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OCCUPATIONAL HEALTH & SAFETY

INDUSTRIAL HYGIENE:
Choosing the Best CS Gas
Detector **14**

SHOWERS & EYEWASH:
The Overfamiliarity Trap **32**

WINTER HAZARDS:
Besting Winter's Worst **45**

GOING ON LOOKS
ALONE

Going On Looks Alone

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If you are hiring based on how someone looks, you may be discriminating.

Obviously, no professional would hire someone just because of the way they looked unless they were hiring models or actors. Do you look at the application to decide whom to interview? Sure you do. In doing so, you are creating a mental image of what that person has to offer. When beginning the interview process, you take note of a person's "appearance" and "business demeanor" relative to the job they are seeking. Obviously, a customer service representative will need a certain amount of politeness combined with the ability to steer the conversation to a satisfactory outcome for both you and your customer. This may be as much an art as a skill.

Relative to the subject of this article, Abercrombie & Fitch has had two decisions go against it in the courts. The company decided it wanted to project a "certain" image in its stores, but in 2005, the U.S. District Court for the Northern District of California granted a \$50 million settlement to Latin American, African American, Asian American and female applicants and employees who charged the company with discrimination. The latest widely publicized case resulted in a ruling from the U.S. Supreme Court regarding the hijab (Muslim head scarf) worn by a female applicant during an interview, which resulted in the retailer not hiring her. This is not an article about Abercrombie & Fitch, but I use their cases to bring to light a longstanding bias when hiring, which is, either they do or do not look like the person you may want for a particular job.

You wouldn't necessarily hire the customer service applicant to perform the jobs that are physical in nature and require strength, endurance, and agility, just because he or she demonstrated the skill set to be a good customer service representative. Or would you? After all, the person already has proven himself. But are you putting him at risk or are you refusing to move him because you don't think he can perform jobs that require strength, endurance, and agility because he doesn't look the part?

Category	Fail Tests		Pass Tests		Total
	Number	% of Category	Number	% of Category	
UnderWeight	2	3%	68	97%	70
Normal	101	8%	1,104	92%	1,205
Overweight	267	18%	1,223	82%	1,490
Grade 1 Obesity	244	27%	663	73%	907
Grade 2 Obesity	121	31%	265	69%	386
Morbid Obesity	118	47%	135	53%	253
Overall	853	20%	3,458	80%	4,311

The study below represents 4,311 applicants for jobs that would be considered in general terms to be heavy physical demand. You can see a direct correlation between pass/fail rates and BMI, but BMI is not an appropriate indicator as to a person's ability to perform the work. This is obvious due to the number in the overweight to morbid obesity categories that demonstrated, during a job-specific physical ability test, that they can indeed perform the essential physical demands of the job.

The courts may be right by taking away the discretion of the employer to hire based on appearance. As shown in the chart above, roughly one-third of the qualified applicants (Grade 1, 2, and morbid obese) who demonstrated they could perform the work may not have been hired due to their unfit appearance. Also, notice that the underweight performers performed at a very high pass-to-fail ratio, with only two out of 70 failing the test.

So are you going to read this article and say that you have never hired one person over another because one was a better fit "physically" than another?

In reality, many factors go into the risk assessment. Have the applicants already conditioned to your job because they were performing similar work for another employer? Are they at higher risk for injury because of the work they performed for another employer? So what can we do to minimize the risk?

A properly validated job-specific physical ability test is an objective way to determine whether a person has the physical capability to perform the physical demands of the job regardless of appearance, age, or sex.

The table below represents “Injuries per hours worked” of employees who passed the test versus employees who failed the test (Anderson and Briggs, 2008). To arrive at the data in the table below, 549 employees were tested in three distribution areas: food, soft drink, and retail. All of the applicants were tested for strength and endurance. For purposes of the study, all of the applicants were employed regardless of passing or failing the physical ability test. These employees were tracked over their period of employment up to two years.

Injury Rates By Pass/Fail Status – Predictive Validation Studies

Distribution Type	Fail			Pass		
	Number of Injuries	Hours Worked	Injury Rate	Number of Injuries	Hours Worked	Injury Rate
Food	9	19,304	93.24	40	194,059	41.22
Soft Drink	1	1,314	152.25	17	57,109	59.53
Retail	35	70,996	98.60	41	125,667	65.25
Overall	45	91,614	98.24	98	376,835	52.01

As you can see in the table, the injury rates for those deemed to fail the test were much higher than for those who passed the test.

This leaves us at a fork in the road. Do we guess whether or not a person is physically capable of performing a job, or do we test him? Statistically speaking, it makes sense to use a physical ability test, but not all tests are created equal and not all jobs warrant a physical ability test.

