
Rules of Department of Labor and Industrial Relations

Division 60—Missouri Commission on Human Rights

Chapter 3—Guidelines and Interpretations of Employment Anti-Discrimination Laws

Title	Page
8 CSR 60-3.010 Preservation of Records and Posting of Posters and Interpretations.....	3
8 CSR 60-3.020 Employment Advertising Practices	3
8 CSR 60-3.030 Employment Testing	4
8 CSR 60-3.040 Employment Practices Related to Men and Women	7
8 CSR 60-3.050 Religious Discrimination	9
8 CSR 60-3.060 Handicap Discrimination in Employment	9
8 CSR 60-3.070 National Origin Discrimination.....	10
8 CSR 60-3.080 Affirmative Action.....	10

**Title 8—DEPARTMENT OF
LABOR AND
INDUSTRIAL RELATIONS**

**Division 60—Missouri Commission
on Human Rights**

**Chapter 3—Guidelines and
Interpretations of Employment
Anti-Discrimination Laws**

**8 CSR 60-3.010 Preservation of Records
and Posting of Posters and Interpretations**

PURPOSE: The Missouri Commission on Human Rights has the authority to formulate policies to effectuate the purposes of Chapter 213, RSMo (1986). This rule sets forth the rules for employer preservation of records, posting of posters and commission's interpretations.

(1) Every employer, labor organization, employment agency or other business or establishment covered by Chapter 213, RSMo (1986) shall post a commission equal employment poster in a place where other employee notices are posted or in a conspicuous place where employees will have access to it.

(2) Every person subject to the jurisdiction of the commission under Chapter 213, RSMo (1986) shall post the commission's fair housing poster in all places of business and establishments subject to the statute.

(3) Every person subject to the jurisdiction of the commission under Chapter 213, RSMo (1986) shall post the commission public accommodations poster in all places of business and establishments subject to this statute.

(4) Any personnel or employment record made or kept by any employer including, but not necessarily limited to, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation and selection for training or apprenticeship shall be preserved by the employer for a period of one (1) year from the date of the making of the record or the personnel action involved, whichever occurs later.

(5) Where a complaint of discrimination has been filed and the respondent notified, the respondent employer shall preserve all personnel records relevant to the complainant until final disposition of the complaint. The term personnel records relevant to the complaint, for example, would include personnel or employment records relating to the complainant and to all other employees holding

positions similar to that held or sought by the complainant and application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the complainant applied and was rejected. The date of final disposition of the complaint means the date which litigation is terminated, with regard to the complaint.

(6) If a person fails to make, keep, or preserve records or make reports in accordance with this regulation, the commission may draw an adverse presumption from this failure with regard to the allegations in the complaint. The presumption is rebuttable.

(7) Section 213.010(8), RSMo is interpreted to mean that any structure built after the effective date of these rules which is a place of public accommodation as covered by this statute must provide access for handicapped persons unless it can be shown this accommodation would cause undue hardship.

(8) Employer. A person is an employer subject to the provisions of Chapter 213, RSMo if at the time of the alleged discrimination that person employs six (6) or more persons within the state, whether these persons are temporary, part-time or permanent employees.

(9) A corporation or association must be one hundred percent (100%) owned and operated by a religious or sectarian group and being a member of that religion or sect must be a requirement for employment for that corporation or association to be exempt as an employer under section 213.010(5), RSMo (1986).

Auth: section 213.030(6), RSMo (1986). This rule was previously filed as 4 CSR 180-3.010. Original rule filed Oct. 31, 1973, effective Nov. 10, 1973. Amended: Filed July 1, 1980, effective Nov. 13, 1980.

8 CSR 60-3.020 Employment Advertising Practices

PURPOSE: The Missouri Commission on Human Rights has the authority to formulate policies to effectuate the purposes of Chapter 213, RSMo (1986). This rule sets forth the guidelines and interpretations governing, but not limited to, the major aspects of employment advertising practices.

(1) It shall be a violation of section 213.055, RSMo (1986) for any employer, labor organization, licensing agency or employment agency to cause to be published, printed, circulated or displayed any advertisement or

notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities or any of the terms, conditions or privileges under an employment advertisement or notice column which is segregated on the basis of race, creed, color, religion, national origin, sex, ancestry or handicap under any column heading which expresses overtly or subtly, directly or indirectly, any preference specification or limitation.

(2) It shall be a violation of section 213.055, RSMo (1986) for any employer, labor organization, licensing agency or employment agency to cause to be published, printed, circulated or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities or any of the terms, conditions or privileges the language of which advertisement or notice expresses any limitation, specification, discrimination or preference as to race, creed, color, religion, national origin, sex, ancestry or handicap. A limitation, specification, discrimination or preference as to religion, national origin or sex is not a violation where the limitation, specification, discrimination or preference is a *bona fide* occupational qualification for the particular job advertised as defined in section (5) of this rule.

