

## Promoting Diversity

# Testing ‘Objective’ Employment Tests for Fairness

**Occupational education and training programs often use objective tests to make decisions about job placement and training opportunities. As the Ford case shows (see box below), employers and unions that sponsor these programs must be sure that their tests comply with Title VII of the Civil Rights Act of 1964, which outlaws discrimination in employment on the basis of race, color, religion, sex or national origin.**

Court cases show that under Title VII, training program operators must guard against two types of discrimination in their selection methods and tests:

- **“disparate treatment”**—the intentional discrimination against a protected group;
- **“disparate impact”**—an unequal effect on a protected group, unless the test is measuring a skill or trait that is clearly related to the ability to do the job.

When in doubt about the fairness of a test or selection process, training program operators should study the Uniform Guidelines on Employee Selection Procedures put out by the Equal Employment Opportunity Commission in 1978 ([www.uniformguidelines.com](http://www.uniformguidelines.com)). The Guidelines provide a framework for hiring and promotion processes in keeping with the requirements of Title VII.

According to the Guidelines, a test has a “disparate impact” when the selection rate for members of the protected group is clearly different from the rate for the general applicant pool. Courts sometimes refer to the “80 percent rule” as an acceptable measure of difference: an employment test has an illegal impact if members of a protected group are selected at a rate that is less than eighty percent of the rate for the group with the highest selection rate.

When a test results in a disparate impact, unions and employers must prove that the test directly measures job-related qualities in order to use it. This proof requires:

- **criteria-related validation**—the test measures an ability that is related to successful job performance. Example: A written test measures knowledge of traffic regulations for bus drivers.



- **content validation**—the test measures the performance of tasks central to the job. Example: A driving test rates driving skills for bus drivers.
- **construct validation**—the test identifies a trait, such as ‘intelligence’ that is required to do the job well. Example: A test to measure aptitude for quick and appropriate crisis-response for bus drivers.

To guard against disparate impact lawsuits under Title VII, employers, unions and program operators should:

- Select a professionally developed test specifically designed to avoid this problem;
- Keep records showing the impact of the test on Title VII’s protected groups;
- Perform a validity study on any test that shows discrimination.

To ensure that they are in compliance with the requirements of Title

VII, unions and their training partners should determine whether the tests they rely on have an adverse impact on a protected group, and if so, whether the use of the test is justified by job-requirements. Professional test evaluators, as well as attorneys, can help make these decisions and find alternative tests when necessary.

### **What steps should organizations take to ensure that their tests comply with Title VII?**

Unions, employers and program operators who sponsor training programs should ensure that their tests do not discriminate against Title VII protected groups. The steps below outline measures that help eliminate discrimination from selection processes.

First, select a professionally developed test, designed to guard against illegal disparate impact. While no test can provide a guarantee against disparate impact, users should pay close attention to the test design and be

aware of discrimination issues. Always choose the test that has the lesser adverse impact.

Second, maintain records that disclose the impact the test has on employment opportunities of Title VII’s protected groups. Users should apply a ‘statistical significance’ test or the 80 percent rule to determine disparate impact. The Guidelines advise testers to do yearly disparate impact evaluations. Under the Guidelines, if “the total selection process” has a disparate impact, then the user must also test each part of the process in order to pinpoint the cause of the impact.

Third, perform a validity study on any test that has a disparate impact on a protected group. Without a study that shows a test measures a job-related skill, a program that relies on a questionable test is probably liable under Title VII. If only one or more parts of a total selection process have an adverse impact, then the study

## 80% rule

**If the highest selection rate for any group of applicants is 50%, then minority candidates must be selected at a rate that represents at least 80% of the 50%.**

### EXAMPLE:

**IF: 20 majority candidates apply, and 10 (50%) are hired,**

**THEN: Of 10 minority candidates who also apply, (80% of 50% = 40%) at least 4 of them must also be hired.**

should focus on those parts. Keep in mind that a validity study should include a search for different selection processes—or methods of using the same processes—that have as little impact as possible. The Guidelines advise test givers to validate any selection process that has an adverse impact every year.

