Pre-Employment Testing and the ADA

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Introduction

The Americans with Disabilities Act (ADA) requires reasonable accommodation in the hiring
process, and the language of the ADA includes "appropriate adjustment or modifications of
examinations" as a form of accommodation. It is the goal of this article to acquaint employers
with the legal requirements and measurement issues that must be considered in using selection
tests under the ADA.

There are three types of information that must be considered in using selection tests under the
ADA. First, employers must be familiar with the legal requirements of the ADA and the rationale
behind these requirements. Second, employers should be aware of the specific role of their
tests in helping to select qualified employees (in other words, the validity basis for their tests).
Third, employers should be familiar with the types of accommodations that are most likely to be
effective in preserving the reliability and validity of the tests for people with various disabilities.

Legal and Regulatory Requirements

Under the ADA, it is discriminatory to use selection criteria that screen out or tend to screen out
individuals with disabilities unless the criteria are shown to be job-related for the position in
question and are consistent with business necessity. This is to ensure that tests do not act as

barriers to the employment of persons with disabilities unless the person is unable to do the job, even with reasonable accommodation.

Employers should design selection criteria for jobs to ensure a close fit between the selection criteria and an individual's ability to do the job. A criterion that tends to screen out an individual with a disability must be shown to be job-related for the position and consistent with business necessity. To be consistent with business necessity a criterion must be related to an essential job function. The obligation to make reasonable accommodation means that an employer must make modifications or adjustments to the application process that would enable a qualified individual with a disability to be considered for the position he or she desires.

Tests should not be given in formats that require use of the impaired skill, unless it is a job-related skill that the test is intended to measure. For example, it is unlawful to give a written test to a person who is unable to read because of dyslexia, unless the ability to read is the job-related skill that the test is designed to measure. If, instead, the test is designed to measure a factor such as verbal comprehension or reasoning, the test should be given orally. Similarly, test time limits should be relaxed for applicants whose disabilities cause them to need more time to take a test, unless the test is specifically designed to test speed. However, the results of a test of speed could not be used to exclude an individual with a disability unless the skill was necessary to perform an essential function of the position that could not be performed by the individual with or without reasonable accommodation. If speed is necessary to perform an essential job function and there is no reasonable accommodation available to enable the applicant to demonstrate the skill or to perform the job, then the employer is not required to employ the individual.

An employer is obligated to make reasonable accommodation only to the physical or mental limitations that result from the disability of a qualified individual with a disability, that are known to the employer. While an employer may inquire whether an employee is having difficulty performing his or her job, it is generally the responsibility of the employee to inform the employer that accommodation for a disability is needed.

Similarly, an employer is generally required to provide testing accommodations only if it knows in advance that an applicant has a disability that requires such accommodations. Usually, it is the responsibility of the individual with a disability to request any accommodation for a test. The employer can be helpful by informing applicants in advance about any tests to be administered as part of the application process, so that they may request an accommodation, if needed. Employers may also ask applicants whether they will need an accommodation for the hiring process.

It should be noted that the ADA and the Title I regulations prohibit pre-employment inquiry into a person's disability or the nature of the disability, with one narrow exception. The ADA permits employers to ask individuals with a hidden disability who request accommodations at the application stage to provide reasonable documentation to verify the disability and the need for accommodation. However, the employer may not make further inquiries as to the nature or severity of the disability. For this reason, employers can use psychological tests at the pre-offer state of the hiring process only if these tests are not medical-that is to say, only if the tests do not provide evidence that would lead to identifying a mental disorder.

Test Validity Models

The use of tests for making employment decisions is supported by evidence of the tests' validity under one or more of the following models:

- Content validity: the test is a representative sample of performance in some defined area of job-related knowledge, skill, ability, or other characteristic.

- Construct validity: the test is demonstrated to be a measure of a job- relevant characteristic (e.g., reasoning ability).

- Criterion-related validity: the test is shown to be statistically related to some criterion of successful job performance.

Test accommodations should be made so as to retain the validity of the test for selecting qualified employees.

Types of Testing Accommodations

Testing accommodations will be discussed under three broad categories: testing formats, time limits, and test content.

