



TRANSMITTAL

**U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Federal Contract
Compliance Programs**

Number: 267

Date: October 15, 2004

ADM Notice/Testing

1. **SUBJECT:** Investigative procedures when a test(s) is one cause of adverse impact in hiring.
2. **PURPOSE:** To create an OFCCP investigative procedure to be used when a test(s) is one cause of adverse impact in hiring.

3. **FILING INSTRUCTIONS:**

Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Testing" tab in your Administrative Practices Binder.

District and Area Office EOSs and EOAs only: File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.

4. **OBSOLETE DATA:** If there is any conflict between FCCM guidelines or other Notices and the ACM procedures contained in this Notice, these ACM procedures take precedence.
5. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only).
6. **EXPIRATION DATE:** This directive remains in effect until superseded.

(signed) Charles James

October 15, 2004

CHARLES E. JAMES, SR.
Deputy Assistant Secretary for
Federal Contract Compliance

DATE

**EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS
WASHINGTON, D.C. 20210**

ADM Notice/Testing

1. **SUBJECT:** Investigative procedures when a test(s) is one cause of adverse impact in hiring.
2. **PURPOSE:** To create an OFCCP investigative procedure to be used when a test(s) is one cause of adverse impact in hiring.
3. **BACKGROUND:** In the past, OFCCP Compliance Officers have expended great amounts of time and effort, investigating potential systemic hiring discrimination, only to discover after a lengthy investigation, that hiring disparities are caused, in whole or in part, by a test. Tests take many forms, including paper and pencil or electronic question and answer examinations, structured interviews, and assessment centers. When investigating potential hiring discrimination, it is more efficient to determine early in the investigation whether a test is used in the hiring process.
4. **POLICY:** In the interest of Active Case Management, the following procedures will be followed in those cases where there are indicators, from a refined data analysis at the desk audit, that potential systemic hiring discrimination exists:
 - a. The Compliance Officer (CO) must call the contractor and inquire as to whether or not the contractor uses a test as one, or more, components of the hiring process for the job(s) in question.
 - b. If the answer is no, the CO can move forward utilizing the normal investigative procedures. If the answer is yes, the CO must determine at what point in the hiring process the test is given. If the test is not the final stage of the selection process (“final stage” means that applicants who have taken the test are otherwise qualified for the jobs at issue and are generally hired if they are selected by the test), or if the contractor did not keep data on who took and was selected by the test, then the CO cannot use this Active Case Management procedure, but must conduct a full investigation of the testing issue. If the test is the “final stage” of the process, e.g., all those selected are eligible for hire pending only reference checks, credit checks or physicals and the test takers otherwise possess the qualifications for the position(s) at issue, then the contractor should be requested to submit data, by race, ethnicity, and gender, of all applicants who took the test, and all those selected by the test. The request must be confirmed in writing.

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- c. When the data is received, the CO must conduct a test of statistical significance to determine whether there is a significantly different rate of selection between the groups compared and the group with the highest selection rate (e.g., women v. men, blacks v. whites).
 - d. If there is no statistically significant difference in the selection rates among the compared groups then the CO can move forward using the normal investigative procedures. If there is a statistically significant difference in the selection rates between one or more of the compared groups, then the CO must call the contractor to determine if the contractor has a validation study.
 - e. If the contractor does not have a validation study, then the CO can proceed with the investigation as usual, e.g., refine the data in terms of the qualifications assessment of the candidates, determine how the system works and collect information for the component analysis. If the contractor does have a validation study, the CO must request that the contractor submit a copy of the validation study and confirm the request in writing.
 - f. The contractor should be advised that the documentation presented must meet the requirements set forth in the Uniform Guidelines on Employee Selection Procedures (UGESP) at 41 CFR 60-3.15 B. criterion-related validity study, C. content validity study, D. construct validity study, E. evidence from other validity studies or F. evidence from cooperative validity studies, as applicable.
 - g. When the validation study is received, the District Office (DO) must put the case on hold and the Regional Office (RO) must transmit a memorandum to the Director of Operations at the National Office (NO), attention Deputy Director of Operations, requesting the services of the OFCCP testing expert. The case file and the validity study will remain in the DO. No further action on the part of the DO will be necessary until the testing expert has reviewed the validation study.
 - h. At that point, the case will be active once again, and the DO, with guidance from the RO and the testing expert, will continue with the investigation. There may be a need for additional data gathering before the testing expert can draw any conclusion as to whether or not the test is valid. The CO must secure the data needed by the expert, as well as identifying the components of the entire selection process, and collecting and analyzing data for each component to determine if any other parts of the process, besides the test, have an adverse impact. These testing cases are important to OFCCP's efforts to combat hiring discrimination and the ROs should therefore keep in close contact with the NO to monitor progress.
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