

WORKSTRATEGIES®

Keeping America on the Job!

Post Offer Employment Testing

Managing Risk in Hiring

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Objectives

- Review current data per the Bureau of Labor and Statistics on work-related cases and lost work days*
- Review Musculoskeletal Disorder (MSD) /Cumulative Trauma Disorder(CTD) issues and the economic impact on employers
- The New Hire Test (POET) development process
- Legal Considerations for POET testing
- Evaluation Components
- Reporting and Data Handling/Management

* Per BLS news release

Work Comp Stats & Facts

Source: U.S. Bureau of Labor Statistics (BLS) for
2017 https://www.bls.gov/news.release/archives/osh_11082018.htm

- Per the BLS: 2.8 million private industry non-fatal injury/illness cases in 2017
 - 882,730 resulted in Lost Work Days (LWD)
 - 36% of LWD cases attributed to work-related Musculoskeletal Disorders (MSD)
 - Sprains/strains most common type of injury/illness, at 311,330 cases
- Overexertion injury claims up 3.4% in 2017
- In 2017, injuries due to repetitive motion had a high median LWD count
 - Tendonitis: 33 days away from work (Median)
 - Carpal Tunnel Syndrome: 30 days away from work (Median)
 - Sprains/Strains/Tears: 11 days away from work (Median)

How Do MSD/CTDs Occur?

Wear & Tear



Exceeds

Healing

Economic Impact

- estimated at \$1 billion per week for direct costs
- Average MSD (Strain) claim cost
 - \$32,959 / \$36,254 (direct/indirect)
- Injury rates can fluctuate
 - In “bad economy” periods, reported claims might decrease while costs/claim increase
 - During periods of economic recovery, significant short-term injury rates can increase

*Source: OSHA SafetyPays website & Casualty Actuarial Society 4/2/09

$$\text{WC Costs} = [\text{Frequency}] \times [\text{Cost per Claim}]$$

- **Frequency** (*# injuries*)
 - Every claim has financial impacts: the more claims, the more cost incurred
- **Length of Claim** (*costs: medical & indemnity*)
 - Claims that span a long period of time tend to have high costs (medical & indemnity)

Cost reduction can be maximized by addressing Injury Prevention (reduce number and severity of claims) and Post Injury Management (reduce re-injury or length of claims)

What is a POET?

■ Post Offer Employment Test

- Essential Function Physical Demand Testing done after an accepted offer but before the hire
 - Test Design would be job specific
- Other forms of Testing done Post Offer
 - Medical Physical
 - Drug screening
 - Background Check
 - Reference Check

Rules/Regulations

- Title VII of the Civil Rights Act of 1964 (Title VII)
- Americans with Disabilities Act of 1990 (ADA)
- Age Discrimination in Employment Act of 1967 (ADEA)
- Steady increase in Employment Testing since 9/11/01
 - Safety/Security
 - Online application process
 - Reduce impact/cost of injuries

U.S. Equal Employment Opportunity Commission (EEOC)

- Title VII of the Civil Rights Act of 1964
 - With respect to testing, Title VII ***permits*** employment tests as long as they are not “designed, intended or used to discriminate because of race, color, religion, sex or national origin.” 42 U.S.C. § 2000e-2(h)
 - Title VII prohibits both “disparate treatment” and “disparate impact” discrimination.
 - NO neutral tests
 - Must be “job-related and consistent with business necessity” or could create “disparate impact” discrimination

U.S. Equal Employment Opportunity Commission

- Title VII of the Civil Rights Act of 1964 (cont'd)
 - In 1978, the EEOC adopted the Uniform Guidelines on Employee Selection Procedures or “UGESP” under Title VII. See 29 C.F.R. Part 1607 UGESP
 - guidance to determine if tests/selection procedures lawful
- Acceptable types “Test Validation”
 - criterion-related validity studies
 - ***content validity studies- based on actual job requirements***
 - **Job Analysis**
 - construct validity studies

EEOC

- Title I of the Americans with Disabilities Act (ADA)
 - prohibits discriminating against qualified individuals with disabilities on the basis of their disabilities
- When hiring, an employer may not ask questions about disability or require medical examinations **until after it makes a conditional job offer to the applicant** 42 U.S.C. §12112 (d)(2);