Testing Format

A change in testing format refers to the use of a different medium or method to present the same information. Test information is usually presented in print in the English language. Therefore, Braille, large print, reader, and audiotape are simply different ways of presenting the same information. In most cases, these formats could be interchanged without a change in the question content or the ability being tested. However, several problem areas exist in the use of different formats:

- Long reading passages may be more difficult when presented orally or in other formats for visually impaired applicants. For oral presentation, the test-taker must try to keep the entire passage in memory. In Braille or large print, scanning through the passage is slower than it is with regular print.

- Figural material is problematic for people with visual impairments. The embossing of figural material should not be viewed as a simple format change, because the tactile sense is quite different from the visual sense.

- When readers are used, they should be people who read well and articulate clearly, and they should practice reading the test in advance. They should be warned against inadvertently giving clues to the test-taker when they read.

It should be noted that changing a test from a printed version into a sign language version is a translation into another language, rather than simply a change of format. It must be done with all of the care that would be taken in translating a test from English into, say, Japanese.

Time Limits

In most cases of accommodated testing it is necessary to change the test's time limits. Often the change in time limits causes a problem in interpreting test results. This problem arises because of the use of "speeded power" tests. In order to understand this problem, it is necessary to learn a bit of testing terminology.

A pure power test is a test in which everyone has an opportunity to attempt to answer every question, and the scores are based on how many questions people can answer rather than on how fast they can work. The pure speed test, on the other hand, contains questions of trivial difficulty given with a very short time limit. Scores are based only on how fast people can work. Many tests that are intended to be power tests are actually somewhat speeded because a considerable number of people are unable to attempt every question. On a speeded power test, a person who had unlimited time would have an advantage over people who took it with the regular time limit. However, since many people with disabilities, e.g., Braille users, need extra time to take tests, there is the difficult problem of determining exactly how much extra time should be allotted so that the test-taker with a disability is at neither an advantage nor a disadvantage.

The ideal solution to this problem would be to eliminate the use of speeded power tests. If a power test has a liberal time limit, with a completion rate of, say, ninety-five percent of all test-takers, then test-takers with disabilities can be given unlimited time without having an undue advantage. The difficult question of how much extra time to allow would no longer need to be answered.

In the case of existing speeded power tests in which the regular time limits cannot be changed, unlimited time may be inappropriate. One method of determining appropriate time limits is to conduct empirical studies. The U.S. Office of Personnel Management conducted a study to set time limits for visually impaired and deaf applicants on one of its large volume examinations. It was found that at least double time was needed for visually impaired users of all media to answer questions that consisted of a short reading passage followed by five answer choices. Mathematical questions involving computation required considerably more time than that. Such empirical studies are only possible in large-scale programs in which there are many test-takers.

Pure speed tests are used in the employment context to test such skills as perceptual speed and clerical checking. Such tests are clearly inappropriate for use with visually impaired test-takers because all of the media for transmitting information are slower, and for some physically impaired applicants, because the physical mechanism for responding (e.g., marking the answer sheet) is slower. The time limit cannot be adjusted on these tests because speed is the factor that is being tested. Therefore, the test user must decide if the speed test should be used with the regular time limit (which is permissible, as noted in the earlier section on legal and regulatory requirements, if the speed factor is necessary to perform an essential job function and the applicant cannot meet the requirement even with reasonable accommodation) or if the test should be deleted from the battery and possibly be replaced with another type of assessment. This would be an instance of the last type of test accommodation-change of test content.

Test Content

In the context of competitive testing for persons with disabilities, changes in test content are not made frequently. However, it is clear that this type of change is a form of accommodation that may be required for compliance with the ADA. Any change in test content would need to be consistent with the validity strategy on which the test was based. For example, substituting one test question for another is easily done under a construct validity model, but might be troublesome under a content validity model.

Changes in test content can be divided for convenience into three types: change in individual test questions, change in the question-type, and change or deletion of a knowledge, skill, or ability (KSA) that is being measured. The first type of change, as mentioned above, is easily done in a construct-valid test. The second type of change-using a different type of question to test the same ability-is feasible if another question-type exists and if scoring comparability can be determined.

