

Fitness Tests Must Be Fair and Job Related

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

Table of Contents

Fitness Tests Must Be Fair and Job Related	3
--	---

Fitness Tests Must Be Fair and Job Related

Reference Number: MTAS-1218

In a summer 1999 issue of *Public Personnel Management*, Dan Biddle and Nikki Shepard Sill point out that physical ability tests have undergone much scrutiny in the courts since the 1970's and that a recent survey of court-disputed police and fire physical ability tests showed a successful defense rate of less than 10 percent. With less than a 10 percent success rate, it is not advisable for a city government to set up physical examination and fitness standards arbitrarily, draw a line in the sand, and insist that employees who fail the examination and do not meet the standards must lose their job. It is important to note that cities can develop criteria or standards for medical examinations and physical testing that are job related, and if the testing is task related, the probability of successful defense in the event of a court challenge should be considerably improved.

Since passage of the Americans with Disabilities Act in 1990, medical screening decisions and recommendations must be based on an individual evaluation of the applicant and the actual tasks, physical demands, and working conditions under which the job is performed. It is very difficult to develop and implement a successful physical ability program that is fair to women and minorities. According to Biddle and Sill, physical testing scores that are too lax endanger public safety and those that are too strict may unduly penalize qualified individuals, as well as reduce the payoff to society of having experienced incumbents in these jobs. Setting standards too high could also subject the city to expensive and time-consuming litigation.

Title VII of the Federal Civil Rights Act (42 U.S.C. Section 2000e-2(h)) states that it is not discriminatory employment practice when a professionally developed ability test is administered, as long as that test does not have an adverse impact on a protected class.

The act also prohibits the use of different cut-off scores or any other adjustments based upon race, color, religion, sex or national origin.

Numerous federal regulations have been promulgated to define what is an acceptable ability test. 29 C.F.R. Part 1607, Uniform Guidelines on Employee Selection Procedures provides that if an ability test has a potential for an adverse impact on a protected class, then there must be proof of that test's validity. Physical ability tests must be content validated; it must be demonstrated that the selection procedure is representative of important aspects of performance on the job, for which the officers are to be evaluated. It should be clear that an individual who takes and passes a physical examination can do the job, and an individual who fails to pass the examination cannot do the job.

A medical examination should be part of a physical fitness test. Normally a city will require police officers and firefighters to undergo a medical examination as part of the initial employment process. The applicant, who has been made a tentative job offer, subject to passing the medical examination, is simply sent to a medical doctor with instructions that he/she is to be given a medical examination. A medical examination that is not job related is not adequate. A pass or fail on a medical examination where the doctor has no idea as to the physical or mental job requirements would be questionable. Some responsible city official—police chief, fire chief, human resources department, city manager/administrator, or mayor—should instruct the medical doctor that the purpose of the medical examination is so the doctor can determine if the applicant has the physical ability to meet the essential functions of the job. These essential functions should be communicated to the medical doctor.

- MTAS does not recommend differentiating test scores among males and females. In other words, a city should not establish 80 as a passing score for males and 60 for females. A male applicant who makes 78 on the test and fails by two points, could not become a police officer or a firefighter. A female could make 60 on the test and would be qualified as a police officer or firefighter. Cities are, however, cautioned that the passing score should relate to business necessity.
- If business necessity requires that police officers and firefighters are required to make a certain score in order to perform the job, then all police officers and firefighters should be required to take the test and achieve the required test score.

- It is not advisable to test new applicants and not test current employees. A strategy that might be successful in developing and implementing physical testing for police and fire would be for cities to form a consortium and contribute financially to employ a reputable testing company to develop physical testing. A highly professional testing company would be more likely to prevail if challenged in court.
- MTAS strongly recommends consulting with your MTAS consultant or city attorney prior to adopting a test or policy on fitness, inasmuch as this area of the law may have highly technical areas that may increase liability for municipalities. Also, contact with the Tennessee Peace Officer Standards and Training Commission (<http://tn.gov/commerce/section/post-peace-officer-standards-training-commission> [1]) may be helpful.

Links:

[1] <http://tn.gov/commerce/section/post-peace-officer-standards-training-commission>

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

Source URL (retrieved on 09/23/2019 - 5:13pm): <https://www.mtas.tennessee.edu/reference/fitness-tests-must-be-fair-and-job-related>