From Job Analysis to Candidate Selection

Best Practices for Results AND Compliance

Contents

Job Analysis: Definition and Best Practices

What is a job analysis?

A job analysis can be formal or informal – but conducting one means understanding the requirements for the job on an employee's starting day.

A few job analysis techniques exist:

- **Observation** – Watching staff doing the job to see what they do.
- **Work Sampling** – actually experiencing the job
- **Employee Diary/Log**
- **Interviewing** – asking the employees about their job requirements
- **Questionnaire** – asking people in that job about what elements they need to perform – physical requirements, knowledge, soft skills, etc.
- **Critical incident technique** – (rarely used)
- **Functional Job Analysis** – determine what the goals are of the organization. Then, what workers need to do at each level, and what training they will need.

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For example:

A **Job Analysis Questionnaire** would cover:

- ‣ Materials and equipment used
- ‣ Financial/budgeting input
- ‣ External and internal contacts
- ‣ Knowledge, skills, and abilities used
- ‣ Working conditions
- ‣ Duties and percentage of time spent on each
- ‣ Work coordination and supervisory responsibilities
- ‣ Physical activities and characteristics
- ‣ Decisions made and discretion exercised
- ‣ Records and reports prepared
- ‣ Training needed

A **Functional Job Analysis** would analyze:

- ‣ Goals of the organization
- ‣ What workers do to achieve those goals in their jobs
- ‣ Level and orientation of all workers do
- ‣ Performance standards
- ‣ Training content

No single one of these job analysis techniques has received a stamp of approval from the various courts in all situations. A combination of methods is the best approach. What's most important is **documenting** all your steps.

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Selection Process:
Requirements and Flow

Learning a job's requirements then leads to crafting a valid selection process.

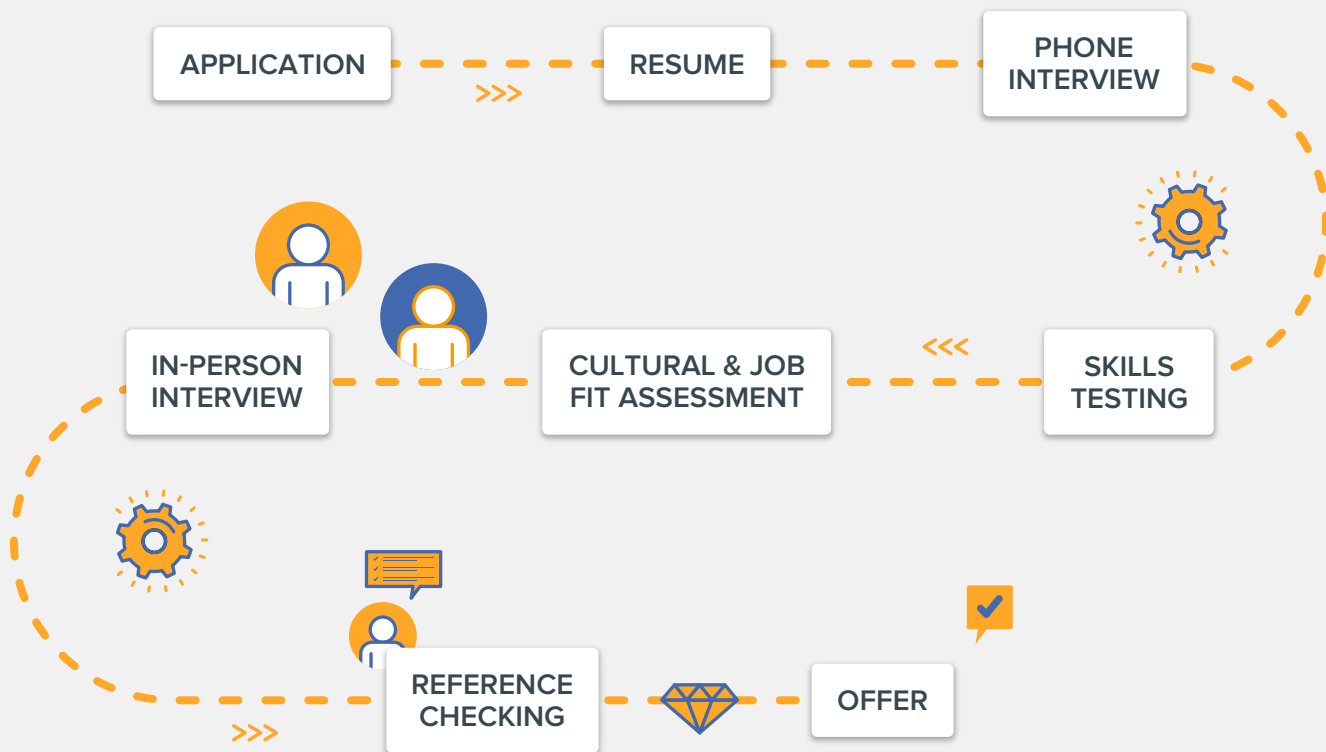Requirements consist of: skills, behaviors, physical requirements, education, and experience.

