

Employment tests often favor white men

By Will Evans, Reveal

There's a hidden form of discrimination blocking job seekers across the country.

It's not a cabal of racist, sexist hiring managers colluding to give white men an advantage – though it can have the same effect.

It's the misuse of employment tests – which measure reading, math and other cognitive skills – that can unfairly disadvantage minorities and women without the employers or the job applicants even realizing it.

Take the popular job tests called WorkKeys. They're timed multiple-choice exams like the ones students take in school, developed by the well-known testing company ACT Inc. and promoted across the country with taxpayer money. Major employers, including the Campbell Soup Co., Unilever, Mars Inc., Siemens and Medtronic, make applicants take the tests to get hired for some positions. Millions of people have taken them to get a "career readiness" certificate that they hope will give them a leg up in the job hunt.

But federal officials have blamed WorkKeys tests for illegal discrimination in six cases over the past decade, affecting more than 1,000 people of color and women, according to Labor Department records obtained under the Freedom of Information Act.

At a California factory for Leprino Foods Co., the world's largest producer of mozzarella cheese, WorkKeys put 253 Latino, black and Asian applicants at a disadvantage, the department found. Leprino Foods eventually agreed to pay

\$550,000 and hire 13 of the rejected job seekers.

At a chemical plant in Virginia, an auto parts factory in upstate New York and an engine plant in Alabama, the tests also illegally screened out minority applicants, according to Labor Department records. At a General Electric Lighting plant in Ohio and an aluminum factory near Spokane, Washington, WorkKeys unfairly hurt the chances of female applicants, officials found.

The tests didn't adequately measure whether an applicant would be good at the job, violating civil rights protections, according to the government. The employers paid a settlement to unsuccessful applicants and scrapped the tests.

"People aren't being accorded a fair shot, and the employers are getting screwed because they're not getting the right people," said Richard Fischer, who served as the top testing expert for the Labor Department's Office of Federal Contract Compliance Programs from 2004 until 2013.

Math skills, for example, weren't critical for an entry-level job "inspecting products, monitoring equipment and maintaining sanitation" at the Leprino Foods cheese plant, officials found.

How much change, asks a sample WorkKeys math question, is due to a customer who buys a \$3.84 can of coffee with a \$20 bill? How many square-foot tiles are necessary to cover the floor of a room measuring $15\frac{1}{2}$ feet by $18\frac{1}{2}$ feet?

Another WorkKeys test gives questions about graphics, such as how to read a pressure gauge or how much crosswind is indicated on an airline pilot's chart.

A test itself isn't illegal – it depends on how it's used and for which jobs. But when WorkKeys tests came up in Labor Department cases, Fischer said, they routinely were found to be discriminatory.

How a worker will perform on the job mostly can't be predicted by a standardized test. But psychologists consider cognitive ability tests to be relatively good indicators of job performance, especially for more complex jobs.

In the WorkKeys cases, the companies targeted by the government used them for entry-level or industrial jobs.

Black and Latino people, on average, score lower than white people on these tests. There's no consensus on the reason, but some researchers argue that the differences stem from disadvantages in income, education and home environments as children, among many other factors. As far back as the 1920s, the test score gaps were used to trumpet racist theories of Nordic superiority.

Unequal outcomes are acceptable, under federal civil rights law, as long as the test is closely related to the job. If employers use a test that isn't appropriate for the job, then they may be screening out women or people of color based on factors that aren't relevant. And that's when it becomes illegal.

ACT, a giant nonprofit company known for its college preparation tests, stands by WorkKeys.

"When used correctly, we think it's a valid and reliable and important tool," said Scott Montgomery, an ACT senior vice president.

ACT's own research found that people of color, in general, do worse than white people on its core tests. But the company commissioned a study defending WorkKeys by two prominent psychologists who believe that most cognitive ability tests are fair for virtually any job and that federal regulations are outdated.

Montgomery put the onus on companies that he said might have misused WorkKeys.

“It’s not about us, it’s about how employers are using the test,” he said.

But employers often rely on reports put together by ACT-trained consultants, who tell them which tests and passing scores to use for each job.

“One of the problems with an illegal test is the employers take the word of a test publisher,” Fischer said. “It’s not really the employer’s fault, yet they can be left holding the bag.”

When tests have little to do with the job

No matter who was responsible, Katherine Olvera couldn’t figure out what the questions on her WorkKeys tests had to do with the laborer job she wanted at a local cheese factory.

In 2005, Olvera was working at a Wal-Mart in California’s agricultural San Joaquin Valley. She was eyeing the better-paying jobs at a plant run by Leprino Foods. First, though, she had to pass a series of tests.

Sitting with other test takers, Olvera remembers feeling stumped by questions about amps and cylinders.

“It started talking about things that I had no idea, never learned about them,” she said. “I thought to myself, ‘What does this have to do with working here?’”

She figured she wouldn’t get the job, and she was right. She stayed at Wal-Mart. Years later, Leprino Foods agreed to pay back wages to 253 applicants of color who were rejected like Olvera.

“Leprino Foods’ hiring process simply doesn’t pass the sniff test,” Patricia Shiu, then-director of the Labor Department’s anti-discrimination office, stated when she announced the complaint. “When workers are denied employment because of factors that have nothing to do with their ability to perform

the job, something is not right.”

Olvera said she never got any money. A Labor Department spokeswoman said Olvera initially qualified, but there’s no record showing she responded to a settlement offer in time.

Between ACT’s marketing and the government’s crackdown, “employers are stuck between a rock and a hard place if they’re buying that test,” said Sandra Rappaport, a San Francisco attorney who represented Leprino Foods.

