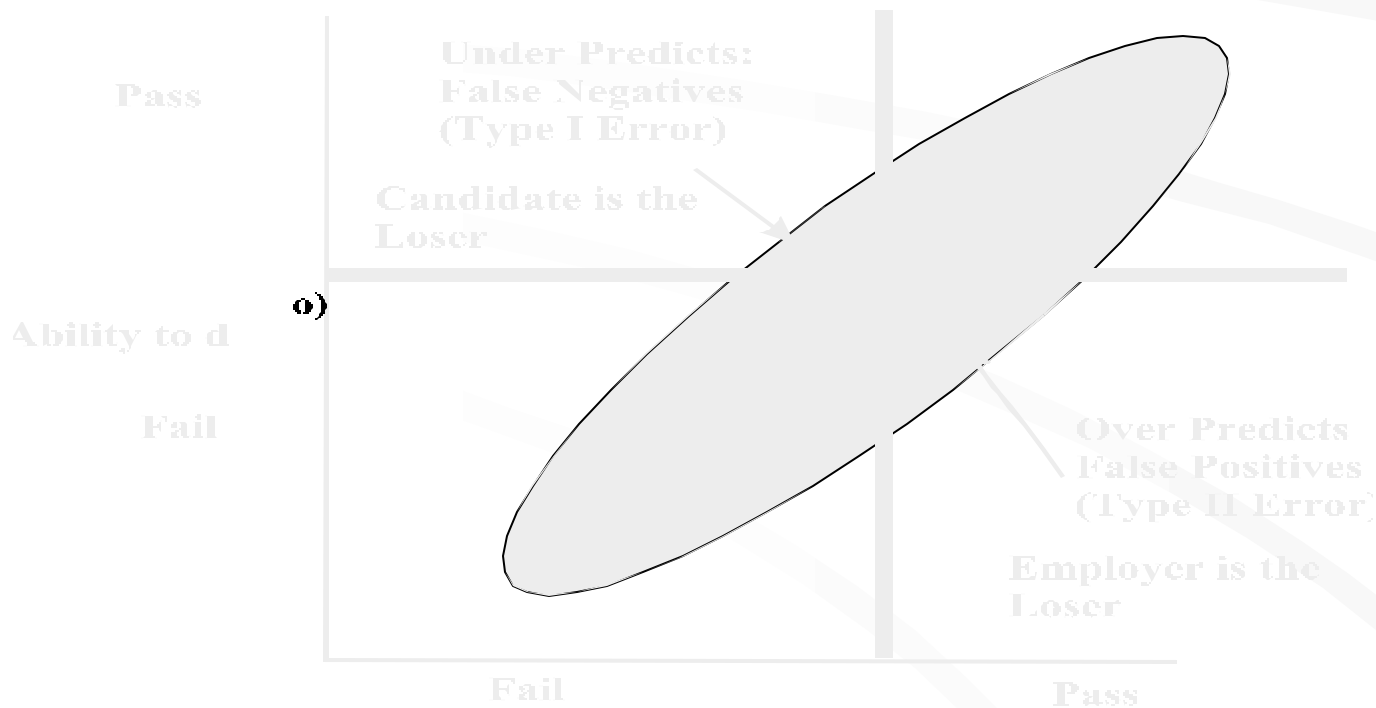
# CHAPTER 10 of Standards Refers to TESTING INDIVIDUALS WITH DISABILITIES ...

- defines “individuals with disabilities” and “accommodation”
- modification to test format, response format, timing, test setting, content, etc.
- NOTE: test format modification should not change construct...what is being measured...

**...that is the Knowledge, Skills and/or Ability  
critically related to the job!!!**

*Let's try to visualize what the passpoint on an employment test represents*

## Taylor-Russell Tables



# *//Band Scoring - What's it all about???*

- band scoring is a method by which different raw scores (number of correct answers) are assigned the same final test score...not unlike the educational setting...  
90 - 100 = A; 80 - 89 = B; 70 - 79 = C, etc.
- band scoring allows for consideration of the fact that no test can measure a candidate's true score with perfect confidence...

