



Re: IOP paper concerning the Uniform Guidelines
Lance Seberhagen
to:
Michael A McDaniel/AC/VCU
02/16/2011 10:40 AM
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Hi Mike:

I enjoyed your article, but you are taking a lot of the fun out of the IOP by asking for comments before publication. Scathing comments are supposed to be made after you publish your article. Feel free to disregard my comments, so I can make them later.

COMMENTS

1. I agree that this is a worthwhile topic for debate because the discussion will help educate I/Os about the Uniform Guidelines, federal EEO enforcement, and the differences between law and science. IOP should publish your article and the resulting comments.
2. I also like David Copus' idea of asking EEOC to publish an ANPR on whether the Guidelines should be revised and, if so, how. SIOP might consider making this request, pending the outcome of the IOP discussion. However, EEOC may be prohibited from publishing the proposed ANPR due to Congressional restrictions (see below). Nevertheless, some benefit would come from making these restrictions public, if they exist.
3. Apparently you are more interested in eliminating regulations for employers than in promoting scientific standards. You believe that adverse impact discrimination does not exist. Therefore, there is no need for the federal regulation employment testing. Why don't you just say that instead of pretending to support professional standards?
4. Your article implicitly assumes that EEOC opposes revision of the Guidelines. Another explanation is more likely. Congress probably ordered EEOC not to revise the Guidelines by placing a provision in EEOC's appropriation bill that says something to the effect, "EEOC is prohibited from spending any funds on revising the Uniform Guidelines without the express permission of Congress." In 1985 Clarence Thomas was Chair of EEOC, and EEOC was rumored to be working on a revision to the Guidelines. In response to those rumors, Congress (a House subcommittee) held hearings on the Guidelines that year, and the result was the restriction written into EEOC's appropriation bill. The same restriction may also have been written into the appropriation bills for DOL, DOJ, and OPM. The restriction may or may not have been written into subsequent appropriation bills, but once would be enough to tell the EEO enforcement agencies to back off until they received a clear "go" signal from Congress. Congress could have sent that "go" signal when Title VII was revised in 1991, but it didn't. Therefore, the EEO enforcement agencies are not going to do anything until they receive orders from Congress or the President.
5. Another reason why the Guidelines have not been revised is that testing is not a high priority for EEO enforcement agencies. EEOC receives about 100,000 complaints per year, of which only about 200 (0.2%) are testing cases. Similarly, OFCCP has focused its most of its resources on compensation and affirmative action, while DOJ has focused most of its resources on harassment and other forms of intentional discrimination. OPM doesn't follow the

Guidelines, so they don't care.

6. EEOC has also maintained that there is no need for them to revise the Guidelines because the Guidelines are continually updated by the courts through case law. Of course, this is a very inefficient way to revise the Guidelines and communicate the revisions to employers, attorneys, testing specialists, and EEO enforcement staff. A better approach would be for EEOC to revise the Guidelines every 10 years, so EEOC could incorporate all of the recent developments in case law, testing research, testing practice, and EEO enforcement in one place for everyone to see.

7. The Guidelines need updating and clarification, but everybody understands that. Thus, no one requires rigid compliance to the Guidelines, except perhaps for misinformed lawyers who write rigid Guidelines compliance into settlement agreements without consulting an I/O or other testing specialist. In practice, most judges, lawyers, I/Os, and enforcement staff follow only the general spirit of the Guidelines, with due consideration of current professional standards and practice. It's not a big problem.

8. Your article (p. 7) says, "In the 1970's [sic], the average sample size in a validity study was 68 (Guion, 1965)." I knew he was good, but I didn't know Guion could predict the future!

9. Your article implicitly assumes that if the Guidelines are silent on a practice, the practice is prohibited by the Guidelines. Besides the fact that this assumption is illogical, the Guidelines specifically say that they are open to new methods and practices, provided that the test user can make a good argument to justify its use.

10. Your article (p. 11) says that the Guidelines has a "1950's [sic] perspective on separate validity methods." This statement is false and deceptive. The 1974 Standards and 1975 Principles both described "three aspects of validity" (i.e., "criterion-related validity," "construct validity," and "content validity"). The 1980 Principles described four validation "strategies" (i.e., "criterion-related," "construct," "content-oriented," and "validity generalization"). Describing validity in terms of various "aspects" or "strategies" versus "methods" is more of a semantic difference than a scientific difference. The 1974 Standards, 1975 Principles, and 1980 Principles also promoted local validation and said that validity coefficients could not be generalized unless the jobs and job settings were very similar. In addition, the 1974 Standards, 1975 Principles, and 1980 Principles all noted that there were few professional standards for validity generalization because this was an evolving area of research and practice. Thus, the 1978 Guidelines were at least consistent with professional standards of the 1970s, if not the 1980s and beyond.

11. Your article failed to provide specific examples of the kinds of revisions you would like to see in the Guidelines. For example, do you think the Guidelines should say, "If a test is valid for one job, it is valid for all jobs"? Also, what documentation you think the Guidelines should require for validity generalization based on meta-analysis? The fact is that current professional standards don't provide much specific guidance about VG because VG is still an evolving area of research and practice in 2011.

Best regards,

Lance
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On 2/14/2011 9:00 PM, Michael A McDaniel/AC/VCU wrote:

Colleagues,

On February 7th, I wrote you inviting comments on a draft copy of a focal article for *Industrial and Organizational Psychology: Perspectives on Science and Practice*. The article concerns the *Uniform Guidelines* and its inconsistencies with science and practice. It also encourages SIOP to become more active in encouraging science-based Federal regulation of employment practices.

I received some excellent feedback from many of those on the initial distribution list, but I did not receive any comments back from you. If you planned on commenting, and can do so by Thursday, I would appreciate receiving your comments.

Thank you for considering this request.

Best wishes,

Mike

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