

Contrast & Compare Inquiries on Physical Ability Test

I have received several inquiries and discussions concerning a legally defensible "Fitness for Duty" or a Conditional Post-offer Testing from an assessment benchmark and how various company programs compare. If your company is currently performing or having a clinic or rehab center perform employee testing, these are factors you should know as well as who and how in your company or testing entities will step up to defend your discrimination law suit.

A common miss-conception is that your company or medical clinic or rehab center can arbitrary determine the loads to lift, carry and push/pull and other physical job demands etc. without a proper *onsite* quantification/validation performed by a proper experienced and credentialed person. In this case, *who* will provide the interpretation of the test and decide the Pass/Fail...and based on what established validated criteria? The first set of question from a plaintiff attorney may be "what are the credentials of the person assessing the physical demands, how many have you performed, what acceptable industry specific equipment did you use, in what industries, and what was the process used to determine quantification/validation"?



Below summarizes a few of the elements to contrast/compare your current employee testing for EEOC & ADA compliancy, validation with a Job Task Analysis, does the test battery highly relate to job, is the test predictable of job performance and legal defensibility.

First, one should familiarize themselves with the EEOC Uniform Guidelines on Employee Selection Procedures and the ADA to ensure your program meets the required certification procedures to legally test new hires on a conditional post-offer status which is your first line of defense. All employment tests must be in accordance with Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Uniform Guidelines on Employee Selection Procedures (29 CFR Part 1607), the Age Discrimination in Employment Act, and the Americans with Disabilities Act. A fundamental requirement common to virtually all employment legislation is that any employment decision-making (Selection) tools must be validated.

Second, understand the importance and elements of a Job Task Analysis (JTA), this is the second line of defense. The JTA is a multi-process validation event reviewing prior year's data on the specific job, the physical task requirements, workers' compensation claims, employee turnover and shift information to name a few areas of concentration. The JTA is performed on-site by an *ergonomic engineer specifically trained* in the JTA and uses specificity of equipment and instruments to quantify/validate the physical demands of the job task, again, developing an additional line of defense.

Endurance demands quantification/validation is another critical element. The working muscles require oxygen in order to perform the dynamic contractions involved during extended repetitive manual material handling. The energy expenditure requirement is typically measured by determining the amount of oxygen consumed in the course of performing the work. In the jobs of interest in these studies, it was important to be able to study the energy expenditure over the course of the shift focusing on the physical demand frequency and endurance.

After the data is collected and reviewed, cross checked and the quantification/validation is completed, a questionnaire is distributed to confirm the data concerning the physical demands to the company management. This is the initial development of *the test battery*. The test battery includes the measured and quantification/validation of the frequency and duration of the physical required tasks, what body parts are affected (the bio-mechanics), the overall physical impact of all the tasks performed during the entire shift. Heart rate monitors monitor crew members over a 72 hour period, not just at time of testing, to glean readings in many stressed situations encountered during the shift.

Last, but not least, test training, administer and understanding the test battery and performing the test to the letter is the last element to legally defend the process. We offer course seminars and onsite training to become a Certified Test Administer for different industries.

In addition to identifying, quantifying/validating contributing data the ongoing QA process is the evaluation of program effectiveness (Pre/Post Implementation Analysis, an annual job requirement and a five (5) year on-site job re-analysis to maintain legal defensibility; this is a critical element in meeting stipulations in the EEOC Uniform Guidelines on Employee Selection Procedures.

The program should identify individuals that meet the test battery requirements and mitigate workers' compensation injuries and personnel *costs reducing on average 47%* with implementation of ergonomically based physical ability tests. Testing has shown to *decrease new hire injury rates by 20-47%*.

The test battery methodology utilized and testing protocol is validated since 1989 on performing over a 1,000,000 tests to date in many occupational fields.

Costs are *surprisingly low* for the ergonomic onsite assessment per job position by a professional ergonomist and the interpretation of the test data against your company's validated test battery by an unbiased, un-related third party who will defend the test battery validation in a court of law at no charge.

In the effort to provide information and proper systems to industry for risk transfer and protection we offer this guidance. I will be happy to discuss more intricate elements of a legally defensible program with your company representative and/or speak with your current medical providers or legal counsel. Safety Solutions is not providing medical or legal expertise or consultation.