The discussion in the Guidelines shows that the real relevance and fairness of a test depends on the special relationship between a particular test and a particular job. The Guidelines warn that the general reputation of a test for fairness or casual reports of a test’s validity will not be accepted by courts if the test is questioned.

### **Robinson et al. v. Ford Motor Co. and the UAW; EEOC v. Ford Motor Co. et. al.**

On June 16th, 2005, a federal judge in Cincinnati approved a multi-million dollar settlement between Ford Motor Company and the UAW and a class of African American employees who charged that the Apprenticeship Training Selection System at Ford had a discriminatory impact on African American employees. Ford agreed to suspend the use of the test and devise a new selection method for its training program under the supervision of an industrial psychologist.

Because the apprenticeship programs at Ford are administered as part of a collective bargaining agreement with the UAW, the union was also named as a defendant in the suit. The union had tried to address discrimination in the training selection process through collective bargaining with Ford in 2001 but was unsuccessful. When the issue could not be settled, the UAW was named as an “indispensable party” because workers could not resolve the problem without involving the union. Judge S. Arthur Spiegel, who approved the final settlement, characterized the case as “complex and difficult” and the results as “far-reaching and notable.”

# Promoting Certification

## MSSC Certification: A New Labor-endorsed National Credentialing System for Production Workers

For the first time, the Manufacturing Skill Standards Council (MSSC), has produced a national system for certifying the foundational high performance manufacturing skills of U.S. workers. The MSSC, a council of business leaders, union leaders, education and training program operators and others, employed a two-step process to formulate these industry-validated standards and to assure that they reflected the real work needs in a high performance manufacturing plant. (See the reverse of this page for a discussion of the importance of job-relevant testing criteria in hiring and promotion). First, workers and front line supervisors developed the skill standards. Next, specialists in skill assessments designed an evaluation program that certifies “Manufacturing Production Technicians” with skills in four interrelated modules:

- ▶ manufacturing processes and production
- ▶ quality assurance
- ▶ maintenance awareness
- ▶ health, safety and environmental assurance

Using this system, manufacturers can better respond to a need long expressed by American unions: U.S. employers must engage in high value added production processes in order to improve employment security. The MSSC certification system can help ensure that the workers needed to facilitate this high-performance production will continue to be available. At the same time, through the MSSC system, unions can help their members gain certification of their high skill levels.

The MSSC is working to certify test sites throughout the U.S. At these loca-

tions, web-based tests are administered in a secure environment, and a proctor is available to answer questions on any module before testing begins.

Each assessment covers a single module. There is a one-time registration fee of \$50.00 for all test-takers, and an additional \$45.00 charge for each of the four modules.

All test scores are confidential—revealed only to the test-taker.

### The Benefits of MSSC

Promoting the availability of industry-validated certification to ensure that job training for incumbent workers and new hires meets the needs of both workers and business is a first priority for the MSSC.

**In a unionized workplace, unions will want to negotiate the terms of encouraging incumbent workers to take the assessment.** The AFL-CIO Working for America Institute is developing sample contract language for this purpose.

#### For Workers

- ▶ Certification grants portable credentials.
- ▶ Certification reflects workers’ achievements and allows them to demonstrate their capabilities.
- ▶ Certification can improve workers’ career opportunities.
- ▶ Certification may provide workers’ with greater earnings potential.

#### For Employers

- ▶ Certification simplifies applicant screening.
- ▶ Certification accurately assesses workers’ skills and knowledge.
- ▶ Certification increases return on training investments by focusing on “must know” and “must do” areas.
- ▶ Certification is available to employers who wish to compare the skill levels of a group of workers to national norms.

