The Wonderlic Behavioral Risk Profile (WPI)
Technical and Legal Issues

Whenever an employer considers implementing a new means of assessing prospective job applicants it is imperative to evaluate this decision from both a technical and legal perspective. Whether the tool being considered is an interview, background check, job simulation, assessment center exercise or a test, the considerations are almost exactly the same. Employers not only need to evaluate whether a hiring tool is supported by adequate validity evidence for use within their organization, but also need to focus on issues such as invasiveness, disparate impact and likelihood of litigation. Further, employers should have insight on whether the tool is designed to assess disabilities as defined by the Americans with Disabilities Act and whether it might be useful in the defense of negligent hiring actions.

The intent of this document is to provide a meaningful discussion of these considerations with respect to the Wonderlic Behavioral Risk Profile or WPI. If there are any questions about the contents of this document, please contact Dr. David Arnold, Wonderlic’s General Counsel.

EEOC Complaints

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Complaints</th>
<th>Complaints Involving Testing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>79,591</td>
<td>228</td>
</tr>
<tr>
<td>1999</td>
<td>77,444</td>
<td>325</td>
</tr>
<tr>
<td>2000</td>
<td>79,896</td>
<td>325</td>
</tr>
<tr>
<td>2001</td>
<td>80,840</td>
<td>314</td>
</tr>
<tr>
<td>2002</td>
<td>84,442</td>
<td>175</td>
</tr>
<tr>
<td>2003</td>
<td>81,293</td>
<td>246</td>
</tr>
</tbody>
</table>

While most assessments do not enhance the likelihood of litigation, those instruments that contain odd or invasive items, which bare no apparent relationship to job requirements, can trigger lawsuits on behalf of job applicants. Commonly assessments that contain invasive items have been developed for use in medical/clinical settings, and hence tend to ask questions that may seem misguided or inappropriate for employment purposes. With respect to the WPI, it has been developed to predict important workplace behaviors such as work ethic, service orientation and counter-productivity. The items have been designed to be rather straightforward and look like they are appropriate inquiries for predicting performance on the job. The content of the items parallels what applicants might be expected to be asked in a pre-employment interview. Great care has been taken to help ensure that the WPI assessment contributes to applicants’ positive experience in the employment process.

As a result of this approach to the development of the Wonderlic Behavioral Risk Profile, its use has never triggered any type of formal challenge or litigation.

—tests are viewed as a much fairer and objective way to help select employees...—
The Wonderlic Behavioral Risk Profile (WPI)
Technical and Legal Issues

Additionally, similar assessments have stimulated only about forty complaints over the course of the last forty years. Nowadays when employment litigation is commonplace (approximately 80,000 EEOC complaints per year), it is imperative for employers to utilize assessments that seem professional and appropriate to the job. The WPI contributes to the perception that an employer’s hiring process is fair, appropriate, non-invasive and professional.

Validation Evidence
The Wonderlic Behavioral Risk Profile was developed by industrial psychologists with decades of experience in the field of test development. The instrument continues to be supported and researched by these prominent professionals, as well as one of the few industrial psychologists who is also an employment attorney.

This test is supported by extensive evidence that shows the instrument is predictive of various forms of workplace counter-productivity such as theft, turnover, rule infractions, ability to get along with coworkers/clients, accidents and acts of insubordination. In addition to research specific to the assessment, human resources research over the last 85 years has shown that well developed tests designed to predict workplace counter-productivity do a much better job than interviews, reference checks or background checks (Psychological Bulletin, 1998). Additional research by some of the most prominent independent psychologists in the country concluded that, “measures of integrity correlate substantially with supervisory ratings of job performance and with both externally measured and self-reported counterproductive behaviors” (Journal of Applied Psychology, 1993).

Disparate Impact
Generally, according to the EEOC, disparate or adverse impact exists when a subgroup passes a test or other selection tool at less than 80% the rate of the relevant comparison group (e.g., Hispanics v. Whites, African Americans v. Whites, Females v. Males). Research on the WPI has shown that it has not exhibited disparate impact on the basis of race, gender or age. Hence use of the WPI assessment helps ensure that applicants are treated in a fair and non-discriminatory manner.