(3) Whenever a help wanted advertisement or notice is to contain any job title or job description which is not clearly neutral in terms of sex and to the job advertised is not one for which sex is a *bona fide* occupational qualification as defined in this regulation, then the advertisement or notice shall instead utilize a neutral job title whenever practicable. If the use of a neutral job title is not practicable, then the advertisement or notice may contain the nonneutral job title provided, however, that the advertisement or notice also includes: a) the job title which is the counterpart of the nonneutral job title; or b) the designation "M/W." Newspapers which print employment advertisements are encouraged to voluntarily print a box on their employment advertising pages indicating that the abbreviation "M/W", when used, means men or women.

(4) For the purpose of this regulation, the *bona fide* occupational qualification exception shall be narrowly interpreted to include only those situations where the essence of the business would be undermined by not excluding persons on the basis of their sex, religion or national origin. The exception shall be interpreted so that individuals will not be considered

for employment on the basis of any characteristics generally attributable to their group. The employer, labor organization, licensing agency or employment agency has the burden of establishing with the Missouri Commission on Human Rights that religion, national origin or sex is a *bona fide* occupational qualification.

(A) The application of the exception is not warranted where based on, for example, assumptions of the comparative general employment characteristics of persons of a particular religion, national origin or sex, such as their turnover rate; stereotyped characteristics of the previously mentioned classes, such as their mechanical ability or aggressiveness; customer, client, coworker or employer preference; historical usage, tradition or custom; or the necessity of providing separate facilities of a personal nature, such as restrooms or dressing rooms. In regard to sex, the application of the exception may be authorized by the Missouri Commission on Human Rights where it is necessary for authenticity or genuineness, such as for an actor or actress or fitters of intimate apparel.

(5) Any employer, labor organization, licensing agency or employment agency may make a request of the Missouri Commission on Human Rights as to whether religion, national origin or sex is a *bona fide* occupational qualification for a particular job which they intend to cause to be published, printed, circulated or displayed. The Missouri Commission on Human Rights shall give opinion in response to these requests. All requests shall be made in writing. An opinion in writing by the commission prior to the publication or display of any advertisement in response to this a request shall be binding on the commission for the purpose of this regulation except in those instances where the inquiry has not fully and accurately disclosed the relevant facts regarding the particular job in question. The commission shall maintain records as to each inquiry made pursuant to this section, to include the name, title and address of the inquiries, a summary of the job and job duties, the basis for the exception claimed and the time, date, identification number and disposition of the inquiry.

(6) It shall be a violation of section 213.070, RSMo (1986) for any newspaper or other publication published or circulated within this state to print, publish or circulate employment advertisements under headings or columns that are segregated on the basis of race, creed, color, religion, national origin, sex, ancestry or handicap or under any column or heading which expresses overtly or subtly, directly or indirectly a preference, specification or limita-

tion on the basis of race, creed, color, religion, national origin, sex, ancestry or handicap.

(A) Newspapers and other publications which print employment advertisements are encouraged to maintain lists of discriminatory terms and permissible substitutes and to instruct their employees to advise employers, labor organizations, licensing agencies or employment agencies of these terms and to have copies of these regulations available for distribution to advertisers upon request.

(B) The use of language including but not limited to black, Negro, colored, white, restricted, interracial, segregated, Christian, Jewish, men, women, boy, gal or any other word, term, phrase or expression which tends to influence, persuade or dissuade, encourage or discourage, attract or repel, any person(s) because of race, creed, color, religion, national origin, sex, ancestry or handicap shall be considered discriminatory advertising in violation of section 213.070, RSMo (1986).

(7) Employers and/or labor organizations whose work forces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas, may not recruit exclusively or even primarily by means of word-of-mouth referrals from present employees or present members.

(8) Employers and/or labor organizations whose work forces or memberships do not bear a reasonable relationship to the racial and/or ethnic pattern of the general population in their recruiting areas may not give preference in hiring or in admission to membership to relatives or present employees of present members by reason of those relationships.

(9) Nothing contained in this regulation shall be deemed to prohibit the commission from including in any of its orders against any respondent employer, labor organization, licensing agency or employment agency a provision requiring the respondent to include in any advertisement or notice regarding any employment or licensing opportunity the term equal opportunity employer or any substantially similar term. Nor shall this regulation be deemed to prohibit persons from voluntarily using the term equal opportunity or any substantially similar term in any notice or advertisement.

Auth: section 213.030(6), RSMo (1986). This rule was previously filed as 4 CSR 180-3.020. Original rule filed Oct. 31, 1973, effective Nov. 10, 1973. Amended: Filed July 1, 1980, effective Nov. 13, 1980.

