

## Focused on Pay Equity?

### Remember, Performance Reviews are Tests

This month, many companies for the first time are submitting 2017 and 2018 compensation information broken down by sex, ethnicity and race. Pay equity is a growing area of interest and concern for individuals and businesses around the country. Yet many do not realize that performance reviews and other neutral policies that impact compensation are “tests” governed by specialized federal law.

#### **Testing law is more nuanced than traditional discrimination law**

Performance reviews are tests under the *Uniform Guidelines*, subject to challenge in the same manner as cognitive and physical-ability tests. The Plaintiffs’ bar is starting to focus on the testing aspect of compensation decisions, since disparate-impact claims that do not require a showing of intent are typically well-suited for class treatment. Many employers are not prepared for this particular area of attack.

#### **A proper pay equity audit involves more than just statistical analysis**

A company cannot justify pay disparities on performance when the performance review process itself is challenged. Do you know which groups receive statistically significant differentials in scoring in the review process? Is there grade inflation? Was there a specific job analysis done by an industrial organizational psychologist validating the use of the performance test for the particular job/s in question? When was the last time this validation study was updated? Has the job changed at all since then? Would eliminating certain questions on the performance review decrease adverse impact without sacrificing utility? Some companies are aware that these questions must be addressed when implementing cognitive and physical-ability tests, but the same statutory requirements exist for performance review systems.

#### **Meet Parker Hudson’s testing gurus:**

Parker Hudson is uniquely qualified to help its clients address testing concerns. Parker Hudson’s Senior Counsel, **R. Lawrence Ashe, Jr.**, and Of Counsel, **Paul Barsness**, are preeminent legal experts in the fields of testing and disparate-impact liability. Lawrence and Paul are the Associate Editors and Chapter Chairs of chapters 3 (disparate impact) 4 (application to scored testing and other criteria) and 35 (statistical and other expert proof) of the nation’s leading employment discrimination law treatise, have extensive consulting and litigation experience with respect to testing, and are available to assist with any concerns you may have.

Parker Hudson represents test developers, workforce management companies, municipalities, and employers of all sizes when it comes to testing. In years past, the EEOC’s Chief Industrial Organizational Psychologist has requested a copy of Lawrence and Paul’s annual testing paper summarizing changes in the law.



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