

Don't get burned...surviving the hiring minefield

Pilot Hiring can be fraught with dangers that can expose airlines to an range of liability issues Diane Damos and Roland Juarez look at the problems and possible solutions in the first of two articles.

Modern “best practices” pilot selection systems have five major components: one or more criterion, one or more selection instruments, a decision aid, a feedback loop, and documentation. The criterion measures the success of the newly hired pilot and, de facto, determines what type of individual the carrier wants to hire. For example, one common criterion is the score on the check ride at the end of training. This score reflects the pilot's success in initial training and may also provide a measure of his/her ability to learn. For this reason, many carriers include several criteria in their selection system, which allows them to select individuals who learn quickly, have good eye-hand co-ordination, etc. The criterion is arguably the most important element of the selection system and yet is the most frequently forgotten.

The second element of the selection system is the selection tests. These may include evaluations of flight skills conducted either in an aircraft or simulator, intelligence tests, aviation knowledge tests, personality tests, and interviews. The tests are chosen to assess the knowledge, skills, abilities, and traits required by the system criterion (ia).

The decision aid is the third element of the system. The



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purpose of a decision aid is to help the decision maker combine the information obtained during the selection process in a consistent and systematic manner. Decision aids vary from very elaborate statistical models to simple, weighted combinations of scores on the selection tests. A decision aid never replaces the decision maker; its sole purpose is to help the decision maker reach a hire/reject decision in a consistent manner.

The feedback loop is another element of the selection system that is frequently forgotten. The primary purpose of the feedback loop is to provide the company with information about how well the selection system predicts performance on the criterion(ia). The feedback loop collects the scores on the criterion (ia) for the newly hired pilots and puts them into a file with their scores on the selection instruments. After both sets of scores for the newly hired pilots have been entered into one file, the relation between the scores and each criterion can be determined statistically. If the selection scores and each criterion (ia) are highly related, the selection system is functioning well. If they are poorly related, the selection tests are not predicting the criterion (ia), and new tests should be considered. The development and use of the feedback loop is usually the responsibility of the human resources department.

The final component of the selection system is the documentation. All selection systems should be developed using



He may be qualified but should you hire this pilot? Despite what many test vendors tell air carriers, each company must conduct its own validation on each of its selection tests.



To prove a case of discrimination under these circumstances, an applicant must usually establish the following, or something similar: (1) the applicant was in a protected class (race, sex, religion, national origin, etc.), (2) he or she applied for a job and the employer was accepting applications for that job, (3) he or she was qualified for the job, but was denied the job, and (4) the employer continued to accept applications for the job.

one of the recognized methodologies that are described in the Uniform Guidelines on Employee Selection Procedures and in various industrial/organizational psychology references. This development process should be extensively documented. Changes in the tests included in the selection system, the order in which the tests are administered, and in the decision aid should be added to the development process documentation as necessary.

The documentation of the development process should include a justification for each selection test including the interviews. This justification usually rests on the pilot's job analysis and a critical incidents database. The job analysis is a detailed document often 50 to 100 pages in length. The critical incidents database contains detailed descriptions of incidents and "non normal" events that have occurred during flight operations of the carrier. This database may reside either in the flight safety office or in the flight operations office. The job analysis and an analysis of select critical incidents usually are the basis for the questions given in all of the pilot interviews.

Typically, another document describes the relation between the criterion (ia) and the test scores. This document also contains the analyses of adverse impact of each test and the system as a whole on various protected groups. The use of this documentation will be described later in this paper.

Common errors

The system described above is a "best practice" system. A best practice system has three characteristics. First, it is designed to identify the best candidates for the carrier. Second, it meets all federal statutes, all of the professional standards set by the appropriate organizations, such as the Society of Industrial and Organizational Psychologists, and the Uniform Guidelines on

Employee Selection Procedures. Third, it reduces the carrier's legal exposure because it does meet the statutes, standards, and guidelines.

Air carriers often make two mistakes that reduce the effectiveness of the system and leave them legally vulnerable. The first mistake is the failure to document the system properly. Air carriers often have only short descriptions of the pilot's job. These descriptions are too brief to provide the in-depth description of the pilot's job that is needed to identify the correct selection tests and develop interview questions. Additionally, the development of the selection system is usually poorly documented. The initial development process and all subsequent changes to the process or the selection tests must be extensively documented. Finally, the rationale for test selection is often missing, as is information on the training of the interviewers.