She said the company didn’t agree with the government but settled to avoid costly litigation.

The cases faulting WorkKeys represent just a sample of potential problems in the job market, because the government agency that brings them audits a small fraction of federal contractors each year. That office could shrink under President Trump, who has called for slashing the Labor Department budget overall by 21 percent.

Other common employment tests also have come up in federal investigations of job discrimination.

Fastenal Co., a national distributor of industrial products, for example, agreed to pay more than \$1.2 million in 2015 and hire 154 black applicants and 17 women to settle charges that it discriminated against them with PreVisor tests.

A spokeswoman for CEB Inc., which acquired PreVisor, said in an email, “We are confident that CEB’s tests are fully compliant.”

The U.S. Equal Employment Opportunity Commission also occasionally has taken on discrimination-by-test. The retail chain Target Corp. handed out \$2.8 million in 2015 to settle a commission investigation of its hiring tests. Neither Target nor the commission would disclose which tests caused problems.

Job applicants could sue, but most people don’t realize

they're facing potentially illegal hiring practices when they fail these tests.

Marian Kerner wasn't an ordinary job seeker, though, when she applied for a clerical job with the city and county of Denver in 2007. Decades before, she was an anti-discrimination investigator for the Equal Employment Opportunity Commission.

She'd worked for the city before, too, so she knew she could do the job. But there was a new test, called Accuplacer, which she didn't pass. She realized later that she had responded to a writing prompt with a few sentences when it wanted an essay – but said no one had explained that to her at the time.

Kerner needed a job. She was having trouble paying her mortgage and trying to help her adult daughter and grandchildren on her retirement income.

“There were times I couldn't buy food for myself because I didn't have a dime,” she said.

This test, she was certain, had nothing to do with her ability to do the job.

Another woman in the testing room, who was black like Kerner, started crying as she struggled with the test. Kerner wasn't sad – she was livid.

“I was so mad I couldn't see straight,” she said. “I had never failed a test before.”

Kerner went online and found that Accuplacer was designed to measure college preparedness, not job skills. She remembered, from her days investigating discrimination, that tests could be illegal if they weren't job related. She filed a federal complaint. She even fired off an angry letter to the mayor.

Still determined to go back to work, Kerner later retook the test, passed it and landed a temporary job.

Last July, nine years later, a federal judge awarded about \$1.7 million in damages to benefit 912 black and Latino job applicants, including Kerner. She hasn't received anything yet.

Kerner said she can't forget about that other woman who sat there crying, saying she needed the job to support three children and avoid foreclosure.

"It just brings me to tears sometimes when I think about how these people were being affected," she said.

State governments love these tests

"Take the guesswork out of hiring with a proven methodology," Alaska's workforce agency says.

"Time is money. Save both," Arkansas says. "Fair and objective," Kentucky says. "Useful for all industries and jobs at every level," Missouri says.

They tout the National Career Readiness Certificate, earned through a series of WorkKeys tests, as a valuable tool for hiring and a way for job seekers to stand out. Based on their scores, test takers can get a bronze, silver, gold or platinum certificate – sometimes signed by the governor. More than 16,000 employers recognize the certificate, according to ACT, and some require it.

Officials embrace the tests to show they're developing a skilled workforce and making their state attractive to employers.

"Strengthening Virginia's workforce is my top priority as governor," Gov. Terry McAuliffe says in a video endorsement of the career readiness credential.

Some states use taxpayer money to subsidize the tests for job seekers and employers. Indiana spent \$1.25 million in federal funds over the last two years. New Mexico's three-year

contract with ACT is worth \$521,000. Other states, such as South Carolina and Oregon, use state funds to bankroll the tests.

Karen Humelbaugh, director of Oregon's Office of Workforce Investments, said the state's data indicates people of color who take the tests don't experience any disadvantage in the job market.

In all, 17 states have contracts with ACT related to WorkKeys, according to the company. Still others, such as Alabama and Michigan, require high school students to take it.

Public agencies also sometimes use WorkKeys to screen for their own job openings, potentially putting them at risk of legal action as well. Some municipalities in North Carolina, for example, use WorkKeys to hire firefighters. Albuquerque, New Mexico, uses the tests to hire animal handlers and garbage truck drivers.

The campaign to bring WorkKeys to New Mexico started as a way to help "high-risk youth" without strong résumés break into the workforce, said Jamai Blivin, CEO of the nonprofit Innovate+Educate, which focuses on job training and employment. Screening out minorities wasn't a concern, she said, "because people were getting screened out more without it than with it."

State and local agencies promoting WorkKeys tend not to mention the potential for discrimination. Some, such as the state of Wisconsin, called the WorkKeys system "EEOC-compliant." ACT used to say that on its website, too.

Rich Tonowski, chief psychologist at the Equal Employment Opportunity Commission, laughed at the term. "Be exceedingly wary," he said. A government seal of approval is "not bloody likely," because a test's legality depends on how it's used.

After being asked about the issue, the Wisconsin Department of

Workforce Development changed the language “out of an abundance of caution,” said spokesman Tyler Tichenor. He shrugged off the discrimination cases around the country, saying that in Wisconsin, “we haven’t had any complaints.”

ACT advises employers to get a job profile, a report that says which WorkKeys tests and cutoff scores should be used for a specific job. Some state officials said that should protect companies from legal problems.

But employers such as Leprino Foods and General Electric did just that, and the Labor Department argued again and again that those reports were not adequate evidence that the tests matched the jobs.

Jim Kuthy, a testing expert with Biddle Consulting Group in California, has examined WorkKeys’ job profiles for attorneys defending employers. He determined they were “not very solid” and wouldn’t hold up to legal scrutiny.