

## PSYCHOMETRIC TESTING – IS IT A VALID MEANS OF PRE-EMPLOYMENT SCREENING?

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We live in an era in which legal obligations can make it difficult – and costly – to say goodbye to a bad hire. Selecting the right candidate for a job is therefore critical. Unfortunately, a resume, interview and professional reference check can only offer so much insight. They don't necessarily indicate a candidate's intelligence, maturity, and whether and how well he or she is likely to handle stress, conflict and change.

To address this information gap, some employers have turned to psychometric testing as part of their pre-employment screening processes. While the use of psychometrics may provide useful data, an employer considering venturing down this path should be aware of the risks.

### **Five Criteria for a Sound Psychological Testing Protocol**

As a general rule, use of psychological testing is permissible so long as it does not run afoul of human rights legislation. As well, in a unionized environment, such testing must satisfy the following additional criteria:

1. It does not infringe a governing collective agreement or internal policy.
2. It is rationally connected to the job/position at issue.
3. It is valid and reliable.
4. It is administered fairly and reasonably.

Seems pretty simple, right? In fact, satisfying these criteria can be easier said than done.

### **Human Rights and Privacy**

Among the primary objections to psychological testing raised by employees and trade unions are that the tests are: (i) an unreasonable or unfair exercise of management rights; (ii) discriminatory (or applied in a discriminatory manner) and therefore a violation of a candidate's human rights; and (iii) an invasion of a candidate's personal privacy.

Consider the following: While questions related to a candidate's mental health should not be posed directly by a prospective employer, the results of a candidate's psychological test may indirectly reveal or suggest a candidate suffers from a psychological disability. This is information to which an employer is not ordinarily entitled and which, absent the test results, would not have been discovered unless voluntarily disclosed by the candidate. However, once known by a prospective employer, regardless of how the information was garnered, the prospective employer has a duty not to discriminate, and potentially to accommodate the candidate under human rights legislation, adding another layer of complexity to an already complicated and time consuming recruitment process.

Similarly, a test may have other unintended consequences by screening out members of a particular group of candidates, contrary to human rights legislation.

Even with the best of intentions, ensuring a test is administered in a "fair" and "reasonable" manner can be problematic. This point is illustrated by the case of *Alberta Teachers' Association v. Calgary Board*

*of Education* - a 2010 decision which considered the Calgary Board of Education's implementation of psychological testing to assess the leadership potential of principals and assistant principals.

The Board of Education administered a series of psychological tests to incumbent principals and assistant principals who exhibited desirable leadership qualities. The results were to be used as a benchmark against which future leadership candidates would be measured. The union filed a grievance alleging the tests were invalid, unreliable, unrelated to the positions in question and, further, that the manner in which they were administered infringed the employees' personal privacy.

The arbitration panel allowed the grievance, in part. While the implementation of psychological testing was not itself in contravention of the collective agreement, the manner in which the tests had been administered was "maladroit and unreasonable". The panel found the Board of Education failed to provide incumbents with sufficient advance warning of the test, or to advise incumbents of the rationale for the test and the purpose for which the results would be used.

### Best Practices for Employers

The risks associated with psychological testing may lead some employers to conclude this type of testing is not right for their workplace. However if, after weighing the pros and cons, you conclude psychological testing may benefit your workplace, consider the following best practices:

- Ensure the test is compliant with applicable human rights legislation.
- Ensure the test is compliant with any collective agreement and/or internal policy.
- Ensure the test is designed to assess a skill or ability that is a core requirement of the job.
- Do not make hiring decisions based solely on psychological test results. Psychological indicators may appropriately be considered as a *part* of the overall decision-making process. However, adjudicators have consistently held it is unfair and unreasonable to rely on such indicators alone.
- Select a testing protocol that is well-recognized and regarded by qualified professionals.
- Administer the test consistently and not just to 'some' applicants.
- Ensure test results are not shared more broadly than to make an informed hiring decision. If a third party is retained to interpret or assess test results, ensure that third party has sufficient privacy and confidentiality safeguards in place.
- Obtain informed consent from any candidate who will be subject to psychological testing. This includes providing the individual with an explanation of the tests to be administered, their purpose, how results will be used, and to whom results will be distributed.

If you have questions about psychometric testing or would like to learn more about how it may impact your organization, contact a member of Sherrard Kuzz LLP.

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