How to collect the information from candidates?

▸ ATS or manual process

▸ Skills testing for starting skill set

▸ Behaviors to evaluate

▸ Experience to assess via resume, references

▸ Education and certifications
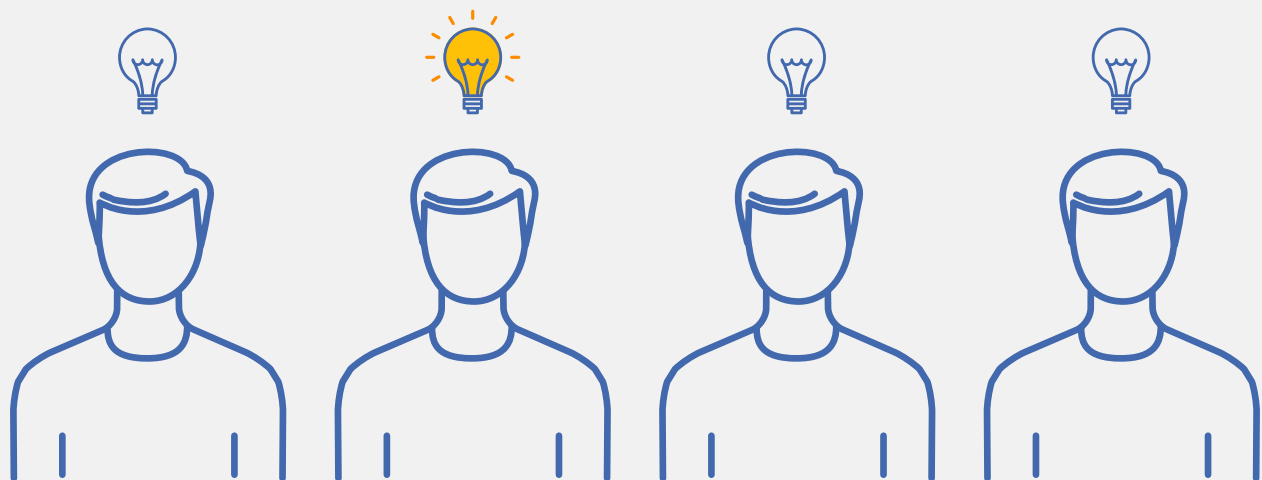
Be aware - what is most important element for performing at a specific job, vs. nice-to-haves? Are you screening-in, or screening-out with the process?

A robust process would flow like this:

APPLICATION　>>>　RESUME　PHONE INTERVIEW

IN-PERSON INTERVIEW　CULTURAL & JOB FIT ASSESSMENT　<<<　SKILLS TESTING

REFERENCE CHECKING　OFFER

>>>

Creating a level playing field for all candidates is the goal of a compliant selection process. Use the same steps and set of assessment questions for every applicant.

Understand & document how both subjective and objective information is evaluated. Once a human is part of the process, there will be subjective information.

Validation: Guidelines and Studies

'Validation' means proving that the selection process assesses job-related skills and attributes.

Adverse impact and the 'Four-fifths' Rule:

For adverse impact analysis, an employer should gather race, sex, and ethnic data on candidates, along with their selection rates.

> ❯ A selection rate for any race, sex, or ethnic group which is less than four-fifths (or 80%) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact

> ❯ If there's no proven adverse impact in the selection process, then the individual components are not evaluated. If adverse impact can be proven, then the components can be called into question.

