



## Legal Considerations: Assessments, the Law and You

Stephen P. Miller, SPHR, CCP, GRP

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There are many misunderstandings regarding the legal implications of the use of formal assessments by employers. In fact, during the 1970s and '80s, conventional wisdom held that using assessments was "risky" behavior likely to invite employment litigation. These perceptions have, unfortunately, been reinforced by complex federal and state regulations and guidelines that can intimidate the average businessperson. The reality is this: the proper and consistent use of reliable and valid assessments can dramatically strengthen a company's legal position. In fact, job-related assessments are essentially the best way to document that you are using objective and non-discriminatory employment practices!

As a result, the number of companies using assessments has been growing every year, with 30-40% of companies now reporting using some kind of formal assessment (the numbers vary somewhat depending on the kinds of assessments being considered). Why the change? The biggest reason is that over the last 10–15 years behavioral scientists have been able to conclusively document to an acceptable legal standard that the use of valid employment assessments does, in fact, improve organizational productivity and, when used properly, do not violate the many laws designed to prevent illegal discrimination.

In order to take advantage of this opportunity to prevent or reduce expensive legal costs, employers simply need to follow a short set of guidelines.

### **One: Consistent Application of Assessments**

Employers should use a standardized process for when and how they use assessments, regardless of whether they are using the assessments for selection, placement, training and development, promotion, career exploration and guidance, or program evaluation. For example, in the case of selection or promotion, all applicants for the same position must take the same assessment at the same point in the process. It is not necessary to assess everyone who applies for a particular position, but it is necessary to assess everyone who reaches the same point in the selection process.

### **Two: Use Only Reliable and Valid Assessments**

Assessments are legal only if they reliably measure criteria that are directly related to job performance. Reliability refers to how dependably or consistently the instrument measures whatever it is that it purports to measure. This means that if a person were to be assessed again, the person would get a similar score.

This information can be found in the user manual and in most cases the following standards apply:



**Table 1.**  
General Guidelines for Interpreting Reliability Coefficients

Reliability Coefficient	Value Interpretation
.90 and higher	Excellent
.80 - .89	Good
.70 - .79	Adequate
Below .79 probably has limited applicability and shouldn't be used without the guidance of an expert.	

In addition to the need for reliability, assessments also need to be valid. This means the instrument must measure criteria that can be demonstrated to be directly related to job performance. For example, an instrument which is used to measure someone's ability to work as an accountant is valid to the extent that there is a demonstrated relationship between someone's score and the scores obtained by accountants. It is critical to understand though, that like politics, all validity claims are ultimately local! This means you can legally use an instrument if you can show that your applicants' scores do (or do not) match the scores of accountants when taken together as a group. However, it is much better (more valid) if you can show that your applicants' scores do (or do not) match the scores of accountants successfully working in your organization!

### Three: Knowledge

Because of the dramatic progress made by industrial psychologists in documenting both the effectiveness and the neutrality of assessments, legal claims arising out of the use of assessments are now rare. Nevertheless, they do happen occasionally. When they do, they typically fall into three areas. An applicant can claim the assessment: 1) illegally discriminates because of his/her race, religion, sex, national origin or disability; 2) violates his/her right to privacy; or 3) is unfair.

In such cases, a little knowledge can go a long way.

First, you will want to know that the service provider's assessment has been proven to not result in adverse impact for job applicants from any 'protected class.' Simply ask the provider for the documentation and make sure you are comfortable with it.

Second, in regard to issues of privacy, you should only use assessments that allow applicants to complete the process through a third party, which will keep

their raw scores confidential. The assessment provider should only share with you (the employer) the extent to which the applicant matched (or didn't match) the desired profile.

Finally, make sure that the desired worker profile the service provider has developed for you was created using an empirical, data-driven method which can be shown to be valid for your jobs – preferably in your work setting – thereby eliminating 'unfairness' concerns.

This is a general outline of the major legal considerations involved with using assessments in employment-related decisions, and is not intended or designed to replace professional legal counsel. Unusual situations should be reviewed by professional legal counsel specializing in employment law.