

CODESP NEWS

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CUTOFF SCORES

This past year we had a presentation by Dan Martens and Robert Schulze, from the law firm of Latham and Watkins, at a training meeting regarding a case involving cutoff scores. Recently Mr. Schulze reported the following update:

The U.S. Justice Department has abandoned its role as a plaintiff in *Lanning v. Southeastern Pennsylvania Transportation Authority (SEPTA)*, a Title VII disparate impact challenge to a public transportation authority's use of a cutoff score on an aerobics test which female applicants failed at a higher rate than male applicants. The test required all applicants run 1.5 miles in twelve minutes. SEPTA submitted evidence that the level of physical fitness was a necessary element of the job and that major crimes dropped seventy percent after implementation of the test.

The court found that the aerobics test complied with Title VII stating, "The Court finds that aerobic capacity predicts and correlates with arrest, which is a critical and important task of SEPTA transit police officers. Indisputably, SEPTA's aerobic capacity requirement bears a *manifest relationship* to the position of a SEPTA transit police officer. Therefore SEPTA has met its burden of establishing the job relatedness and business necessity of its aerobic capacity standard.

In opinions written about the case it was stated that courts and the psychological profession generally recognize three validation studies: content validity, criterion-related validity and construct validity. In general, test validation is the process by which it is determined whether the inferences that the employer draws from results on a selection device are appropriate and meaningful. That is, test validation attempts to determine whether (and the degree to which) persons who are selected by a test will be successful performers on the job, and whether those who are not selected would not have been successful performers on the job.

According to SIOP principles, judgment is necessary in setting any critical or cutoff score. A fully defensible empirical basis for setting a critical score is seldom, if ever, available. The only justification is that critical scores be determined on the basis of a rationale which may include such factors as estimated cost-benefit ratio, number of openings and selection ratio, success ratio, social policies of the organization, or judgments as to require knowledge, skill or ability on the job. If critical scores are used as a basis for rejecting applicants, their rationale or justification should be made known to the users.

TRAINING MEETINGS

CODESP sponsored several training meetings throughout California this past program year and we appreciate the generosity of the speakers and the member districts who hosted the meetings.

We would like to thank the following host districts:

San Luis Obispo COE
El Dorado COE
San Diego COE
Grant UHSD
Santa Clara COE
Garden Grove USD
Mt. Diablo USD
ABC USD
Alameda COE (twice)
Riverside COE
Newport-Mesa USD
San Juan USD
Lemon Grove SD
Hacienda-La Puente USD

If you would like to host a meeting during the next program year beginning in September, or if you have suggestions for topics or speakers, please contact us.

During 2001-2002, Executive Director Marianne Tonjes traveled throughout the state and visited several districts. This summer she will be on the road again. If you would like to schedule a visit for individual district training or to find out more about CODESP, please contact her at marcodesp@aol.com.

ELECTION RESULTS

The Board of Director's election results are in! Marc Steele - Hacienda - La Puente USD, and Bob Lee - Ocean View SD, were both reelected. Also elected to the Board was Lisa Gardner. Lisa is Administrative Coordinator - Personnel Commission at Long Beach Unified School District. We congratulate the winners and welcome Lisa to the Board.

Recruitment - Selection and the ADA

On May 3, 2002 Mary Ciddio, M.A., C.R.C., C.D.M.S., Vocational Rehabilitation Consultant, gave a presentation in Hayward on the ADA and how the laws impact the recruitment and selection of classified school employees.

She explained the text of AB 2222 which states: It is an unlawful employment practice for an employer or employment agency to refuse to hire or employ a person or otherwise discriminate because of specified personal characteristics including a mental or physical disability or medical condition. The act defines mental disability for its purposes to include any mental or psychological disorder, as specified, and defines physical disability to include, among other things, any physiological disease, disorder, condition, disfigurement, or loss that affects specified body systems and **limits** an individual's ability to participate in major life activities.

- Disability is defined as, but not limited to physical and mental disabilities such as chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis and heart disease.
- Medical conditions protected include impairments related to or associated with a diagnosis of cancer or a record or history of cancer and genetic characteristics, which includes individuals who have identifiable genes and chromosomes and inherited characteristics.
- The individual needs to have a "limitation" not a "substantial limitation." (This can include short-term medical conditions.
- Working is considered a major life activity regardless of whether it is for a particular employment or a class or broad range of employment.
- Excludes consideration of mitigating measures (glasses, meds, etc.).

Employer must "engage in a timely, good faith, **interactive process** to determine effective reasonable accommodations, if any, at the request of an employee or applicant with a known disability."

Ms. Ciddio stressed the importance of the Job Description in the recruitment process to determine accommodations. The "essential functions" need to focus on the purpose of the function and the result to be accomplished.

The factors to be considered in determining whether the function is essential are:

- Whether the reason the position exists is to perform that function.
- The number of other employees available to perform the function or among whom the performance of the function can be distributed.
- The degree of expertise or skill required to perform the function.

The evidence to be considered in determining if a function is essential are:

- Employer's judgment.
- Written job description prepared before advertising or interviewing applicants for a job.
- Amount of time spent performing the function.
- Consequences of not requiring a person in this job to perform a function.
- Terms of a collective bargaining agreement.
- Work experience of people who have performed a job in the past and work experience of people currently perform similar jobs.

