



PAVE Validation:
Providing Unmatched Legal Defense of Your
Employee Testing Program

What's all the fuss about the validity of post-offer employment testing?

If you're involved with hiring at an employer, you've likely asked yourself this question while reading news stories about various employers and their hiring practices or as part of case law within your human resources journals. [1] [2] [3] [4] [5]

And in many cases, the next question is likely, "How do I know if my employee testing is valid now and in the future since workplaces and jobs are always changing?"

Legality of Employee Testing

If you're reading this eBook, there's a good chance you already know employee testing is legal – but just in case, here's a refresher.

Employee testing is legal if it is based on an accurate and common understanding of the work performed and the requirements of successfully performing that work. [6]

This occurs by analyzing the physical requirements of what a person encounters while performing their job, which is also known as the "essential function" of their job. This is where having a clear awareness and understanding some technical aspects is key and is why it is important to have an experienced partner like [WorkSTEPS](#) on your side throughout this journey.

Job Task Analysis

Theoretically, anyone can perform a [job task analysis](#). But performing one with "scientific rigor" is not something that everyone is trained to do. Scientific rigor is key to ensuring the job tasks are objectively and accurately defined, measured, and quantified to remove any/all potentially discriminatory elements. WorkSTEPS is unmatched in that it has performed tens of thousands of job task analyses with scientific rigor.

Job analysts determine the essential functions of the job, as well as their respective physical requirements (e.g., what the person will lift, carry, and push or pull, as well as body movements such as squatting, walking, standing, sitting, and ascending or descending stairs). Environmental factors that may impact the physical demands of the job are also considered, such as extreme heat, slippery surfaces, and more.

Now you may be wondering how a job analyst who only spends a few hours with someone – which is a very small percentage considering a full-time employee will spend approximately 2,000 hours in their role each year – will know how to develop a valid test.

The answer is [PAVE™](#).

Introducing PAVE

Physical Abilities Validity Evaluator (or PAVE) is a proprietary software tool developed in accordance with the EEOC [7] that creates validation surveys based upon the criteria entered by the job analyst. The surveys are then completed by existing job experts for the position with the results analyzed by the PAVE software to determine the content-related validity for each test event.

- ♦ If PAVE determines the criteria entered by the job analyst is valid, that information is included as a task within the functional test for that position.
- ♦ If PAVE determines the criteria entered by the job analyst is invalid, that information is rejected and will not be included as a task within the functional test for that position.

Stated simply, PAVE takes the guesswork of validity out of the equation and thus gives you unmatched protection from discrimination cases. With validity for each position being based on the information provided by the job experts in that position, you now may be asking yourself, “What if something changes in the way the job is performed, such as a new tool being utilized, a new product being manufactured, or the job being enlarged to work in other areas?” WorkSTEPS and PAVE have you covered.



Sustaining Validation

Organizations and business needs are ever-changing and ever-evolving – and jobs and job processes must evolve to accommodate these changes, as well. But how is the validity of your employee testing impacted by these changes?

Just as your organization and jobs have changed, PAVE is designed to change with you. This occurs via the ongoing validation function within WorkSTEPS and PAVE. With a validity monthly subscription, all costs associated with maintaining validity are included with no hidden charges. If an additional site visit is needed to verify changes, a WorkSTEPS job analyst will visit your site to ensure your test(s) remain valid – and you won't be charged for the travel or the changes.

We know you and your team are extremely busy, so translating updates to a job/task into a job analysis that was done prior to the change could be difficult to accomplish, thus threatening the validity of the tests. But as part of your monthly PAVE subscription, your WorkSTEPS account manager will ensure regular and effective communication occurs, so your test validation is never in jeopardy.



PAVE in Action

How will this work at your workplace or within your industry? Below are excerpts from a case study showing how PAVE can protect an employer from discrimination claims.

Employment Discrimination Claim dismissed Due to Validation Study

In this case study, we examine the legal dispute between a 51-year-old experienced female lineman, a qualified job applicant, and a national municipal utility provider.

The candidate was denied employment on the grounds that she could not perform all the essential functions of the job, leading to the candidate filing a discrimination complaint with the EEOC.

Ultimately, her complaint was dismissed in court because the employer had conducted a job analysis that identified the essential functions of the job. A formal validation study was also conducted using incumbent workers to validate that both the job tasks were essential, and the simulations used to assess a candidate's ability to perform those job tasks were representative of the way the job tasks were performed in the field.

Case Details:

- ♦ **Candidate:** 51-year-old female lineman with eight years of experience in the industry. She applied for a higher-paying job with a large provider of municipal energy in an area of the country with significant geographical terrain and challenges. Depending on the terrain, linemen often hike to areas where repairs are needed and do not have the benefit of ergonomic or robotic equipment to assist in the repair work.
- ♦ **Defendant:** A regional supplier of municipal energy known for its rigorous hiring processes that has been committed to upholding industry standards and legal regulations.
- ♦ **Job Description:** Experienced lineman required to work in an extremely physically demanding position in varied geographical terrains. Some of the more difficult essential functions include pole climbing, managing a hot stick, and placement of the cross arm on a utility pole. The candidate must be able to lift a 75-lb. cross arm that is 84 inches long.
- ♦ **Physical Assessment:** The candidate successfully completed multiple rounds of interviews and assessments and received a conditional offer of employment, pending a pre-employment [post-offer assessment](#). During the pre-employment assessment, it was discovered that the candidate did not have sufficient strength to perform the 75-lb. lift.
- ♦ **Denial of Employment Based on Assessment Results:** The candidate was denied the position as she could not perform all the essential functions of the job.
- ♦ **Lawsuit:** The candidate, feeling that she was discriminated against, filed a complaint with the EEOC against the municipal energy supplier claiming that she was being denied employment and was part of a protected class that should have been protected under the Americans with Disabilities Act (ADA).

- ♦ **Validation Study:** In defense of their hiring decision, the municipal energy supplier presented their formal PAVE validation study. This study was conducted to validate the essential job functions identified through an onsite job analysis. The employer conducted the validation study using a large group of subject matter experts (SMEs), incumbent workers who had been with the company for 5-15 years. Male and female genders were represented, as well as younger and aging workers and minority workers. Both essential functions and simulations for those physical essential functions were validated by the SMEs.
- ♦ **Lessons Learned:** This case highlights the importance of employers conducting validation studies to determine essential job functions and to justify hiring decisions. It also underscores the significance of compliance with ADA regulations as they relate to the Uniform Guidelines on Employee Selection Procedures, ensuring that employment decisions are made based on valid, job-related criteria.

In a scenario not unfamiliar to many employers today, PAVE played a leading role in protecting the organization and ensuring the case was dismissed. This would not have been possible without the groundwork put in place during job task analysis, the creation of validation surveys, and the execution of the physical assessment – all of which were led with help from the PAVE platform.

Ensure Unmatched Legal Defensibility with PAVE Validation

WorkSTEPS is committed to helping businesses like yours mitigate liability risk. In conjunction with our job task analysis process, PAVE ensures that all physical ability tests meet or exceed federal Uniform Guidelines on Employee Selection Procedures, 1990 Americans with Disabilities Act, and Equal Employment Opportunity Commission (EEOC) requirements. Our PAVE validation report offers you an unprecedented degree of legal defensibility you won't see anywhere else on the market today.

[Contact us today](#) to learn more about WorkSTEPS services and how we can help you reduce injury rates and employee-related health costs.