More can be found by reading the **Uniform Guidelines on Employee Selection Procedures (UGESP)** at: gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/xml/CFR-2011-title29-vol4-part1607.xml

The data required to show validity falls into two types:

1. **Content validity** requires that specific questions and tests are representative of performing on the job. A corollary, **construct validity**, means that the general idea of what you're measuring is legitimate.

2. **Criterion-related validity** concerns the performance goals you are trying to predict. Are they truly related to the job? The more indirect the relationship between the test and the job-related performance goal, the more proof an employer needs to use the test defensibly.

An illustration:

A grocery distribution company needed to hire warehouse workers, where the job required lifting 50-lb boxes. So they used a mechanical handle-pulling test on a pool of candidates, with the scoring ranking whomever could lift the most weight (beyond 50 pounds) as the most job-fit.

The **construct** they tested for – upper body strength – was valid given the lifting tasks.

The **content** of the test – lifting against mechanical resistance to simulate box lifting, was valid test content. However, the implementation (scoring) that screened-in those who lifted the most weight – was NOT valid because the job only required that the worker needed to lift 50lb boxes.

Such a test discriminated against female applicants who are likely not as strong as the men in their candidate pool, though they might be strong enough for the 50lb requirement.

When the grocery company was legally challenged, they claimed that the strongest candidates would also be the least likely to get injured. This was a valid objective, however, they had no proof that upper body strength correlated with injury avoidance at their site… so the assessment process was deemed not valid.

So when developing an assessment process, employers need to make sure the construct being tested for, the assessment content, and the assessment scoring are truly job performance-related.

What employers need to document for a **criterion** validation study:

▸ User(s), location(s), and date(s) of study

▸ Problem and setting

▸ Job analysis or review of job information

▸ Job titles and codes

▸ Criterion measures

▸ Sample description – who are the candidates going through the process

▸ Description of selection procedures

▸ Techniques some results

▸ Uses and score applications

▸ Source data

What employers need to document for a **content** validation study:

▸ User(s), location(s), and date(s) of study

▸ Problem and setting

▸ Job analysis

▸ Selection procedure and content

▸ Relationship between the selection procedure and the job

▸ Uses and application

What employers need to document for a **construct** validation study:

▸ User(s), location(s), and date(s) of study

▸ Problem and setting

▸ Job analysis

▸ Job titles and codes

▸ Selection procedure

▸ Relationship to job performance

▸ Uses and application

▸ Source data

The Uniform Guidelines on Employee Selection Procedures outlines each of these in greater detail.

Concurrent studies are conducted before using the assessment to hire. You take existing employees, whose performance levels you objectively know, and give them the assessment. If scores predict the higher performers and differentiate between high and low performers with statistical significance, the assessment has criterion-related validity.

A predictive study takes people you hired following taking an assessment, and 6-12 months out looks at how they're objectively performing vs. their test scores.

Using an assessment that you've demonstrably tailored to fit a job's requirements, per a job analysis, is more compliant than using an off-the-shelf test or no test at all.

Discrimination: Regulatory Standards and EEOC Guidelines

Discrimination

Discrimination law largely emerged from the Civil Rights Act of 1964, and specifically in employment from Griggs vs. Duke Power in 1971, which was the first case addressing disparate impact against protected groups in hiring.

The Uniform Guidelines on Employee Selection Procedures (UGESP) was created in 1978, and is a section of the Code of Federal Regulations, specifically 29 CFR Part 1607.

The Civil Rights Act recognizes two types of discrimination that the EEOC enforces:

- Disparate treatment
  - Requires proof of intent to discriminate
  - The employer treats some people less favorably based on race, color, sex, religion, disability, or other protected characteristic
  - Liability depends on whether the protected trait motivated the employer's decision

❯ Disparate impact

▸ Doesn't require proof of intent

▸ Involves an employment practice that is placed on everyone but affects one protected group more harshly. Such as a college degree that is not required for a job, yet discriminates against certain minorities.

If a test procedure is shown to be valid, it then complies with the EEOC guidelines and is lawful even if it has disparate impact.

