Employment Litigation And Assessment Centers: Non-Issues, Issues, and Potential Issues Around the World

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Presentation at the 36th International Congress on Assessment Center Methods, October 12, 2011, St. Petersburg, Florida

Information from ACs has impact on employment decisions = “High Stakes”

- Promotion
- Assignments
- Training opportunities
- Pay/income
- Layoff
Varieties of employment “law”

- Federal statutes, city ordinances
  - Title VII, ADEA, ADA
  - “merit” “objective” “70 percent”
- Administrative regulations
  - EEOC, OFCCP
- Court decisions, “case law”

- Constitutional claims: 5th – due process; 13th – right to make contracts; 14th equal protection

Types of Legal Cases

Adverse Impact = Discrimination
- Race
- Gender
- Age
- Disability

Adverse treatment = Failure to provide due process

Violation of privacy
**Non-Issues**

- Well developed ACs have received favorable rulings in US
  - Substantive ruling; Summary judgment; Settlements; denial of request for injunction by plaintiff
- Extensive validation research on OAR
- Few legal challenges in many countries
- Diagnostic and developmental ACs not challenged

**Issues**

- Unfavorable rulings on ACs
  - Substantive ruling against AC
  - Mere mention of AC not enough
- Many unvalidated ACs
- Wide variation in AC practices
- Mixed evidence of validity
- “Politics” may trump sound AC practice
Potential Issues

• Increase in use of ACs in diverse countries
• Increase in employment laws around the world

Topics in Myors et al

• Sub-groups viewed as “disadvantaged”
• Research documenting mean differences in sub-groups
• Laws prohibiting discrimination; “protected classes”
• Evidence of discrimination?
• Selection methods limited or banned
• Legal status of preferential treatment
Sample of Experiences Outside US

• No reported law suits in Korea, Switzerland, Germany, Israel, Belgium, Singapore
• Germany: General Equal Treatment Act 2006 requires public job posting
• Israel: person hired had lower score; right to see fitness report
• Belgium: persons screened out due to ethnicity
• South Africa: 2 cases won by plaintiffs because panel of management assessors did not follow procedures; methods must be “validated”
• UK: emphasis on disabled

Recommendations

• Follow Taskforce Ethical Guidelines and Guidelines in other countries
• Adapt AC to fit with culture of organization and country
• Know bases for employment discrimination “law”
• Know country-specific laws
• Three basic rules: Document, Document, Document
Questions?

Comments?

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References