#### For Educators and Trainers

- ▶ Standards enable trainers to align curriculum with industry needs.
- ▶ Standards help to link training to the public workforce development system.
- ▶ Standards establish guidelines for education and training materials, teacher development programs, and other curriculum aids.

For more information about MSSC certification, please contact Tom Gannon at [tgannon@workingforamerica.org](mailto:tgannon@workingforamerica.org) or the MSSC website at [www.msscusa.org](http://www.msscusa.org)



Graduates of Skill-Map, a pilot project of the Indiana AFL-CIO Labor Institute for Training Inc. and Ivy Tech State College that prepares trainees for MSSC assessments.

### How do the Skill Standards Work?

The MSSC skill standards identify the work to be performed in best practice manufacturing workplaces and the skills and knowledge necessary to execute it.

For example, to set the standards for the “Production Technician,” MSSC identifies:

- ▶ **Critical Work Functions:** the major responsibilities involved in carrying out a concentration;
- ▶ **Key Activities:** the duties and tasks involved in carrying out a critical work function;
- ▶ **Performance Indicators:** means of determining competent performance.

### About the work:

Concentration Area: PRODUCTION (Selected functions, activities and indicators)

Critical Work Function	Key Activities	Performance Indicators
	Identify the materials, tools and equipment available for the production process	<b>Ability to:</b> ▶ Check raw materials against work order; ▶ Check tools and equipment against work order; ▶ Communicate inventory discrepancies to proper parties.
Produce Product to Meet Customer Needs	Perform the production process	<b>Ability to:</b> ▶ Monitor process control data to ensure compliance with standards; ▶ Perform operations safely; ▶ Ensure product meets customer specifications.
	Inspect product to be sure it meets specifications	<b>Ability to:</b> ▶ Verify calibration of testing equipment; ▶ Follow established sampling plan and inspection policies; ▶ Complete inspection documentation accurately.

### About the worker:

Knowledge and Skills: What a worker needs to know and do to perform critical work function

Academic and Employability Skills	Example
Use information and communications technology	Use computerized manufacturing system for Bill of Materials specifications and general assembly procedures.
Gathering and analyzing information	Collect data on parts delivery schedule.
Making decisions and judgments	Determine proper packaging for product to limit product damage during shipment.
Organizing and planning	Establish production schedule to meet customer demand.
Adaptability	Be willing to operate different machines to reduce workload shortages and overloads.
Mathematics	Add, subtract and divide numbers to adjust inventory report.
Occupational and Technical Knowledge and Skills	Example
Inspection tools and equipment	Knowledge of testing equipment: gauge blocks, micrometers, hardness testers and digital inspection equipment.
Production tools and equipment	Knowledge of feed rates and speeds of equipment to maximize productivity.
Manufacturing process	Knowledge of Statistical Process Control (SPC); Skill in communicating work orders.
Health and safety policies	Knowledge of state and federal regulatory requirements.

**The Institute urges orientation and coaching prior to test-taking—even for long-employed workers.** Although training providers may develop their own curricula to prepare for the tests, McGraw Hill-Glencoe, in cooperation with MSSC, developed *High-Performance Manufacturing: Portable Production Skills*, a textbook, applications guide and instructor resource CD. This textbook program includes training materials for eight critical manufacturing work functions, providing a common base of technical and academic skills and knowledge across 14 sub-industries.

To order copies please call Glencoe/McGraw Hill at 800-334-7344 between 8 a.m. and 6 p.m. Eastern Time. Prices vary by quantity and use.

**“Manufacturing production workers’ skills are not widely recognized because workers in the U.S. tend to acquire them through on-the-job training. MSSC addresses this issue by formalizing a set of skills that will help workers prove their capabilities to their employers. Through MSSC, American workers will gain greater skill recognition so that we can keep manufacturing jobs here in the United States.”**

—Keith Romig, Jr., Treasurer, MSSC Executive Board; Director, National and International Programs, United Steel Workers