EEOC

- After making a *job offer* (but before the person starts working), may ask disability-related questions and conduct medical examinations as long as it does so for all individuals entering the same job category. Id. at § 12112(d)(3); and
- With respect to *employees*, an employer may ask questions about disability or require medical examinations only if doing so is job-related and consistent with business necessity Id. at § 12112(d)(4)

EEOC

- Title I of the Americans with Disabilities Act (ADA) (cont'd)
 - The ADA also makes it unlawful to:
 - screen out an individual with a disability or a class of individuals with disabilities unless the test is shown to be job-related and consistent with business necessity 42 U.S.C. § 12112(b)(6);
 - Fail to make reasonable accommodations, including in the administration of tests, unless such accommodation would impose an undue hardship Id. at § 12112(b)(5).

EEOC

- The Age Discrimination in Employment Act (ADEA)
 - The ADEA prohibits discrimination based on age (40 and over)
 - The ADEA prohibits disparate treatment discrimination, i.e., intentional discrimination based on age
 - The ADEA also prohibits employers from using neutral tests or selection procedures that have a discriminatory impact on persons based on age (40 or older), unless the employer can show that the test or device chosen was a reasonable one

Testing Overview

Benefits of Post Offer Testing include:

- Identifying candidates who aren't medically stable
- Gathering baseline data regarding motion, strength and functional status
- Identifying candidates who cannot perform physical requirements for the essential functions of the job (force exertion, climbing, bending, repetitive lifting, etc.)
- Cost savings through
 - Injury prevention (hiring physically qualified individuals)
 - Musculoskeletal Baseline that can be utilized post injury

POET Development



JSA

- Identifying Essential Job Functions/Physical Requirements
- Reviewing with the Employer

Job Analysis Reports -Task Observation


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Work Task Analysis

Tasks	Frequency	Essential	Task Physical Demands
4. Change large and small meters. 	Occasional	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	1. Get equipment from truck and carry to work area. 2. Use key to remove lid from meter. Lid weighs 50-65# 3. Bend, stoop, crouch or kneel into 23-inch wide vault to access meter, may have to lower body into vault or use ladder to climb into vault. 4. Use wrench to turn water off and remove small meter using up to 50# of torque on wrench. 5. Remove old meter and replace with small meter and tighten in place with wrench. (Meter weighing 20#, lifted from below waist to as high as overhead) 6. Put lid back on and tighten bolt in place with key.

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Job Analysis Reports -Task Observation

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WorkTask Analysis

PHYSICAL DEMANDS

Lift	Max Weight Lifted (1RM): 100		Height To/ From: shoulder to floor level to lift self out of hole	Description of Object: Self
Weight (lbs.)	Frequency*	Repetitions/ Time	Height To/ From	Description of Objects
0 – 10	Frequent	2-4/hour+	floor to waist	Keys, hooks and wrenches, small meters.
11 – 20	Occasional	1-2/hour	floor to waist	medium sized meters, shovels, small lids, ladders
36 – 50	Occasional	1/day	waist level	50-65# lids- 20" diameter or 3"x3" square with latch.
51 – 75	Occasional	1/day	floor to waist level	50-65# lids
76 – 100	Occasional	1-2 times/week	shoulder to floor level	Body weight in and out of vaults 4' deep. Employee puts arms over edges of 20" diameter hole and pulls body up out of hole. Uses legs to climb as well.

*Frequency performed per shift: N = Never (0%) O = Occasional (1 – 33%) F = Frequent (34 – 66%) C = Constant (67 – 100%)

Carry	Max Weight Carried (1RM): 75#		Distance: 5-10'	Description of Object: Buckets of mud or gravel
Weight (lbs.)	Frequency*	Repetitions/ Time	Distance	Description of Objects
0 – 10	Frequent	5-6/hour	5-100'	Key, wrenches, hooks and other tools to and from job site.
11 – 20	Occasional	1-2/day	5-10'	small meters, lids
51 – 75	Occasional	1-2/day	5-10'	buckets of dirt, gravel or mud

*Frequency performed per shift: N = Never (0%) O = Occasional (1 – 33%) F = Frequent (34 – 66%) C = Constant (67 – 100%)