ADA REQUIREMENTS

The ADA, as ruled in *Indergard v. Georgia Pacific Corp.*, requires a test to be given post offer if it meets any one of the seven criteria below (EEOC interpretative guidelines, <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>).

1. The test is administered by a health care professional.
2. The test is interpreted by a health care professional.
3. The test is designed to reveal an impairment of physical or mental health.
4. The test is invasive (such as involving measurement of blood pressure or heart rate).
5. The test measures an employee's performance of a task or measures his/her physiological response to performing the task.
6. The test normally is given in a medical setting.
7. Medical equipment is used.

The EEOC's guidelines state that just one of items above may be enough to determine that a test or procedure is a medical exam, and therefore needs to be given post-offer.

Post-offer physical ability tests that are considered medical tests for new hires and return to work are both legal and effective for employment selection decisions, so long as the tests are job specific. Be careful, though, not to turn an agility test into a medical examination or use a test as part of a medical exam if it is not job specific.

Agility tests or work simulation tests monitor an employee's ability to perform a job's essential physical requirements, such as lifting or other “job task simulations.” But do you really want to administer an agility test? Several issues can arise with this type of test.

First, is there consistency in test administration? In other words, is every test given in the same manner and scored the same at each location by each test administrator? Health professionals are trained to administer tests in an objective and reliable manner. If the health professional is external to the organization, there is even less potential for bias in test administration and scoring.

Second, when administering a pre-offer agility test or job task simulation, the test administrator cannot ask any medical history questions and cannot take physiological measurements such as heart rate or blood pressure in order to ensure it is safe for this person to take the test. Without such information, the test administrator is “flying blind.” Who do you think is liable if a person is injured as a result of your test? Such questions and measurements would deem the test to be a “medical test,” though, which would mean it would need to be given post-offer.

Third, you can only observe “job task simulations,” such as lifting or walking, etc. Performing these tasks without benefit of taking heart rate or other physiologic information only tells the test administrator whether the person can perform that task one time, not whether the person can perform the task multiple times over an extended period.

In other words, brief job task simulations are often not particularly effective for evaluating an individual's ability to perform a job that has a significant extended energy expenditure requirement. Thus, such tests would not necessarily identify an individual who would not be able to repeatedly perform essential job demands over the course of a shift.

To test for endurance, there would need to be quantification of the requirement of that specific job, and the test would provide an objective assessment of the individual's ability to sustain the measured requirement over the course of the shift.

So here we are at the crossroads. Do we go on looks alone? Do we use a less effective agility test? Or do you use a validated post-offer physical ability test for the best ROI? The decision is yours.



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Mr. Briggs received his Bachelors of Science Degree in Occupational Therapy from Tennessee State University in Nashville Tennessee and also holds a Bachelors of Liberal Arts Degree in Criminal Justice and Business Law from the University of Tennessee at Martin. He has worked in healthcare since 1978 in management and as a therapist in a wide variety of settings, including industrial, outpatient orthopedics, hospital inpatient, geriatrics and traumatic brain injury.

Prior to joining Advanced Ergonomics in 2001, Mr. Briggs was the National Director of Employment Testing for HealthSouth.

Mr. Briggs has been published in Occupational Safety and Health Online Magazine, Facility Safety Management Magazine, HR Times Magazine, The Informer Magazine and American Occupational Therapy Online Magazine. In 2008, Mr. Briggs co-authored peer reviewed and published research in the journal Work; A Journal of Prevention, Assessment and Rehabilitation entitled “A Study of the Effectiveness of Ergonomically-Based Functional Screening Tests and Their Relationship to Reducing Worker Compensation Injuries”.

In addition to consulting on Physical Ability Testing issues, he speaks nationally on “The Legal Issues Surrounding Physical Abilities Testing” and other related topics. The forums include: Safety, Risk and Loss Prevention Seminars, Society of Human Resource Managers, and Self Insured Associations. Mr. Briggs was nominated for Gubernatorial Appointment to the Tennessee Workers Compensation Advisory Board in 2009. Served on the American Trucking Association Safety Management Council as Allied Committee Chairman 2010 and 2011. Became a certified teacher with the “With Hope In Mind” family education and support program of the National Alliance on Mental Illness (NAMI) 2013. President, Board of Directors NAMI North Middle Tennessee 2015-16. Member Board of Directors, Tennessee Trucking Association 2015-16.

Mr. Briggs is currently responsible for developing business relationships and contractual negotiations for prospective clients and service providers including over 10% of the current Fortune 100 companies and numerous Fortune listed companies, while also providing services to companies as large as 100,000 plus employees to as small as 25 employees in the US, Canada, and Puerto Rico. Jim's email is jim.briggs@advancedergonomics.com