

Psychological Evaluations in the Workplace: Pre-Employment, Fitness, and Threat of Violence

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- An attempt to balance the interests (and rights) of the employer, applicant/employee, examiner (and the public)

Pre-Employment Psychological Examinations (aka PEPEs)

- Are conducted on all job applicants for a specific job title
- Assess psychological suitability and stability to safely and effectively complete the requisite training and responsibilities of the job
- Utilize the same procedure for every job applicant for that specific job per the ADA

PEPEs (cont'd)

- Frequently used in public safety/high risk professions
- Involve review of job analyses, formal psychological testing, and a clinical interview
- Prefer review of polygraph and/or background investigations
- Benefit of ride alongs, plug-ins, job shadowing, etc.

Law Enforcement PEPEs

- International Association of Chiefs of Police Psychological Services Section (IACP-PSS) PEPE guidelines (currently being updated)
- RCW 43-101-095 (Peace Officer Certification)
- WAC 139-07-10 (Conditions of Employment – see Agency Filings)
 - Outlines specifics regarding PEPE process
 - Former “pass”; now states that a candidate must “submit to”
 - Valid for 6 months (previously 1 year)
 - An applicant’s PEPE may be shared among agencies with permission of both, as well as the examining psychologist
 - Applicants may be asked to pay for part or all

California POST (Peace Officer Standards and Training)

- Peace Officer Psychological Screening Dimensions
 - Social Competence
 - Teamwork
 - Adaptability/Flexibility
 - Conscientiousness/Dependability
 - Impulse Control/Attention to Safety
 - Integrity/Ethics
 - Emotional Regulation/Stress Tolerance
 - Decision-Making/Judgment
 - Assertiveness/Persuasiveness
 - Avoiding Substance Use and Other Risk-Taking Behavior

Guiding Forces for PEPE's

- 1967 President Johnson's Commission on LE and the Administration of Justice
- *Bonsignore v. City of New York* (1981)
- Various nondiscrimination acts
 - Civil Rights Acts of 1964 and 1991
 - Age Discrimination in Employment Act of 1967
 - EEOC Uniform Guidelines on Employee Selection Procedures (1978)

Guiding Forces (cont'd)

- Americans with Disabilities Act of 1990 and Amendment Act of 2008
 - Requires **CONDITIONAL OFFER** for "medical" inquiries
- *Leonel v. American Airlines* (2005) affirmed the need to review relevant non-medical information that could have been reasonably analyzed prior to a conditional offer.
- Genetic Information Nondiscrimination Act (GINA) of 2008



Does HIPAA apply?

- Yes.
- PEPE is inherently "medical" and must be kept separate from personnel files.



An alternative PEPE option?

- “Traditional” post-conditional offer PEPEs are still permissible.
- Bifurcated PEPEs:
 - Phase 1 (pre-conditional offer) involves non-medical psychological testing and NO psychologist interview.
 - Phase 2 (post-conditional offer) involves additional “medical” psychological testing and a psychologist interview.

Fitness-for-Duty Evaluations (aka FFDEs)

- Conducted on incumbent employees
- Determine whether the employee is able to safely and effectively perform his or her essential job functions (i.e. “business necessity”)
- Tailored to the specific concern at hand

What Prompts an FFDE

- 1). Objective evidence that the employee may be unable to safely or effectively perform a defined job (meaning direct observation, credible third-party report, or other reliable evidence; not just speculation)
- 2). A reasonable basis for believing the cause may be attributed to psychological factors

FFDE is not to be utilized as a form of discipline.

Law Enforcement FFDEs

- Chiefs/Sheriffs have the right and responsibility to mandate FFDEs if warranted. (Conte v. Horcher, 1977; Bonsignore v. City of New York, 1981; Brownfield v. City of Yakima, 2010)
- Ensuring officers are psychologically stable is more compelling than respect for privacy rights. (David v. Christian, 1987; Redmond v. City of Overland Park, 1987)
- FFDE reports are to be limited to fitness issues. (Peltus v. Cole, 1996)
- Preemptive FFDE permitted if significant safety concerns are raised without evidence of work-related impairment. (Brownfield v. City of Yakima, 2010)
- International Association of Chiefs of Police Psychological Services Section (IACP-PSS) offers guidelines.

Common FFDE Prompts

- Dramatic behavior or personality change
- Excessive substance use or dependence
- Suspected domestic violence
- Pattern of performance problems which are not responsive to corrective actions
- Failure to recover from critical incidents

Common FFDE Prompts (cont'd)

- Misuse of authority and/or excessive force, including verbal outbursts
- Self-reported psychological distress
- Threat to self or others
- Questionable judgment / integrity

Referral Process

- Remove the employee from any duties related to questions about his/her job safety and effectiveness
- Submit a formal letter of referral
- Provide background and collateral information

Possible FFDE Outcomes

- Fit for duty
- Unfit for duty
 - Severe mood disorder, traumatic brain injury, personality disorder, PTSD, dementia onset
 - Consideration of long-term disability benefits or retirement
- Fit with Restrictions

Work Restrictions / Modifications

- Employer, not the evaluator, must determine “reasonableness” of ADA accommodations.
- Some examples:
 - Scheduling changes
 - Change of duties or supervisors to reduce stress

Examiner Qualifications (PEPEs and FFDEs)

- Licensed psychologist or psychiatrist
- Preferably Board Certified in a relevant field (e.g. Board Certified in Police and Public Safety Psychology by ABPP)
- Qualified in the specific area of inquiry
- Familiar with legal and ethical guidelines
- Willing to defend in legal proceedings
- Aware of and avoidant of conflicts of interest

Threat of Violence (aka TOV)

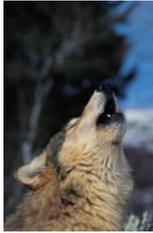
- OSHA requires that workers are protected against “recognized hazards.”
- Making versus posing a threat:
 - Many who make threats do not pose a threat.
 - Some who make threats ultimately pose a threat.
 - Some who pose threats never make a threat.