Job Analysis Reports -Task Observation

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WorkTask Analysis

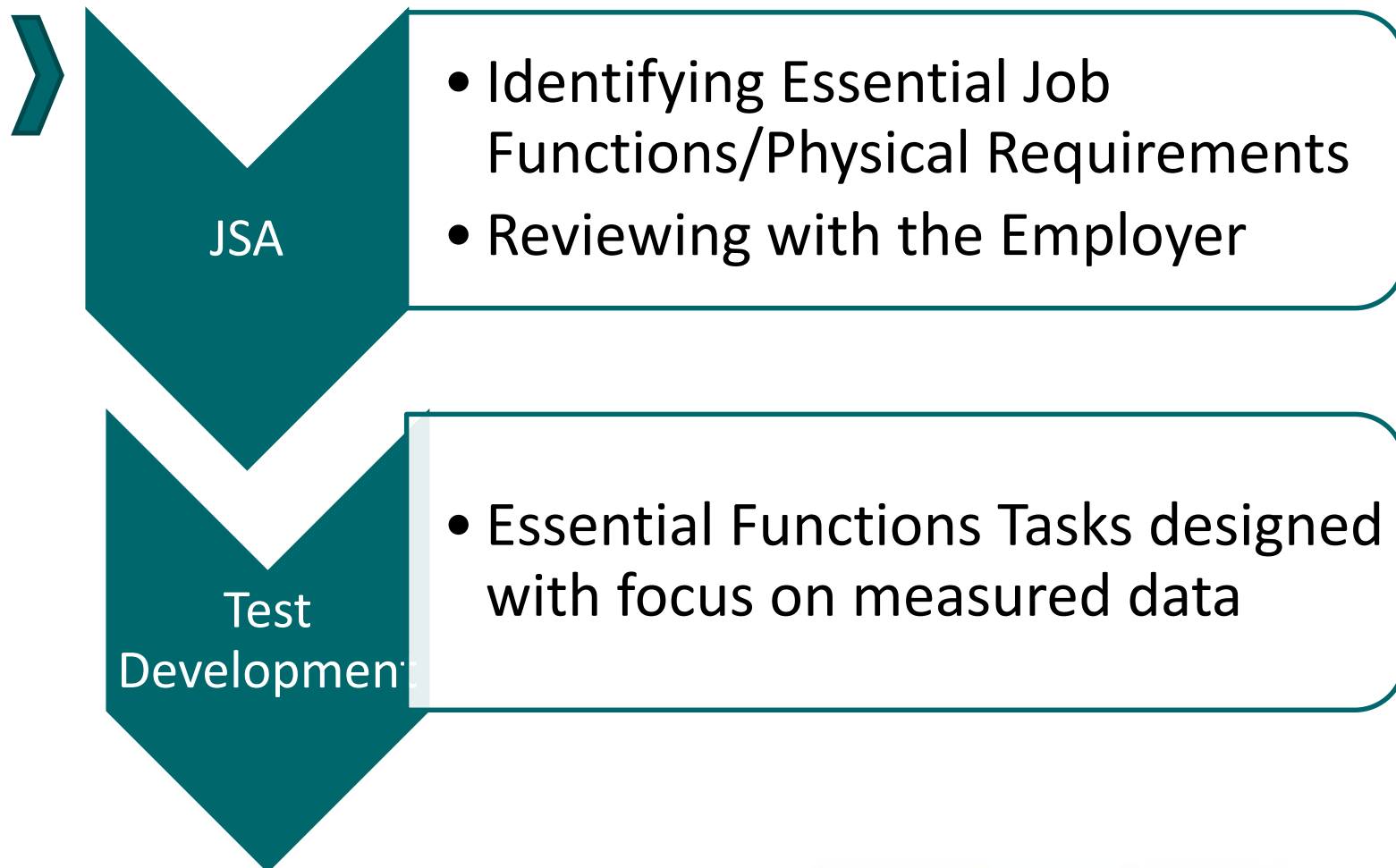
OBJECT HANDLING

Item	Dimension(s)	Height	Weight	Distance	Method	Duration
Large Lids	20 "	waist level	50 lbs.	N/A †	Lift	Occasionally
Shovel of ground cover	varies	floor to waist level	30-40 lbs.	N/A †	Lift	occasionally
Buckets of dirt and gravel	5 gallon bucket	18-20 "	20-75 lbs.	5-10 †	Lift/Carry	Occasionally

POSITIONAL DEMANDS

Activity	Frequency	Comments: (Distance, Sustained Time, Examples, etc.)
Climbing Ladders	Occasional	To climb in and out of vaults deeper than 5'.
Reach Forward	Constant	While driving, using tools and typing on computer.
Reach Overhead	Occasional	To get tools from truck and get out of vault.
Balancing	Frequent	While walking on uneven surfaces.
Stooping	Frequent	To take meter readings and turn water on and off.
Kneeling		When changing out small meters or reaching in vaults to take a manual reading.
Crouching		To take meter readings and turn on and off water.