The interpretive guidance to the EEOC's Title I ADA regulations describes some bold substitutions of methods for measuring the same KSA's, as the following excerpt shows: "Where it is not possible to test in an alternative format, the employer may be required, as a reasonable accommodation, to evaluate the skill to be tested in another manner (e.g., through an interview, or through education, license, or work experience requirements)."

This excerpt does not reflect a concern for score comparability. In fact, it is difficult to see how this approach could be used if applicants needed to be rank-ordered on the basis of quantitative scores.

If there is no effective way to test a person with a disability for a certain KSA, and if there is reason to believe that this KSA will not be required on the job by the person, the requirement for measuring this KSA should be changed or deleted.

Accommodation for Specific Disabilities

The following is a brief listing of the types of testing accommodations that are appropriate for test-takers with different disabilities.

For test-takers with visual impairments, tests must be presented in appropriate formats, such as Braille, large print, and audiotape. Time limits must be extended for all of these media, and speed tests are inappropriate. Within the context of changing test materials into different formats, certain types of test material may be problematic, as noted earlier. In addition, the test-taker will probably need accommodation or assistance in marking answers.

For test-takers who have physical impairments that affect use of the hands, the principal test accommodation is the adjustment of test time limits and the avoidance of speed tests. In addition, accessible test sites, the assistance of a test administrator in turning pages and marking answers, and extra rest breaks may be required.

Among hearing impaired test-takers, only those who are deaf need extensive testing accommodations. For the majority of prelingually deaf persons, that is, persons who lost their hearing before acquiring speech, verbal tests are not good measures of any ability. For most prelingually deaf people, English is a second language and the native language is sign language. (Of course, there are exceptions to this rule; some prelingually deaf people have very good English skills.) Therefore, as a general rule, verbal tests cannot be used effectively with

most deaf test-takers to test anything except verbal ability. Tests that are completely nonverbal, however, do not pose a problem. Test instructions should be given very carefully, with the use of sign language or demonstration, and time limits should be explained clearly. Extra time should be allowed on power tests that include verbal material.

Individuals with specific learning disabilities now constitute the largest group that requires testing accommodations. The specific tasks that are affected by learning disabilities vary widely, so it is difficult to generalize about testing accommodations. Accommodations will need to be arranged on a case-by-case basis for applicants with specific learning disabilities. The most frequently used accommodations are the allowance of additional time for power tests and reconsideration of speed tests in areas of specific weakness. For example, a test- taker who had a specific learning disability that affected numerical computation might be screened out by a speeded test of computation. Under the ADA, it would be inappropriate to use that test unless it tested an essential job function that the test-taker could not perform with or without reasonable accommodation.

Emerging Considerations

The increasing use of the Internet in recruiting, "online interviewing," and pre-employment screening may have a significant impact on employees with disabilities. If E-recruiting is not accessible, it can prevent people from applying for or even finding open positions. Pre-employment screening and testing considerations need now to be extended to these Internet applications and their potential impact on applicants and employees with disabilities. Further information about current employer use of information technologies (IT) in the employment and human resource (HR) management processes, and the accessibility of these services for persons with disabilities is needed. Related research is currently being conducted by Cornell University and will be the subject of a forthcoming publication produced by the AAC and ARCA.

Resources

Information on Disabilities and Employment

ADA Technical Assistance Program
The National Institute on Disability and Rehabilitation Research (NIDRR) has established ten regional centers to provide information, training, and technical assistance to employers, people with disabilities, and other entities with responsibilities under the Americans with Disabilities Act (ADA). The Centers also provide information on accessible information technology issues. Go to http://www.adata.org/, or call 1-800-949-4232.

Job Accommodation Network (JAN)
The Job Accommodation Network (JAN) is a free consulting service that provides information about job accommodations, the Americans with Disabilities Act (ADA), and the employability of people with disabilities. Visit http://www.jan.wvu.edu/ or call 1-800-526-7234 for more information.

