



Legal Risks – Use of Big Data in Recruitment and Selection

Pennsylvania Bar Institute
Employment Law Institute West -- November 14, 2018

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The World is Awash in Data

Publicly Available Data

- Social media profiles/activity (Facebook, LinkedIn)
- Twitter feeds
- Job boards
- Government databases

Employer Data

- Employment history (HRIS)
- Job performance
- Personality testing and other past assessments
- Wearable sensors
- On-line calendars

How Big Data are Combined . . .



"Your recent Amazon purchases, Tweet score and location history makes you 23.5% welcome here."

“People Analytics” Will Increasingly Drive Talent Acquisition

“Who to **hire**, who to **promote**, how much to **pay**, how to **develop**, what **next job** to take – all these decisions are now ‘data enabled’ and we expect HR technology, which is becoming more integrated every day, to become more and more like ‘instrumentation of your organization’ – giving you data to improve organizational performance every day.”*

*Bersin by Deloitte, January 6, 2015, at <http://www.bersin.com/Blog/post/Predictions-for-2015--Redesigning-the-Organization-for-A-Rapidly-Changing-World.aspx>

Sourcing and Selection Products

- Applicant sourcing – try to correlate public data with workplace performance
- Search algorithms – both candidate matching and text analysis to pick out skills and experience
- Audit and video analysis – algorithms to evaluate intent, attitude, engagement, *etc.*



Key Potential Legal Concerns

- **Disparate Treatment Claims**
- **Disparate Impact Claims**
- **Internet Applicant Rule**

Disparate Treatment Concerns



- Analytics are controlled by too few employees, who may exhibit bias in selection or data inputs
- Use of analytics/selection procedures for one protected group but not others
- Potential for class actions

Disparate Impact Concerns

- Neutral selection criteria may have disparate impact
- Ease of finding statistically significant differences in large datasets
- Need to validate as test under UGESP

Big Data Validation Challenges

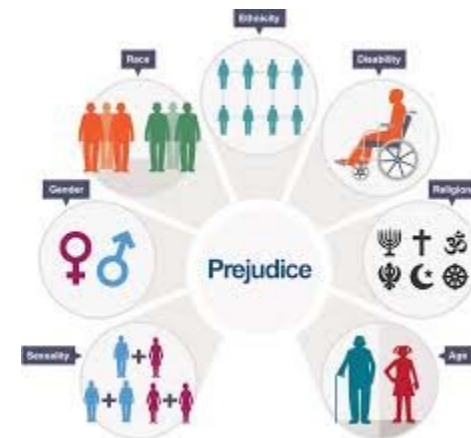
- Content and construct validity may not be feasible
- Job analysis often missing/may not be feasible
- Statistical significance vs. meaningfulness
- Spurious correlation

When To Use Big Data Analytics?

- To improve sourcing decisions
 - Opportunity to use analytics without triggering Internet Applicant Tule
 - Recruiting practices are not selection procedures under UGESP
- To narrow applicant pools
 - Sophisticated predictive techniques using objective criteria
- To make selection decisions **WHEN/IF validated!**

Persons With Disabilities

- Use of personality tests
- Disability-related inquiry or medical examination?
- Adverse impact
- Accessibility issues





Questions



Thank You!

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