
Preface

We are honored to have had the opportunity to create this book for our fellow practitioners. When an editor from Springer first approached us about producing a volume on employment legal matters, we immediately tried to correct the case of mistaken identity. She, however, confirmed that we were the intended audience for the proposal, and after accepting the gracious offer, we grabbed a couple of drinks to figure out how we might fulfill our end of the bargain.

There are many great texts on human resource (HR) legal matters (Landy, 2005; Outtz, 2010; Gutman et al., 2010; Gatewood et al., 2011) and we did not see value in recreating the wheel. Instead, our goal was to offer something unique to the field. In our discussion about potential book content, we began to focus on the fact that although we both worked for consulting firms specializing in “legal issues,” our work had almost no overlap. Thus, each of us had limited practical experience addressing certain legal issues informed by industrial/organizational (I/O) psychological research and practices. As a result, we often consulted each other and other colleagues to discuss best practices for addressing challenges in unique legal contexts. Given the variety of labor and employment legal issues, and the constantly changing legal landscape, we suspected that many fellow practitioners may benefit from practical advice on specific legal issues from I/O psychologists who encounter such issues on a regular basis. Thus, the idea for an edited volume on various HR legal topics relevant to I/O Psychology, some common and some novel, began to take shape.

We began by developing a list of legal issues with which HR practitioners are commonly confronted and that I/O research and practice could inform. We then asked ourselves how we could convince a group of highly experienced and respected I/O professionals to share their experiences and practical advice with the rest of us, free of charge. It turns out, one simply has to ask, which was great for us given our lack of many important KSAOs (knowledge, skills, abilities, and other characteristics) driving effective salesmanship. We were surprised but thrilled by the impressive group of authors who were willing to contribute their expertise to this volume.

Our intention for this volume was to create an instructional text that would be useful to the HR practitioner and the graduate student alike. For the HR practitioner with no graduate school training in I/O psychology, this text will help to highlight various legal contexts around common human resource practices. For the practitioner with training in I/O psychology, this text will serve as a reminder of legal scenarios commonly outlined in graduate-level

legal courses, and potentially provide an introduction to new topics. For all practitioners, the chapters provide best-practice guidance on applying scientific methods in legal scenarios and/or ensuring practices are aligned with what is legally allowable. For the graduate student, we intend the text to provide an understandable introduction to legal issues associated with common human resource practices. It is our hope for anybody who purchases this text that it will provide a valuable reference resource year over year as specific legal issues are encountered on the job.

It is important for the reader to understand that many of the issues outlined in this book have been written about extensively elsewhere. In fact, each topic could potentially fill an entire volume on its own, and several already do. Although we intend the information presented in each chapter to be comprehensive enough to be informative and actionable, our goal was not to provide a complete treatment of every topic covered. Each chapter is accompanied by a recommended reading list that will help the reader gain a complete understanding of many of the nuances of each topic that we and our contributors were simply unable to cover with the space allowed. Each chapter is focused on providing practical guidance based on research literature and industry best practices, but special care was taken to provide readers with references to the literature that supports the guidance.

In addition, we wanted to offer the reader a more robust perspective on several topics in which the legal issues may be less well-understood by the general audience. Several of the chapters in the book include legal commentary from an employment attorney with specific expertise in the type of litigation covered by the chapter. The legal commentary is intended to offer a different perspective on the same issue by focusing on how the methods described in the chapter fit into the larger context of resolving the dispute.

We viewed the chapter topics as falling into three main groups and have organized the text accordingly.

Section 1: General Testing Topics

Chapter 1: Measuring Adverse Impact in Employee Selection Decisions This chapter provides guidance on the available statistical methods for addressing whether pass rate differences for protected class subgroups may be problematic, and further, illegal. The authors present guidance explaining the background and purpose of each statistical method, in addition to guidance on circumstances in which each method is more or less appropriate.

Chapter 2: Test Validation Strategies This chapter is the first of two that address validating tests in the section context. The focus of this chapter is to provide guidance on what practitioners *should do* when developing and validating tests. The authors discuss several validation strategies including recommendation on how to determine the most appropriate strategy in a particular context.

Chapter 3: Test Validation Pitfalls This chapter is the second of two that address test validation. The focus of this chapter is to provide guidance to

practitioners by highlighting lessons learned from cases in which the validation strategy was not considered appropriate. In other words, this chapter provides guidance on what practitioners *should not* do.

Section 2: Specific Testing Topics

Chapter 4: Using Background Checks in the Employee Selection Process This chapter examines the use of criminal background and credit checks for employment selection, which has become a hot-button topic in recent years. The chapter summarizes the empirical research on the validity of background checks and provides guidance to employers, based on current case law, on whether and how to use these tools in a way that minimizes legal risk.

Chapter 5: Physical Abilities Physical ability testing is often subject to legal scrutiny because specific physical abilities are necessary to perform many jobs but tests that measure these abilities are known to result in adverse impact. The chapter provides a discussion of competing views on how to define and measure physical abilities, common uses of physical abilities testing and guidance for practitioners who seek to identify the physical abilities required for a position and develop and validate tests of those physical abilities.

Chapter 6: Setting Cut Scores This chapter provides guidance on the myriad strategies for setting cut scores and other performance standards in which equity or litigation may be a concern. The authors describe many of the most common strategies for setting cut scores and considerations in determining the most appropriate strategy in a particular context. The chapter also provides detailed guidance on how to implement each of the strategies discussed.

Chapter 8: Validation Issues in the Public Sector Validating tests in the public sector presents unique challenges for practitioners and often faces legal challenges. This chapter explores the public sector testing environment with a focus on public safety jobs. This chapter provides detailed recommendations based on authoritative guidance and industry best practices for developing, administering, or validating selection tests in the public sector.

Chapter 9: Clinical Psychological Evaluations for Pre-employment Selection This chapter introduces many practitioners to the use clinical psychological examinations (CPEs) for selection in high-risk jobs. The chapter combines perspectives from I/O and clinical psychology to guide practitioners through the process of utilizing CPEs within their selection strategy.

Section 3: Nontesting Topics

Chapter 10: Compensation Equity: Who, What, Where, When, and How This chapter provides an overview of the social and legal questions governing compensation equity and the framework for investigating compensation inequity. A main focus of the chapter is to provide the practitioner

with an understanding of how to prepare for and proceed with an analysis of potential systemic pay inequity in an organization.

Chapter 11: Wage and Hour Litigation This chapter provides an overview of the types of wage and hour issues that are commonly addressed using I/O methods, many of which require precise measurement of what work employees actually perform. The chapter discusses several methods, including job analyses that can adequately address these unique issues with a focus on providing guidance to practitioners on the application of the methods.

Practitioner's Guide to Legal Issues in Organizations

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