



# SOCIETY FOR INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGY, INC.

## Division 14 of the American Psychological Association Organizational Affiliate of the American Psychological Society

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Steve W. J. Kozlowski

Honorable Augustus I. Hawkins  
Chairman  
Committee on Education & Labor  
2101 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Representative Hawkins:

The Society for Industrial and Organizational Psychology is a 2400-member organization and a Division of the American Psychological Association, an association of over 90,000 psychologists. The members of our Society are centrally involved in employee selection issues. Our Society's publication entitled, Principles for the Validation and Use of Personnel Selection Procedures is commonly referred as a leading statement of the most current scientific thinking on personnel selection issues. They are frequently cited in Federal District Court cases on issues related to employment discrimination. In addition, our members conduct the research and practice that underlies legislative, judicial and administrative action at the local, state and federal level. Thus, we have followed with great interest the development of the Kennedy-Hawkins Civil Rights Act of 1990.

As a result of our analysis of the proposed Kennedy-Hawkins Civil Rights Act of 1990, we wish to call your attention to possibly unanticipated consequences of one provision of the Act. Section 3.1.o reads:

"The term 'required by business necessity' means essential to effective job performance."

We have three concerns. First, the term "essential" is very restrictive. While behavioral science has technology available to examine job relatedness (e.g., validation techniques for examining whether increasing levels of skill lead to increasing levels of performance), standards for determining that a requirement is "essential" have not been clearly articulated.

Second, the term "effective" may be interpreted as implying that performance is dichotomous, and that once an individual has met the "effectiveness" criterion higher levels of performance cannot be considered as being of greater value to the organization. In many cases, this is not true. There is a substantial body of literature that documents the advantages of adding employees who might make contributions beyond a single, discrete "effectiveness" level.

Third, the term "job performance" may be interpreted in a restrictive manner. For example, it is not clear if an organization's interest in reducing absence or turnover could be included in the definition of "job performance." Criteria such as absence and turnover can be central to the viability of an organization and are reasonable areas of interest for human resource research and practice.

We would like to suggest the following less ambiguous language as an alternative:

"The term 'required for business necessity' means shown to be (1) predictive of or significantly correlated with work behaviors comprising the job or relevant to the job or job family for which the procedures are in use, or (2) representative of the content of one or more important components of the job."

It is our understanding that certain revisions to the proposed Act have been made since the original bill was circulated and that among these changes is the following:

"The term 'required by business necessity' means that the challenged practice or group of practices bears a substantial and demonstrable relationship to effective job performance.

an unlawful employment practice is established ... a complaining party demonstrates that a group of employment practices results in a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate by objective evidence that such practices are required by business necessity."

Were this language to remain in the bill, it would be as bad or worse than the language we objected to earlier in this letter. I realize that an attempt was made to eliminate the many objections to the term "essential" but this does not solve the problem. There are two distinct problems with the substitute language.

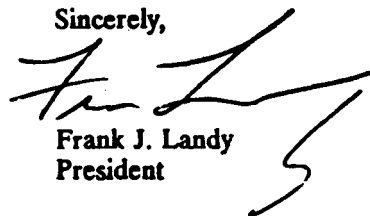
First, the term "substantial" is considerably more demanding than the prevailing standard of statistical significance and might be interpreted to be of a level of association impossible to reach using even the most advanced selection instruments.

Next, the term objective evidence would seem to implicitly endorse criterion related validity studies as the only reasonable methods for establishing job relatedness. Over twenty years of scientific discussion and litigation have previously settled that issue. Content-oriented and construct-oriented validity studies are equally acceptable for demonstrating business necessity. To use the term objective evidence would be to ignore that consensus regarding validity models.

If the language of the Kennedy-Hawkins bill has been changed as indicated above, we feel even more strongly that our substitute language for addressing the issue of business necessity is appropriate.

We would be pleased to discuss this further with you or your staff. I will personally brief your staff on these issues if you feel that such a briefing would be of value. I would be pleased to come to Washington for such discussions if appropriate. We thank you for your attention to our concerns.

Sincerely,



Frank J. Landy  
President

FJL/jls