Threats should be taken seriously (i.e. not minimized)

- Increase liability
- Impact workplace culture and morale
- May be interpreted as a go ahead

Basic Goal of Threat Assessment

Howler



vs. Hunter



Important Principles of Threat Assessment

- Goal is to assess dangerousness, not predict violence.
- Only perpetrators truly know their intentions.
- Threat assessment is dynamic.

Threat Assessment (3 steps)

1. Identify
2. Assess
3. Manage

Step One - Identify

- What constitutes a threat?
 - Washington Criminal Code: RCW 9A.04.110
 - Organizational policy
- Need to have a way for concerns to be reported
 - Similar to “bomb threat” instructions/checklist
 - Examples can be found online

Step One - Identify (cont'd)

- “See something, say something” campaign
- Frequently third parties are more aware of potential threats than the target.
 - In one study of school shootings, 80% students knew of upcoming trouble BUT few reported it.



Step Two - Assess

- Use of a Threat Assessment Team (TAT)
- Gather and evaluate information
- In a perfect world - conducted similar to a fitness for duty evaluation

Step Two - Assess (cont'd)

- Analyze the threatener's history and current situation:
 - Motive?
 - Recent loss?
 - Past behaviors and ways of coping with stress?
 - Target?
 - Organizational skills to carry out an attack?
 - Weapon accessibility?
- What behaviors are of most concern?
 - It depends.
- Consider approach behaviors.

Step Three - Manage

- Use of a Threat Assessment Team (TAT)
- Document
- Move the subject away from the threat
 - Formal discipline
 - EAP or other counseling services
 - Arrest / trespass / no contact order
 - Increase security
- Close the case

Takeaways

- Develop or review policies and procedures IN ADVANCE.
- Identify experienced legal counsel and potential evaluators IN ADVANCE.
- We can't predict behavior but we can try to assess dangerousness and manage it.



Selected References

- IACP Psychological Services Section (2009, currently being updated). Pre-employment psychological evaluation guidelines.
- IACP Psychological Services Section (2013). Psychological fitness-for-duty evaluation guidelines.
- California POST (www.post.ca.gov).
- ASIS Workplace Violence Prevention and Intervention Standard (2011).

Contact Information

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EDUCATION

1997 Ph.D. in Counseling Psychology (APA-Accredited)
Texas Woman's University, Denton, TX

PUBLIC SAFETY EXPERIENCE

2002 - present Member-Manager of Northwest Assessment Services, PLLC, Seattle WA

Police/Public Safety Psychologist – On contract with various public safety departments to provide consultation services and various employment-related examinations (e.g. pre-employment, fitness-for-duty, threat of violence). Provision of critical incident stress debriefing (CISD) and short-term psychotherapy.

**2001 - 2006 Seattle-King County Public Health Department
King County Correctional Facility, Seattle, WA
Regional Justice Center, Kent, WA**

Psychiatric Evaluation Specialist – Completion of initial psychiatric assessments and crisis intervention services on newly booked and existing inmates. Shifted to per diem status in 2003.

1997 - 2000 Central State Hospital, Petersburg VA

Forensic Evaluation Specialist, Director of Cognitive Rehabilitation Program, Psychologist Senior – Completion of various forensic evaluations for Virginia's only Maximum-Security Forensic Unit. Development, implementation, and primary facilitation of a multidisciplinary, group-format Cognitive Rehabilitation Program for schizophrenic inpatients.

POLICE TRAINING EXPERIENCE

1998 - 2000 Crater Criminal Justice Academy, Petersburg, VA

Instructor/Consultant – Developed and offered trainings in police stress, police suicide, and suicide by cop.

PUBLIC SAFETY PRESENTATIONS

Canaan, M. & Pilarc, M.J. (2014, September). Targeted violence risk management. SMART Puget Sound Area Safety Summit, Seattle, WA.

Pilarc, M.J. (2009, March). Fitness-for-duty evaluations: The basics. Olympic Peninsula Law Enforcement Executives Association, Sequim, WA.

Pilarc, M.J. (2005, May). Psychology and the law. Washington State Department of Health and Social Services, Division of Vocational Rehabilitation, Northeast Seattle Branch, Seattle, WA.

Pilarc, M.J. (2003, December). Pre-employment/post-offer psychological evaluations. Annual DOC-Southeast Region Human Resources Meeting, Coyote Ridge Correctional Center, Connell, WA.

PROFESSIONAL/COMMUNITY ORGANIZATION MEMBERSHIP

2004 - present National Register of Health Service Providers in Psychology (Registrant #50829)
2005 - present Washington Association of Sheriffs and Police Chiefs (WASPC)
2005 - present International Association of Chiefs of Police (IACP), Psychological Services Section
2007 - present Society for Police and Criminal Psychology
2007 - present King County Certified Small Contractor and Supplier (#585, Prime NAICS 621330)
2009 - present Washington State Certified Women's Business Enterprise (#W2F9620982)
2010 - present International Association of Threat Assessment Professionals
2002 - present APA Division 18 – Public Service, Police, and Public Safety Section