An employer may not make any pre-employment inquiries regarding disability, but may ask questions about the ability to perform specific job functions and may, with certain limitations, ask an individual with a disability to describe or demonstrate how s/he would perform these functions. Such inquiries cannot be included on application forms or in background or reference checks. You can ask: "Are you able to perform the specific job functions, with or without reasonable accommodation? "

Tests that screen out or tend to screen out a person with a disability on the basis of disability must be job-related and consistent with business necessity. Testing alternatives include: larger print, Braille, color-coded text, audio (reader, tape/cd, computer), extended time, scribe (records responses), flexible positioning, breaks, writing aids, etc.

Mary Ciddio can be reached at Ciddio-Morris Associates, Inc. (510) 208-7100

WRIPAC

JOB ANALYSIS WORKSHOP

**Presented by Mike Willihnganz, Ph.D. and
Karen Coffee, MPA - State Personnel Board**

July 25 & 26

8:30 - 4:30

City of Rocklin Sunset Center

This interactive two-day workshop will focus on the WRIPAC Job Analysis Method. This comprehensive method is designed to identify the essential job tasks and associated knowledge, skills and abilities (KSAs) required to satisfactorily perform those tasks. The WRIPAC Job Analysis method is flexible enough to be used in any jurisdiction and for a variety of classifications.

\$250 for WRIPAC Member, \$270 for Non-Member

Contact Susan Stocks, County of Tulare (559) 651-5714

FALL CONFERENCE

**ASILOMAR CONFERENCE GROUNDS
PACIFIC GROVE**

Preconference Training: September 18

8:30 - 4:30

TRAINING AND EXPERIENCE WORKSHOP

Presented by Mike Willihnganz, Ph.D.

This one – day class is designed to acquaint participants with a variety of techniques that can be used to assess training and experience (T&E). Advantages and disadvantages of T&E evaluation methods will be addressed, as well as issues related to reliability, validity, instrument development, and scoring of these assessment techniques. Through a combination of lecture, discussion, and individual and group exercises, participants will gain an understanding of the approaches commonly used in evaluating training and experience.

\$100 for WRIPAC Member, \$120 for Non-Member

Contact Susan Stocks, County of Tulare (559) 651-5714

Conference: September 19 - 20

Presentations will include "Will They Wig Out?" by Harry Brull, Personnel Decisions International; "An Online Employment System: More Than Just an Application" by the County of Santa Barbara; and "Staying Abreast of Legal Changes in HR in These Rapidly Changing Times" by Ines Vargas Fraenkel, City of Oakland City Attorney's Office.

Contact Bronda Silva at silvab@saccounty.net

NO CHILD LEFT BEHIND ACT

A subcommittee sponsored by the Southern California Comprehensive Assistance Center has organized a group of representatives from Los Angeles, Orange, and San Diego counties to share ideas and develop paraprofessional assessment and training standards in response to the No Child Left Behind Act. The committee also hopes to define the role of the county offices of education in assisting districts in the implementation of the Act's requirements.

The next committee meeting will be held June 26 from 10:00 - 2:00 at the Orange County Department of Education. Various district's curriculum and categorical department personnel, human resource staff members, testing/assessment experts, and CSEA representatives will be present to provide input.

Since the State and Federal governments do not plan to develop paraprofessional testing standards, we feel this cooperative effort among districts will provide a proactive method to meet requirements.

CODESP Executive Director Marianne Tonjes will be a facilitator on the Testing/Assessment committee and will pass on new developments to members as it is received. Any changes in test standards will be reflected on our sample Instructional Aide test.

Check out the new presentation, *Instructional Aide Assessment Requirements*, posted in the Member's Only/Presentation's area of the website. It will be updated as new information is received.

C-CIB

New multiple choice test items entered into C-CIB this month were in the following subject areas:

*Reading Comprehension
English Usage
Math
Transportation*

NEED INFO?

**TO ORDER TEST MATERIALS
COMPLETE A C-CIB REQUEST FORM ON
OUR WEBSITE: WWW.CODESP.COM**

Considering CODESP membership? Visit our website to learn more about our services. An invoice and the necessary paperwork to become a member are posted on the site under Membership.

JOB ACCOMMODATION NETWORK

The Job Accommodation Network (JAN) provides information regarding job accommodations and the Americans with Disabilities Act (ADA) to callers throughout the United States, but receives more inquiries from individuals in California than from any other state. One of the reasons JAN provides so much information in California is because of the progressive state law that protects the rights of California citizens with disabilities. California's January 1, 2001, amendments (AB 2222) to the California Fair Employment and Housing Act (FEHA), which governs the prohibition of disability discrimination provides more protection than the ADA.

Under the California law the standard for measuring a disability is based on whether it makes a major life activity "difficult." This contrasts with federal law stipulating that a condition must substantially limit one or more major life activities. According to Rheta Baron King, an ADA expert (rhetab@hotmail.com), "In some cases, the most stringent law may be the state law."

Unlike the ADA, California law has no cap on the amount of punitive damages that can be awarded to a plaintiff in an employment or other discrimination case.

In a recent *businessandhealth.com* article, King stated that state courts have been historically more "plaintiff friendly" than federal courts. Slightly more than half the state disability discrimination cases in California that have gone to trial have resulted in a favorable ruling for the plaintiff, but most get resolved through settlement or the court dismisses them at summary judgment.

JAN is a free service of the U.S. Department of Labor's Office of Disability Employment Policy. JAN's mission is to facilitate the employment and retention of workers with disabilities by providing employers with information on job accommodations, and related subjects. JAN's consultants have obtained at least one Master's degree in their specialized fields, ranging from rehabilitation counseling to education and engineering. You can reach them at www.jan.wvu.edu.

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