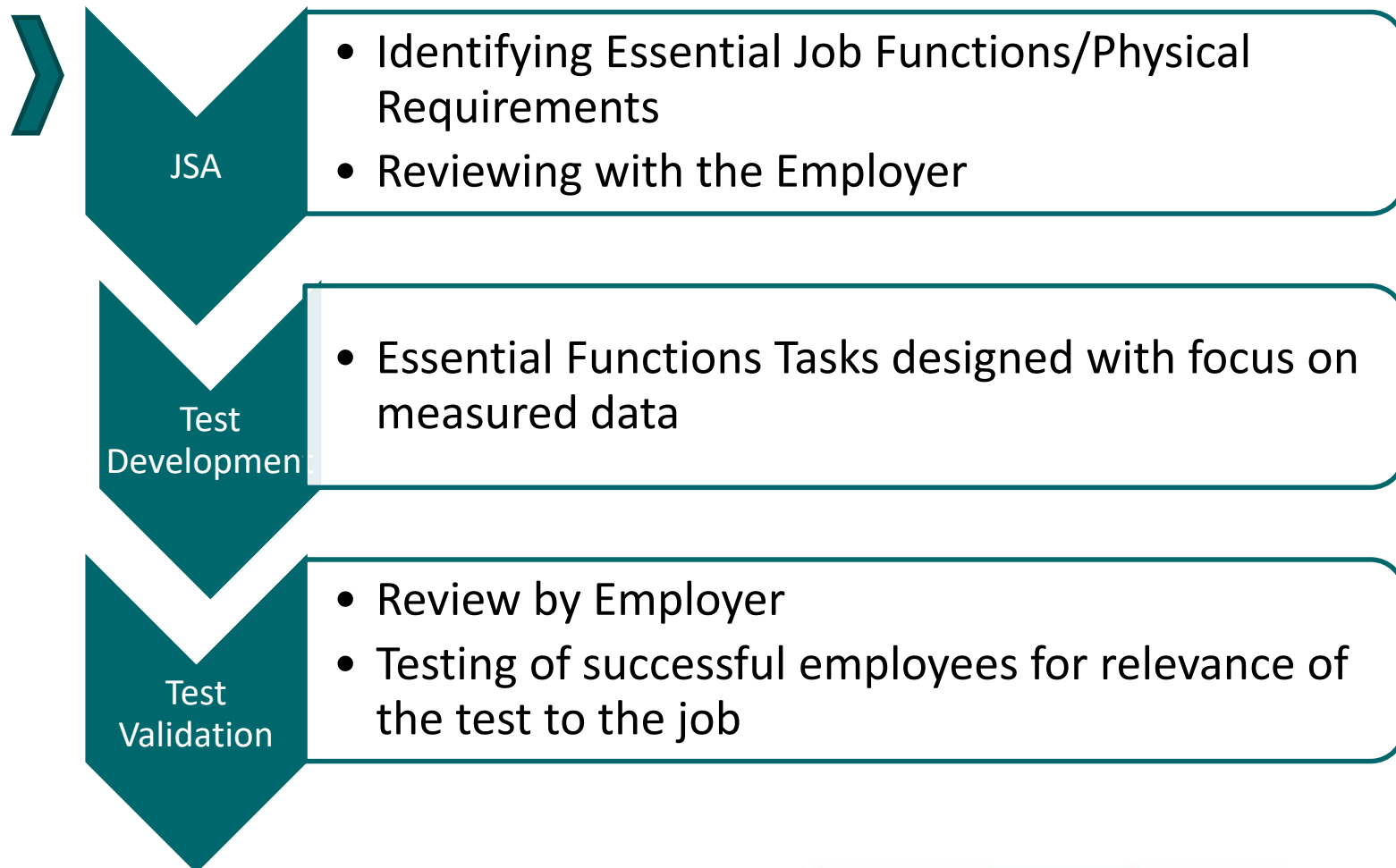
POET Development



EEOC Regulations

- Stages of testing include:
 - Pre-offer
 - **Post-offer**
 - Existing Employees (Fit for Duty)
- **Post-offer stage** is when employers may collect the greatest amount of data
- The EEOC states that Post Offer testing must be JOB RELATED –
 - **different test for each job position**
 - Each test must be related to the physical demands of the essential job functions