# Band Scoring cont..

- the band scoring methodology is based on a mathematical model that enables the consideration of a group of scores to be functionally equivalent
- guidelines established by NY State Department of Civil Service to ensure uniform standards for determining the width of bands and for the application of band scoring based on accepted psychometric principles and on parameters set by the courts

# Band Scoring cont..

- there may be critical SKAPs important to successful performance in the position that are not evaluated by the written test, but are better assessed by other means...minimum qualifications, interview, probation periods, etc.
- there may be substantial differences among position duties or requirements within a title resulting in tested SKAPs being of variable importance to different positions that exist at different locations with the same title

# Band Scoring cont..

- department of Civil Service began to band score written civil service tests, on a case-by-case basis in the mid-80s
- this method of scoring was gradually extended to local examinations prepared by this department
- as of the fall of 1997, most local examinations prepared by this department have been scored using the band score methodology...

# Band Scoring cont..

- band scoring methodology is endorsed by professionals in the measurement field as appropriate to use in a variety of circumstances
- band scoring does not change the relative order of candidate scores
- band scoring does not diminish the competitive nature of the examinations scored using this methodology
- to the contrary, band scoring is an important tool for use in the development of a comprehensive selection program...

# What's an Affirmative Action Officer to do???

- Stay informed... What are demographics  
Where are the opportunities?
- Assist with distribution of  
information (C.S. Test  
Announcements) to targeted  
population...
- Encourage individuals to take any &  
all C.S. Tests they are eligible to  
take & thereby increase familiarity with process
- Become involved in the process when possible  
(Sensitivity Reviewers & Subject Matter Experts...)

# Addressing Adverse Impact

- A well-designed assessment program will improve your ability to make effective employment decisions. However, some of the best predictors of job performance may exhibit adverse impact. There are several good testing practices to follow to minimize adverse impact in conducting personnel assessment and to ensure that, if adverse impact does occur, it is not a result of deficiencies in your assessment tools.

# Addressing Adverse Impact cont.

- Be clear about what needs to be measured, and for what purpose. Use only assessment tools that are job-related and valid, and only use them in the way they were designed to be used.
- Use assessment tools that are appropriate for the target population.
- Do not use assessment tools that are biased or unfair to any group of people.

# Addressing Adverse Impact cont.

- Consider whether there are alternative assessment methods that have less adverse impact.
- Consider whether use of a test with adverse impact is necessary. Does the test improve the quality of selections to such an extent that the magnitude of adverse impact is justified by business necessity?

# Addressing Adverse Impact cont.

- If you determine that it is necessary to use a test that may result in adverse impact, it is recommended that such a test be used as only one part of an assessment process. That is, apply the whole-person approach to your personnel assessment program. This approach will allow you to improve your assessment of the individual and reduce the effect of differences in average scores between groups on a single test.

# Addressing Adverse Impact cont.

- Use adequate sample in your adverse impact analysis studies, and conduct such studies over a period of years. Adverse impact data is often not stable over short time periods or with small numbers. Use a variety of statistical tests to evaluate for adverse impact. Compare the geographical locations of jobs and applicants and check that the applicants are available for the jobs. If not, they are not applicants.

# Addressing Adverse Impact cont.

- Check the impact of such variables as veterans' or seniority points or residency preference in adverse impact studies.
- Develop and adhere to sound procedures in job analysis, examination planning, examination development, and examination analysis and evaluation.
- Document your work (i.e., job analysis, test planning, test development, test review, basis for passing scores, item review, etc.).

# Discussion Topics

- Are Merit/Public Service Testing and Affirmative Action Goals and Objectives...Same or Different?
- How can Affirmative Action Officers utilize and benefit from the Merit/Public Service Testing Program?

## Resources

**American Association for Affirmative Action**

**[www.affirmativeaction.org](http://www.affirmativeaction.org)**

**Keep your eye on the goals...**



**A Merit System of  
appointment in the  
Public Service is all  
about Fairness and  
Equity... For All...**