8 CSR 60-3.030 Employment Testing

PURPOSE: The Missouri Commission on Human Rights has the authority to formulate policies to effectuate the purposes of Chapter 213, RSMo (1986). This rule sets forth the guidelines and interpretations governing, but not limited to the major aspects of employment testing.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) For the purpose of the guidelines in this rule, the term test is defined as any pencil-and-paper or performance measure used as a basis for any employment decision. The guidelines in this rule apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not limited to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical or other abilities, dexterity and coordination; knowledge and proficiency; occupational and other interest; and attitudes, personality or temperament. The term test includes all formal, scored, quantified and standardized techniques of assessing job suitability including, in addition to these guidelines, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

(2) The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by the Missouri Fair Employment Practices Act constitutes discrimination unless—

(A) The test has been validated and evidences a high degree of utility as described; and

(B) The person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his/her use.



(3) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate section (2) of this rule. This evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than non-minority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

(A) The term technically feasible as used in these guidelines means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

(B) Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job(s) for which candidates are being evaluated.

1. If job progression structures and seniority provisions are so established that new employees probably will progress within a reasonable period of time and in a great majority of cases, to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a high level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will, in fact, attain that higher level job within a reasonable period of time.

2. Where a test is to be used in different units of a multi-unit organization and no significant differences exist between units, jobs and applicant populations, evidence obtained in one (1) unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multi-unit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one (1) company in the same industry.

Both in this instance and in the use of data collected throughout a multi-unit organization, evidence of validity specific to each unit may not be required; provided, that no significant differences exist between units, jobs and applicant populations.

(4) When probable cause is found by the investigating commissioner following the filing of a complaint pursuant to Chapter 213, RSMo (1986), the following standards shall apply:

(A) For the purpose of satisfying the requirements of section (4) of this rule, empirical evidence in support of a test's validity may be based on studies employing generally accepted procedures for determining criterion-related validity, such as those described in *Standards for Educational and Psychological Tests and Manuals* published by American Psychological Association, 1200 17th Street, N.W., Washington, D.C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone may be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job;

(B) Although any appropriate validation strategy may be used to develop empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

1. Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job(s) in question. This further assumes that the applicant sample is representative of the minority population available for the job(s) in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his/her subsequent obligation for validation

when inclusion of minority candidates becomes technically feasible;

2. Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring and interpretation of tests results, that are privately developed and/or are not available through normal commercial channels, must be included as a part of the validation evidence;

3. The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. This criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses;

4. In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scored for reasons other than supervisors' prejudice, as when, as new employees, they have had less opportunity to learn job skills. The general point is that all criteria needs to be examined to insure freedom from factors which would unfairly depress the scores of minority groups; and

5. Data must be generated and results separately reported for minority and non-minority groups whenever technically feasible. When a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these guidelines pending separate validation of the test for the minority group in question. A test which is differentially valid may be used in groups but one (1) group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups;

(C) In assessing the utility of a test, the following considerations will be applicable:

1. The relationship between the test and at least one (1) relevant criterion must be statistically significant. This ordinarily

means that the relationship should be sufficiently high as to have a high probability of no more than one-to-twenty (1:20) to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one (1) component of job performance; and

2. In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including: the larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful; conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available; the larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful; conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory; the smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful; and conversely, a relatively low relationship may prove useful when the former risks are relatively high;

(D) The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted;

(E) In cases where the validity of a test cannot be determined under sections (3) and (4) of this rule (for example, the number of subjects is less than that required for a technically adequate validation study or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when—

1. The studies pertain to jobs which are comparable (that is, have basically the same task elements); and there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of a test validity for his/her own job must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in this rule;

(F) Under no circumstances will the general reputation of a test, its author or its publisher or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are—assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes. Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity; and

(G) Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue.

1. Provided the person can cite substantial evidence of validity as described in subsection (4)(E) of this rule, and s/he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity which will be obtained.

(5) An employment service, including private employment agencies and state employment agencies, as defined in section 213.010, RSMo shall not make applicant or employee appraisals or referrals based on the results obtained

from any psychological test or other selection standard not validated in accordance with these guidelines.

(A) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these guidelines. An employment service is not relieved of its obligation because the test user did not request validation or has requested the use of some lesser standard than is provided in these guidelines.

(B) When an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the guidelines in this part, before it administers the testing program and/or make referral pursuant to the test results. The employment agency must furnish on request this evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the user on the reputation of the test, its author or the name of the test shall not be deemed sufficient evidence of validity. An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in subsection (4)(E) of this rule.

(6) The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard even though validated against job performance in accordance with the guidelines in this rule cannot be imposed upon any individual or class protected by the Missouri Fair Employment Practices Act where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority group have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by the Missouri Fair Employment Practices Act, who, but for prior discrimination, would have been