The second major mistake is using unvalidated selection instruments. This issue is very confusing for many individuals involved in pilot selection; the situation for pilots is different than for many other jobs at an air carrier. The guidelines of the American Psychological Association state very clearly that no selection test is every validated; only the particular use of the test is validated. Some types of tests, such as a typing test for clerical workers, have been used for selection for many years and have been published in many scientific articles. For such tests industrial psychologists have performed a statistical technique called "meta analysis" to demonstrate that the test in question relates to different criteria. In most cases, the meta analyses have demonstrated the relation between the criteria and the test over many years and many industries. When such a relation has been demonstrated, a company may use the test without doing its own validation. Unfortunately, no comparable body of published studies exists for US civilian pilots. Despite what many test vendors tell air carriers, each company must conduct its own validation on each of its selection tests.

The validation process requires, at its most basic, that the test in question be given to a group of applicants. Management is not permitted to see the test scores nor are the scores used by the decision aid. The criterion scores for those applicants who successful complete the selection process and accept the job offer are then related to their scores on the test. If a strong relation is found between the two sets of scores, the test may be used in making hiring decisions for the next group of applicants. If the relation between the two groups of scores is weak, the test is discarded and never used. As part of this validation process, the test scores must be examined for adverse impact, as discussed below.

Basic legal issues in hiring

There are two basic concepts in discrimination law that impact the hiring process: disparate impact and disparate treatment discrimination. Disparate impact discrimination can occur when a hiring policy or practice that is neutral on its face (meaning the terms of the policy do not differentiate between groups of applicants, such as men and women, but applies

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equally to all applicants) falls more harshly on one group than another.

For example, the hiring process described in the first section of this paper would arguably be neutral on its face, in that it does not differentiate between classes of employees and would apply equally and neutrally to all applicants for employment. If, however, this neutral process results in all women being hired for vacant pilot positions to the exclusion of every male applicant, the neutral policy would arguably have a disparate impact on men, e.g., would fall more harshly on men than women. Such a disparate impact could form the basis for a sex discrimination suit under Title VII of the Civil Rights Act of 1964. One primary difficulty with defending such a claim is that there is arguably no need to prove that the company intended to discriminate against men based on their sex. The impact itself is evidence of the discrimination.

The second major concept is disparate treatment discrimination. Disparate treatment discrimination can occur when two applicants, who have similar qualifications, experience, and backgrounds, are intentionally treated differently because of their race, sex, religion, national origin, or other protected class. To prove a case of discrimination under these circumstances, an applicant must usually establish the following, or something similar: (1) the applicant was in a protected class (race, sex, religion, national origin, etc.), (2) he or she applied for a job and the employer was accepting applications for that job, (3) he or she was qualified for the job, but was denied the job, and (4) the employer continued to accept applications for the job. Once the applicant meets this burden, the employer must prove that it had a legitimate, non-discriminatory reason for its decision.

An example of a policy that was challenged under a disparate treatment concept occurred in the case *Frank v. United Airlines*, 216 F.3d 845 (9th Cir. 2000). In the case, a class of female flight attendants challenged a weight requirement policy imposed by United Airlines. Under the policy, female flight attendants were required to weigh between 14 and 25 pounds less than their male counterparts of the same height. The court found

that the policy was not neutral on its face; rather it was facially discriminatory because it treated men and women differently. The court also found there was no legitimate business justification for requiring disproportionately thinner female flight attendants.

The Equal Employment Opportunity Commission (the government agency in charge of enforcing most major discrimination laws), as well as other state and federal governmental agencies, are increasingly testing company's hiring policies with professional applicants known as "testers." Testers are paid by the EEOC to go into a company, apply for a job, and determine how the company reacts to each of them. The testers have the same basic resume, skills, past experience, etc. with one major difference: One will be in a protected class and one will not be in such a class. If the applicant who is in

a protected class is not hired, the EEOC will want to know why. The company will need to have a good faith business reason for its decision or trouble could ensue.

Conclusion

The hiring procedure described in the first section of this paper will assist in protection against disparate treatment discrimination, since the subjectivity involved in the decision is greatly reduced. Hiring decisions based on subjective criteria are easily subject to challenge under discrimination law. The hiring process above focuses on objective measures, which assists in making consistent, non-discriminatory decisions. The procedure, however, does not necessarily protect against a disparate impact claim. Because statistical evidence is often used to prove disparate impact discrimination, a statistical analysis of the impact a company's hiring system has on groups of applicants may prove beneficial in identifying any statistical anomalies created by hiring programs that are neutral on their face.

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