Accommodation Tips for Human Resource Professionals
This site features articles, checklists, a glossary, and links to useful resources to help Human Resource professionals accommodate applicants and employees with disabilities in accordance with the Americans with Disabilities Act (ADA). Visit http://www.hrtips.org/, or call -607-255-9536.

Center for IT Accommodation (CITA) -- Section 508 Resources
The Center for Information Technology Accommodation (CITA), in the U.S. General Services Administration's Office of Government-wide Policy, has a web site where Federal employees and the public can access resources for understanding and implementing the requirements of Section 508. Go to http://www.section508.gov/ for more information.

Cornell University's Program on Employment and Disability (PED)
The site has many helpful policies and suggestions on employment and disability policy, school to work transition, and vocational rehabilitation. See http://www.ilr.cornell.edu/ped for more.

Disability Employment and Initiatives Unit, U.S. Department of Labor
This site provides information on the program related to the Workforce Investment Act. Visit http://wdsc.doleta.gov/disability/htmldocs/about_us.html for more details.

Disabilityinfo.gov
Part of President Bush's New Freedom Initiative, this site is a comprehensive resource that provides access to disability-related information and programs available across the government on numerous subjects, including civil rights, education, employment, housing, health, income support, technology, transportation, and community life. Go to http://www.disabilityinfo.com

Equal Employment Opportunity Commission (EEOC)
This site includes information on laws dealing with personal with disabilities and includes documents on providing reasonable accommodations for individuals with disabilities. See http://www.eeoc.gov/ for further information

Office of Disability Employment Policy, U.S. Department of Labor
ODEP's site, http://www.dol.gov/odep, provides information on Department of Labor programs.

World Wide Web Consortium (W3C)
The W3C develops inter-operable technologies (specifications, guidelines, software, and tools) to lead the Web to its full potential. See http://www.w3.org/ for further information.

Information on Assessment and Disabilities

American Educational Research Association (AERA)
Visit http://www.aera.net/ for information about the AERA, its publications and papers of relevance to educational researchers.

American Psychological Association (APA)
Information on assessment can be found at http://www.apa.org/science/testing.html

American Speech Language Hearing Association (ASHA)
This site includes information on various communication disabilities, licensure, and interventions. See http://www.asha.org/ for these resources

Association for Assessment in Counseling and Education (AACE)
See http://aac.ncat.edu/ for links to resource materials and policy statements on assessments of interest to the counseling and education communities.

Association of Test Publishers (ATP)
This group is a consortium of test publishers with interest in assessment in education, employment, technology and psychology. See http://www.testpublishers.org/ for issue and policy statements.

Joint Committee on Testing Practices (JCTP)
This group is comprised of members from seven professional associations, working in the public interest to improve testing practices. Among many of its projects are the *Code of Fair Testing Practices in Education,* and *Rights and Responsibilities of Test Takers: Guidelines and Expectations.* Visit http://www.apa.org/science/jctpweb.html for more information.

US Department of Education, Office for Civil Rights (OCR)
Visit http://www.ed.gov/offices/OCR for overview information on discrimination laws and federal status related to assessment.

Sponsoring Associations

The Association for Assessment in Counseling and Education (AACE)
The Association for Assessment in Counseling and Education is an organization of counselors, testing professionals, counselor and assessment educators, and other assessment professionals that promotes best assessment practices. It provides leadership, training, and research in the creation, development, production, and use of assessment and diagnostic techniques. Information on assessment practices is disseminated through its journal, nerwsletters, monograph, conference presentations, and consulting. Individuals can join AACE in conjunction with ACA or as an AACE member only. For further information visit our website http://aac.ncat.edu or contact jw4aac@earthlink.net.

American Rehabilitation Counseling Association (ARCA)
The American Rehabilitation Counseling Association is an organization of professional rehabilitation counselors and rehabilitation counseling students concerned with improving the lives of people with disabilities. The mission of ARCA is to enhance the development of people with disabilities throughout the life span and to promote excellence in the rehabilitation counseling profession. ARCA is a division of the ACA and a partner in the Alliance of Rehabilitation Counseling. Individuals can join ARCA in conjunction with ACA or as an ARCA-only member. For further information visit our website http://www.counseling.org/arca/ or contact smb23@cornell.edu.