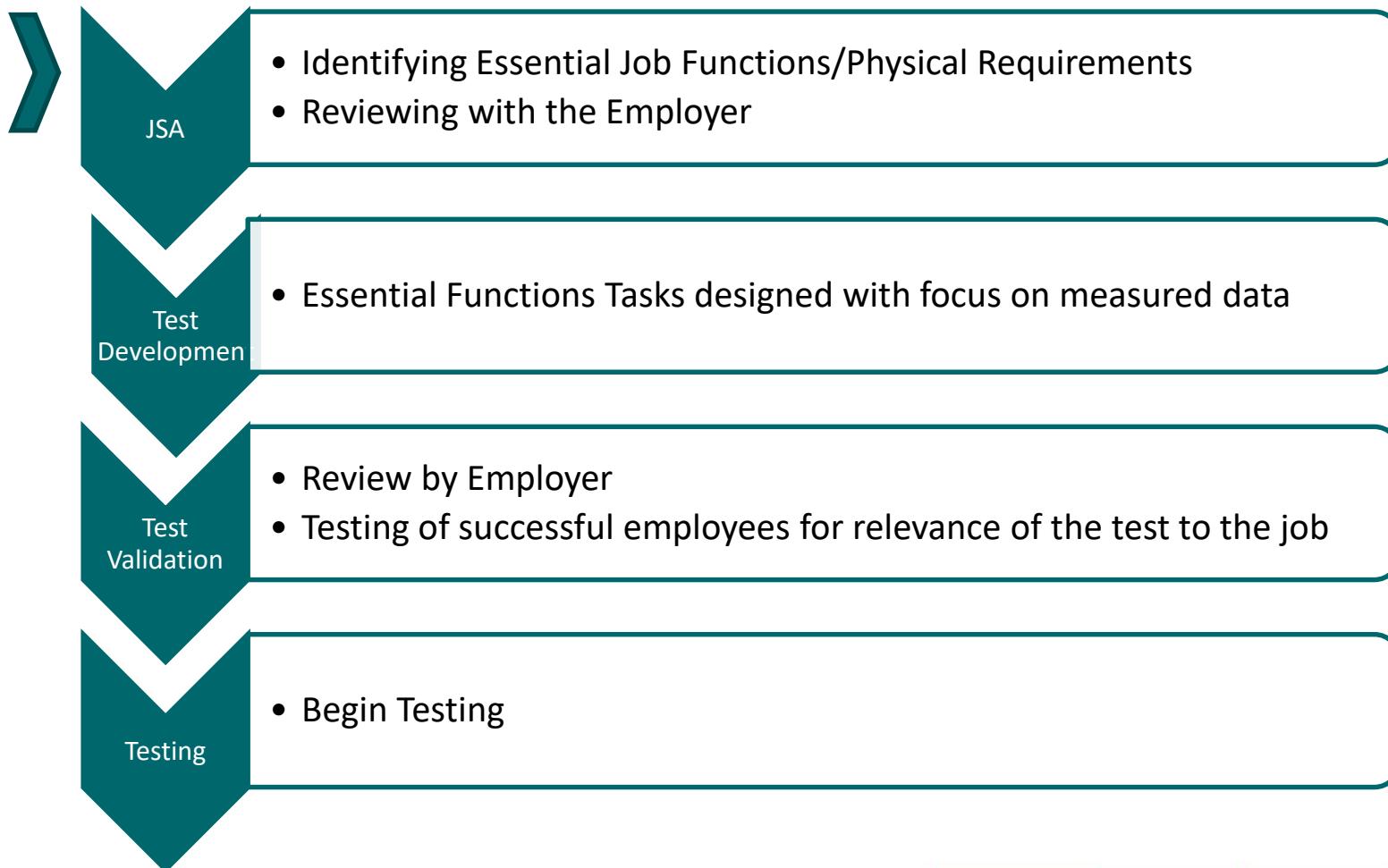
POET Development



Validation – Why do it?