EEOC-enforced federal laws:

❯ **Title VII of the Civil Rights Act** of 1964

▸ Prohibits employment discrimination based on race, color, religion, pregnancy, sex and national origin

▸ Prohibitions against disparate treatment and disparate impact

❯ **Americans with Disabilities Act**

▸ Prohibits disparate treatment and impact based on disability

▸ Class cases are difficult for plaintiffs and very rare

❯ **Age Discrimination in Employment Act** of 1967

▸ Prohibits disparate treatment and impact, but more applicable to current employees than hiring. It may not apply to hiring if age is job-related.

❯ **Equal Pay Act**

▸ Prohibits sex discrimination in pay, but not disparate impact.

❯ **Genetic Information Nondiscrimination Act**

▸ Prohibits discrimination based on genetic information and family medical history, but does not prohibit disparate impact discrimination

Title VII disparate impact burdens of proof, in order:

1. A plaintiff must prove an employer uses a particular employment practice that causes a disparate impact on the basis of a prohibited factor.

2. If a plaintiff proves disparate impact, then the defendant must prove that the employment practice "is job related for the position in question and consistent with business necessity".

3. If the employer satisfies its burden, then the plaintiff can prevail if it shows that the employer refused to adopt an available alternative employment practice that has a less disparate impact and serves the employers legitimate needs

The UGESP sets legal standards governing the use of selection devices such as tests.

When analyzing whether the use of an employment test has violated Title VII of the Civic Rights Act, the focus of inquiry is on whether the test as applied to a specific set of individuals seeking a specific job has produced a disparate impact that is not job-related.

Any selection procedure that has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory **unless** the procedure has been validated or otherwise complies with UGESP 29 CFR 1607.3A.

29 CFR 1607.3A states:

A procedure having adverse impact constitutes discrimination unless justified. The use of any selection procedure that has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines.

It's important to note that whether a test or other selection device causes a disparate impact, and whether the use of a test or other selection device is job related or otherwise lawful, **are specific to the employer and not to the test itself.**

__The employer__ is responsible for choosing or configuring assessments to be valid for its job requirements.

No assessment provider can legitimately state that their out-of-the-box tests are valid for an employer's jobs without the tests being tailored to the output of the applicable job analyses.

Again - if you are using a selection tool you have configured to fit the job requirement, and can prove it is valid, it is **legal** to use per the UGESP even if it has disparate impact.

Good faith reliance on UGESP provides a defense to any claim, but UGSEP and other EEOC regulations do require record keeping.

The EEOC has investigated many cases involving the use of selection devices such as tests. Employers that can show either a lack of adverse impact in their candidate pool, or a validation study showing the predictiveness of assessment scores with job performance, have strong protection against judgment.

Summary of the documentation employers should gather:

1 *Is the selection process reflective of the requirements of the job?*

2 *Are the tools being used in the process valid and reliable?*

3 *Is there data to support the validation?*

4 *Is there any adverse impact resulting from your selection process?*

5 *Are you collecting appropriate data?*

Conclusion

Conducting a **job analysis** – understanding a job's skill, behavior, physical, education, and experience requirements - can sound laborious, but it becomes a vital operation as an organization scales in size.

With increased headcount and complexity, an organization must implement standard hiring practices to ensure accurate hiring while protecting itself from a growing possibility of litigation from an increasing employee base.

There are several ways to a do a job analysis, with no one way being universally accepted. The best practice is to use more than one, and **document every step**. Once you've learned the requirements of the job through the job analysis, you can move on to develop a selection process to assess candidates' job fit.

In creating a selection process, you must make sure it is valid and in compliance with EEOC (U.S. Equal Employment Opportunity Commission) guidelines. The validity of the selection process is necessary both to find the best candidates and to avoid legal repercussions.

If an employer in good faith tries to follow EEOC recommendations, and demonstrably customizes their selection assessments to fit the job requirement, the employer will have a robust defense against adverse impact and other legal challenges.

A note about the sponsor:

eSkill has been providing online skills selection tools and advice to organizations since 2003. Over 4,000 clients including Zappos, GE, Coca Cola Bottling, Paychex, and FedEx have used eSkill to deploy customized online skills tests mapping to their jobs' requirements, and have tested millions of candidates without legal challenge.

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This article is a summary of a Webinar hosted by eSkill, and led by:

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To watch this webinar in its entirety, you may find it as:
Conducting a Job Analysis – Best Practices for Results AND Compliance
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