



Narrowing Down Candidate Pools: Professional and Regulatory Guidance*

This is Part I of a four-part series intended to demystify employment selection processes.

To which candidate do you make an offer? Which employee do you choose to promote?

These decisions are critical as you continue to engage your team in delivering results for your organization. A “good” decision improves your team’s effectiveness; a “bad” decision diminishes it.

While all managers recognize the impact of a hire/promote decision on their teams, many are not fully aware of the legal and professional standards that govern their decisions. Our intent is to highlight federal employment law and the professional standards that can help you and your company address them.

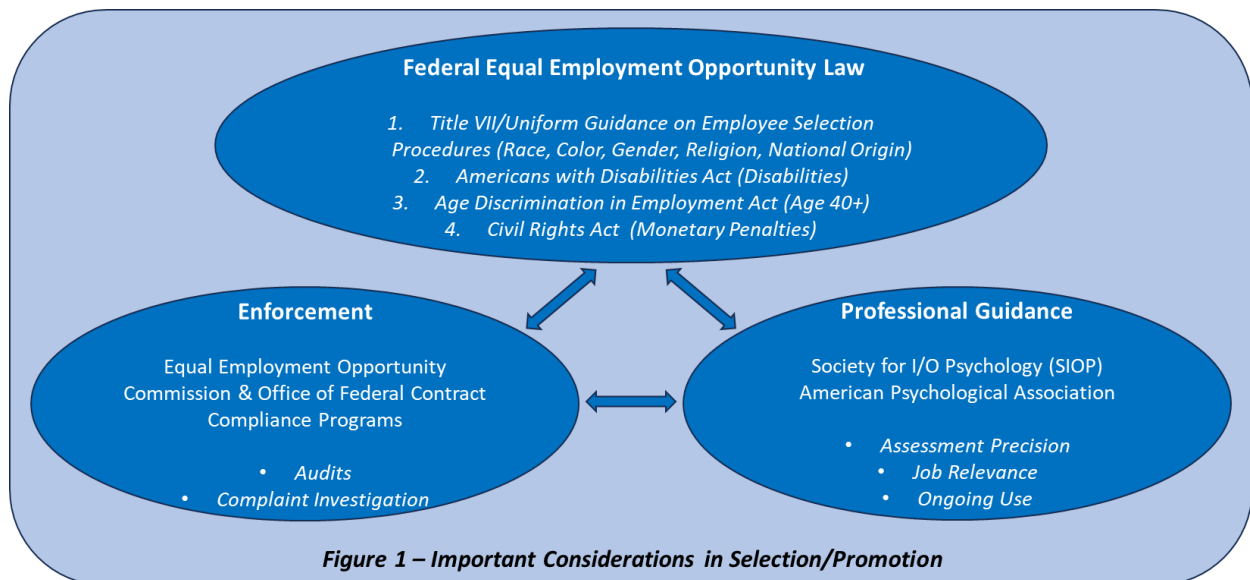


Figure 1 highlights relevant federal employment law, the professional guidance that helps to address the legal standards, and the EEOC’s/OFCCP’s role in monitoring and enforcing the law in the context of professional guidance. You might think about Figure 1 this way:

- Federal employment law is focused on eliminating discrimination in selection/promotion decisions. Three of these laws identify different protected classes while the Civil Rights Act makes monetary penalties permissible.
- The EEOC and OFCCP administer and enforce employment laws.
- The Society of Industrial & Organizational Psychology, the American Psychological Association, and other professional groups issue guidance on designing and using selection/promotional processes to address legal requirements and to yield the best qualified candidates.



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- Your state and local laws may provide additional rights relative to federal law. We do not address state and local laws here.

Title VII & Uniform Guidance on Employee Selection Procedures

In Title VII matters, the EEOC/OFCCP are concerned with two forms of discrimination in selection/promotion decisions. These are:

- *Disparate Treatment* – This form of discrimination occurs when an organization uses different standards or processes for one group versus another. For example, a company chooses to administer a physical ability test to women but waives this requirement for men.
- *Adverse Impact* – This form of discrimination occurs when a selection/promotion process has the effect of disproportionately excluding persons based on race, color, religion, gender, or national origin. Continuing with the previous example, a company may use a physical ability test to screen all candidates, but the test might qualify more males than females.

The most common measure of adverse impact is known as the 4/5ths (or 80%) Rule. This simply compares the hiring rates of various classes. For example:

- Percent of Females Hired = 50%
- Percent of Males Hired = 60%
- Computing the 4/5ths Rule – $50\% / 60\% = 83\%$

Since 83% is greater than 4/5ths (80%), the EEOC *might not* investigate further depending on other factors.

If a selection/promotion process does produce adverse impact, the company may be obligated to show that there are no comparable processes with less adverse impact. Also relevant is whether the use of the process is justified by a clear relationship to the job and “business necessity”. We will expand on these ideas in a later post.

Americans with Disabilities Act (ADA)

This law is intended to address discrimination against individuals with disabilities. Some important components of the ADA are:

- An employer may not ask questions about a medical condition or require medical examinations until after a conditional offer is made.
- If an employer inquires about medical conditions or uses medical examinations, they must do so for all candidates considered in the job category.
- Inquiries into medical conditions are required to be job-related and consistent with business necessity (clarified in our third post).
- Employers are expected to engage an individual with a conditional offer in an interactive dialogue regarding reasonable accommodation.



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- Employers are to make reasonable accommodations to the selection process when a candidate has a known physical or mental disability.

Age Discrimination in Employment Act (ADEA)

This law is intended to eliminate employment decisions based directly or indirectly on age. Some important components of the ADEA are:

- Individuals who are 40 or more years old are considered “older workers.”
- Like Title VII, there are two discrimination theories:
 - *Disparate Treatment* – an employer knowingly uses age as a factor in selection. For example, an employer requires that candidates 50 years of age and older are required to take a physical agility test...candidates under 50 are not.
 - *Disparate Impact* – an employer uses a screening procedure that reduces the likelihood that candidates aged 40 or higher are successful unless the procedure is based on a reasonable factor other than age. (This will also be addressed more in our third post.)

Professional Standards

SIOP's *Principles for the Validation and Use of Personnel Selection Procedures* and the American Psychological Association's publication [Standards for Educational and Psychological Tests](#) provides guidance on the development and validation of selection processes. In general, these publications address standards on tool precision, accuracy, and establishing job relevance/business necessity, all of which are components of federal employment law. The next two posts will address the *Principles* and *Standards* in more detail.

What's Next?

Stay tuned for the following white papers on [LinkedIn](#) and [Talent Alignment's "Learn" pages](#).

- The Foundation - Capturing Job Requirements
- Tool Precision - Necessary but Not Sufficient
- Will You Get Better Candidates?

Thanks to our own [Alan Mead, Ph.D., Eric Paul, and Tiffany Watson](#) for their insights into this four-part series.

References

- [Employment Tests and Selection Procedures | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)
- [Federal Laws Prohibiting Job Discrimination Questions And Answers | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)



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- [Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)
- [Standards for Educational and Psychological Tests](#)
- Principles for the Validation and Use of Personnel Selection Procedures. The Society for Industrial and Organizational Psychology (SIOP)



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