- The backbone of a test's defensibility
- A test must demonstrate the true essential function and what is the minimal requirement for task completion

POET Development



POET – Physical Demand Test

Components might include:

- Consent for Testing
- Medical History
 - General, Injury, Workers' Compensation Claims, Lost Work Time
- Musculoskeletal Examination
 - Range of Motion, Strength, Balance, Flexibility
- Assessment of Cardinal Signs
 - Blood Pressure, Resting Heart Rate, Resting Respiratory Rate
- Baseline Testing
 - Aerobic Fitness, Grip Strength, Lifting Ability
- Job Simulation
 - Confined Spaces, Lifting, Pushing, Pulling, Positional Abilities

Medical History Interview

- No medical history at pre-offer stage
- Post-Offer –comprehensive medical history
 - Information collected by medical provider alleviates employer legal exposure
 - Insures safety during testing
 - If candidate falsifies or withholds information and it is discovered, employer contacted for guidance

Medical Clearance

- If a Safety Issue identified, candidate required to obtain Medical Clearance from physician
- Examples:
 - Candidate currently under physician's care or in therapy
 - Recent surgery (less than 1 year ago)
 - Ongoing medical condition that could be exacerbated by physical testing
 - Elevated resting heart rate/blood pressure
 - Pain during any portion of testing

Baseline Testing

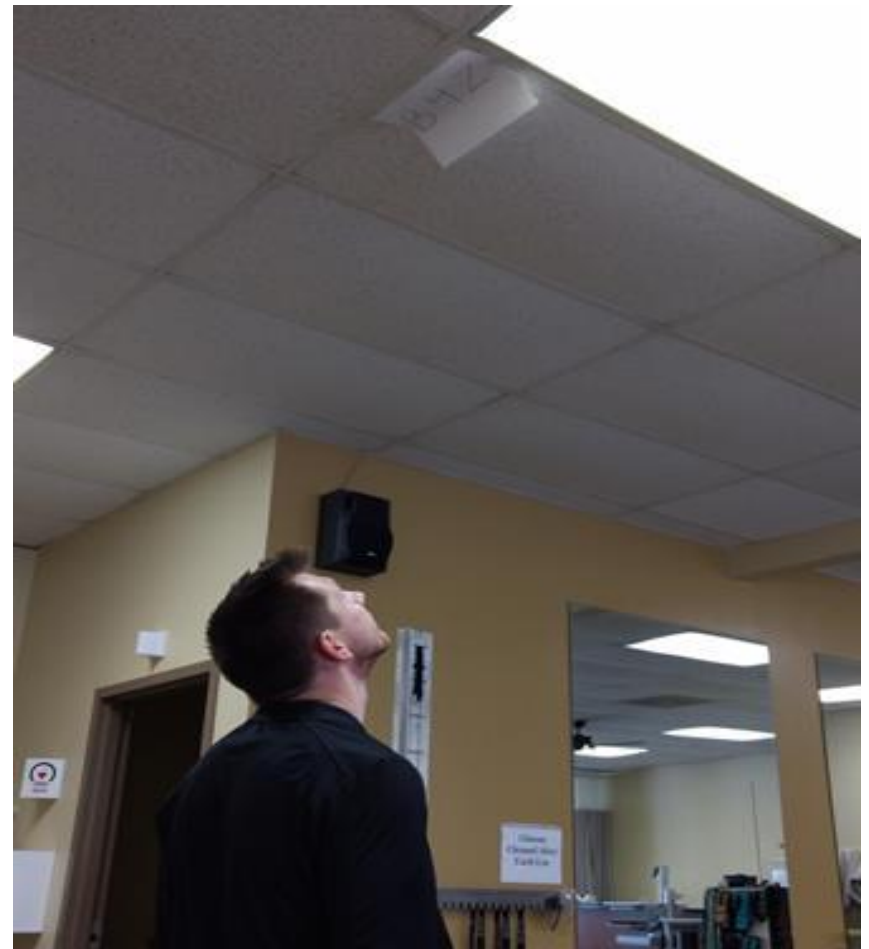
- Musculoskeletal screening:
 - Posture
 - Range of motion
 - Strength
 - Flexibility
 - Reflexes
 - Joint mobility
 - Demonstrates safety and establishes baseline
- Cardiovascular endurance test
- Grip Testing – strength

