



COLLEGE OF LAW  
CLINICAL LAW PROGRAMS

August 27, 2010

Ralph Rosenberg, Executive Director  
Iowa Civil Rights Commission  
Grimes State Office Building  
400 E. 14th Street  
Des Moines, IA 50319-1004

RE: Special Report: The Use of Undercover Testers To Identify and Eliminate Discrimination  
in the Selection and Hiring of Employees

Dear Mr. Rosenberg:

The Iowa Civil Rights Commission retained our services to conduct research and to prepare a special report on the use of matched pair or situation testing to uncover and eliminate employment discrimination. As you know, these programs typically involve trained individuals who pose as job applicants with carefully crafted, fictitious identities. They submit electronic or paper resumes, apply for jobs in person or by telephone, and participate in face-to-face job interviews—with no intention of accepting employment—for the sole purpose of determining whether the employer is unlawfully discriminating.

You asked us to provide an overview of covert testing and how it is used in the initial job application and hiring process, to address several specific issues and concerns, and to furnish recommendations and best practices materials for the Commission and local enforcement agencies. To that end, it is our pleasure to furnish you with our Special Report, "The Use of Undercover Testers to Identify and Eliminate Discrimination in the Selection and Hiring of Employees," which is organized as follows.

The first section describes the project team and our activities and methods. The second section examines the value, benefits and costs of testing programs. The third section delineates the Commission's powers and describes how testing initiatives can fulfill or further its mission and mandates. The fourth section provides a brief summary and timeline of tester cases in the courts and studies of tester programs and research conducted by government agencies, non-profits. The fifth section examines resume and interviewing testing, the methodologies that have proven most effective in uncovering discrimination in hiring. The sixth section addresses the preservation and admissibility of tester evidence, participation and testimony of expert witnesses, and ethical dilemmas that frequently arise in tester programs. The seventh section includes issues the Commission should consider when deciding whether to establish a tester program or initiative.

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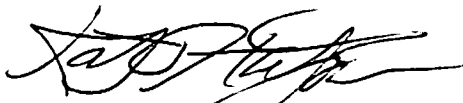
The Appendix includes the following reports, documents and tester guidance. Except as noted, the materials are available in digital and paper format.

1. List of the Most Significant Articles and Materials Reviewed by the Project Team
2. List of Significant Interviews Conducted by the Project Team
3. Timeline of Testers in the Courts 1958-2010 (UI Clinical Law Program)
4. Timeline of Employment Sector Tester Studies 1991-2010 (UI Clinical Law Program)
5. Employment Testing for Civil Rights Enforcement: An Operations Manual. Legal Assistance Foundation of Chicago, LeeAnn Lodder, Project Manager, Employment Discrimination Project – 1994, 1997
6. Employment Testing Within the EEOC: A Report on the Houston Pilot Testing Project. By LeeAnn Lodder and Scott McFarland, Employment Discrimination Project, Legal Assistance Foundation of Chicago, Conducted May – September 1998 (paper only)
7. Tester Response Form: Devah Pager, Princeton University
8. Discrimination against Persons with Disabilities: Testing Guidance for Practitioners, prepared for HUD by Sara Pratt, et al, the Urban Institute, 2005

As promised, the attached report is comprehensive; it examines select topics in more than one section to provide additional context, emphasis and elaboration, so some passages may seem repetitive. We trust that you will find the content valuable, including the insights and illustrations provided by experts from many disciplines, and will share this special report with state and local civil rights commissioners and staff. Please contact us if you have comments, questions or suggestions for future research or advocacy.

Thank you for providing the Law and Policy in Action Project with the opportunity to help improve the quality of life and the employment prospects of persons who live, work or play in Iowa.

Respectfully submitted:



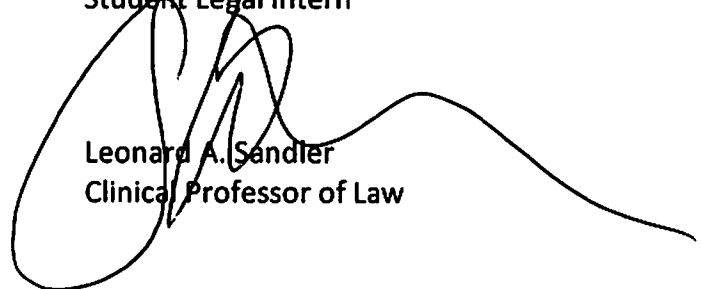
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