Historically, there have been very few challenges to counter-productivity assessments like the WPI (approximately 35 since the advent of the Civil Rights Act of 1964), and in all of these instances the Equal Employment Opportunity Commission or relevant state human rights agency has disposed of the complaint in favor of the employer. This is reinforced by independent technical reviews (e.g., Journal of Applied Psychology, 1993), which have determined that tests of counter-productivity have not been shown to have an adverse impact on the basis of an individual’s subgroup status.

Note, from strictly a legal perspective, employers are not required to document that a selection measure is valid if it does not exhibit adverse impact. If adverse impact on the basis of race or sex exists, use of the measure is legal if the employer can show that the tool is job-related and consistent with business necessity. When disparate impact on the basis of age exists, the employer merely has to show that selection measure is being used due to a reasonable factor other than age. In both instances, the available validation documentation on the WPI would be very useful for legally justifying its use.
The Wonderlic Behavioral Risk Profile (WPI)
Technical and Legal Issues

Disability-Based Issues
The Americans with Disabilities Act (ADA) and similar state statutes mandate that medical examinations and certain psychological tests be administered after applicants have received a conditional offer of employment. This stems from the fact that such tests are likely to identify the existence of a disability. The WPI is a pre-employment assessment that does not contain any inquiries that reveal any form of disability nor is it designed to identify the existence of a disability. Additionally, federal appellate case law (See Karraker v. Rent-A-Center, No. 04-2881, 2005) and EEOC guidance have indicated that instruments like the WPI are not medical in nature. Specifically, with respect to the Karraker case, the U.S. Court of Appeals for the Seventh Circuit’s opinion recognized the EEOC’s longstanding guidance that “Psychological tests that are designed to identify a mental disorder or impairment qualify as medical examinations, but psychological tests that measure personality traits such as honesty, preferences, and habits do not.” As a result, our clients typically use the WPI assessment early in the employment process to help screen job applicants on the basis of their work ethic, service orientation and likelihood of engaging in workplace counter-productivity.

Invasion of Privacy
Invasive items, assessments and processes are likely to be perceived negatively by job applicants. As a result, employers should not implement hiring practices that unnecessarily require an applicant to disclose personal information. Whereas drug testing is the most commonly challenged employment practice due to invasion of privacy issues, there has been an extremely small number of challenges that have involved psychological testing. However, the psychological tests at issue were very different from the WPI. These tests were developed for use in medical/clinical environments and designed to assess psychological and physical disorders. As a result of their intended purpose, these clinical instruments contain many invasive items (e.g., inquiries about bodily functions, family life, religious beliefs, sexual practices, dreams). In contrast to these instruments, the WPI has been developed specifically for use in employment settings. As a result, its items do not delve into an applicant’s personal life to help ensure that no privacy boundaries are crossed.

In litigation alleging invasion of privacy due to the use of psychological testing, plaintiffs have not focused on typical employment tests, including those used to help assess counter-productivity. Specifically, in Soroka v. Dayton Hudson, 235 Cal.App.3rd 654 (1991), the plaintiffs only alleged that employer’s use of two clinical-based instruments constituted an invasion of privacy—not the employer’s use of an assessment designed to predict counter-productivity.

Negligent Hiring
Negligent hiring is a common claim made against employers today. It allows a person to sue an employer due to being harmed by one of that employer’s employees. Negligent hiring actions claim that the person was ultimately hurt due to the employer’s negligence in screening employees. These claims are based on acts of violence, recklessness or theft, and typically expose employers to millions of dollars in liability unless they can show appropriate diligence in the hiring process.
The Wonderlic Behavioral Risk Profile (WPI)  
Technical and Legal Issues

Given the focus of the WPI, use of it may help employers in two ways: 1. Help ensure that employers are not hiring applicants who will engage in violent or dishonest acts, while complying with safety rules and 2. Help document that the employer was not negligent and that it was appropriately diligent in screening job applicants. Obviously criminal background and reference checks are important in this area, but an employer's position may be substantially reinforced through use of the WPI.

**Conclusion**

The WPI is a well validated assessment that is appropriate for many entry-level jobs within organizations. It has been developed in a manner to help ensure that it does not constitute an invasion of privacy nor fall within the ADA's definition of medical examination. Additionally, research has shown that it does not have a disparate impact on the basis of applicants' protected subgroup status. Employers seeking to hire highly productive employees who are unlikely to turnover quickly, while protecting against negligent hiring claims, should seriously consider the WPI to help meet these important corporate goals.