This testing is for data collection and not used as a selection criteria

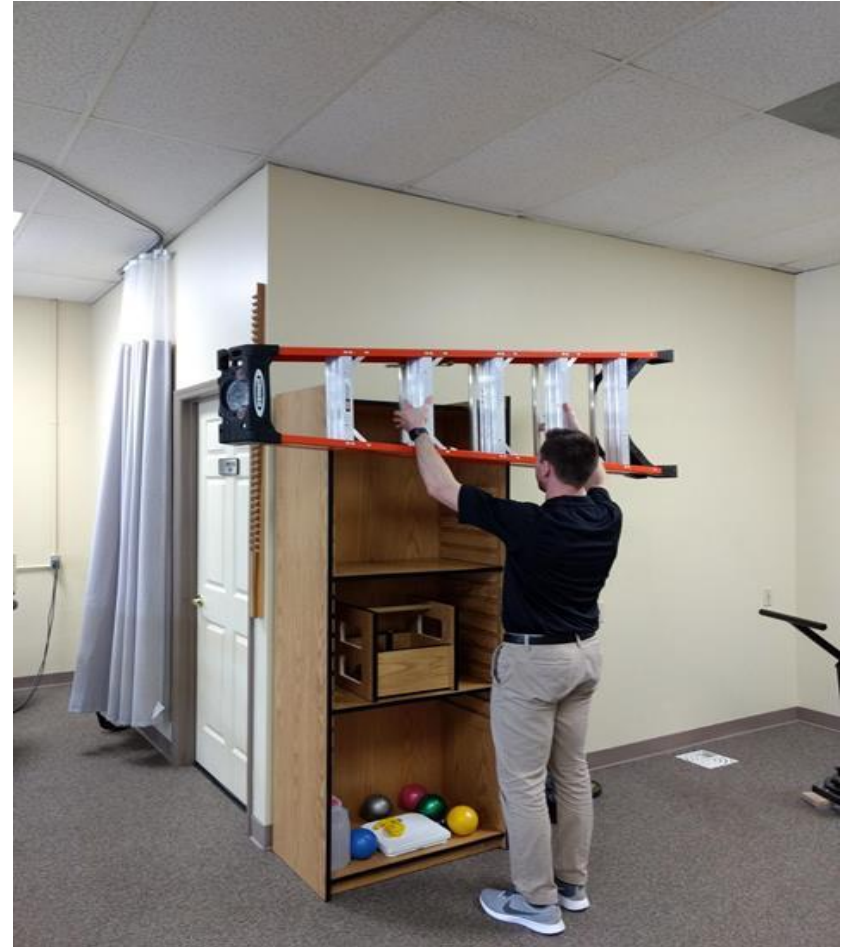
Job Simulation Testing

- Force Exertion Activities
 - Pushing/Pulling
 - Lifting
 - Carrying
 - Grasping
- Positional Tolerance Activities
 - Stepping
 - Crouching, kneeling
 - Reaching to various levels
- Confined Space Requirements
 - If tested, needs to replicate the environment

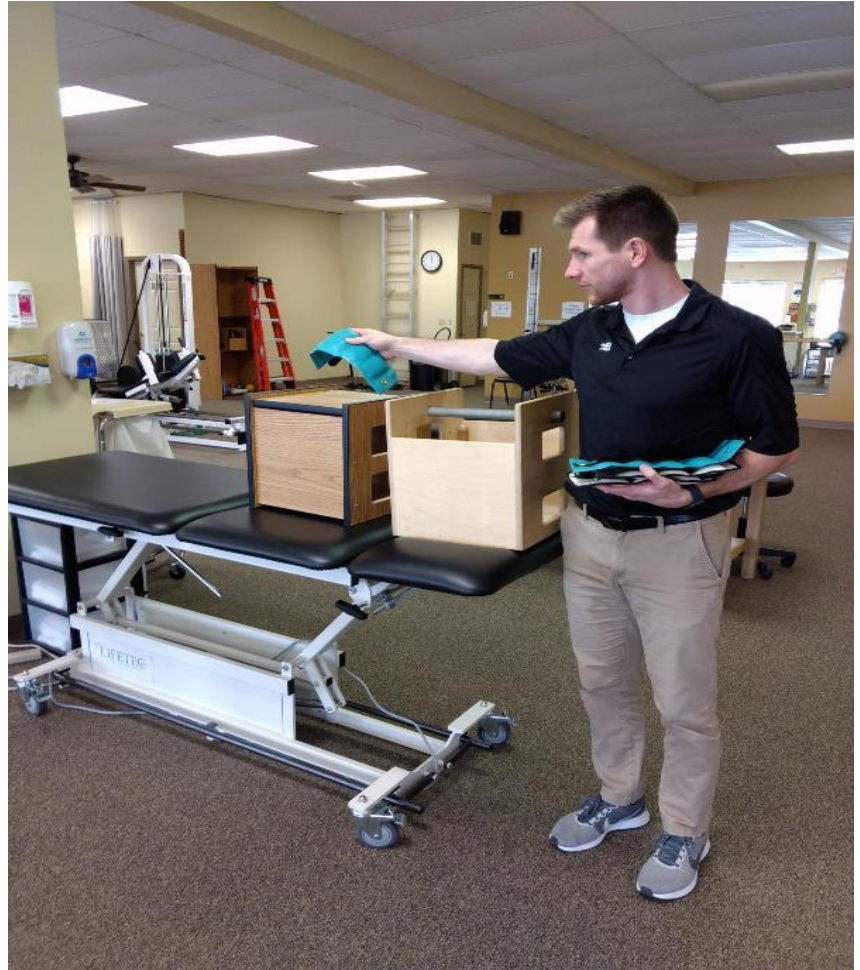
Job Simulation



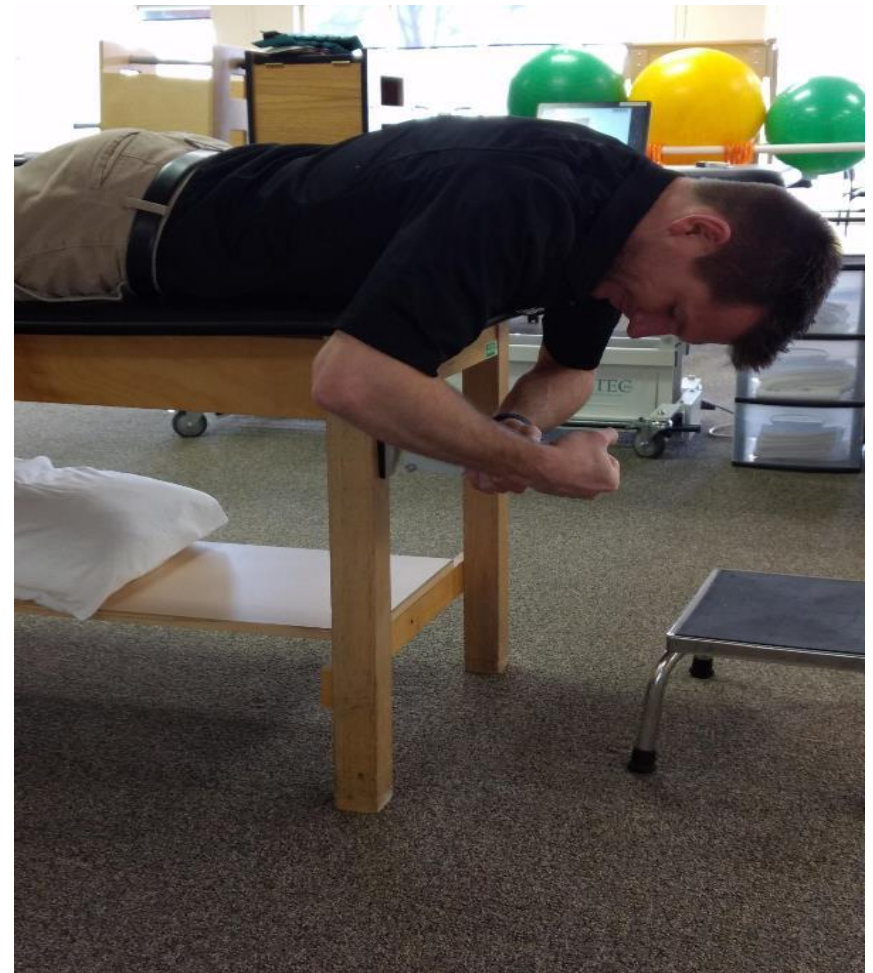
Job Simulation



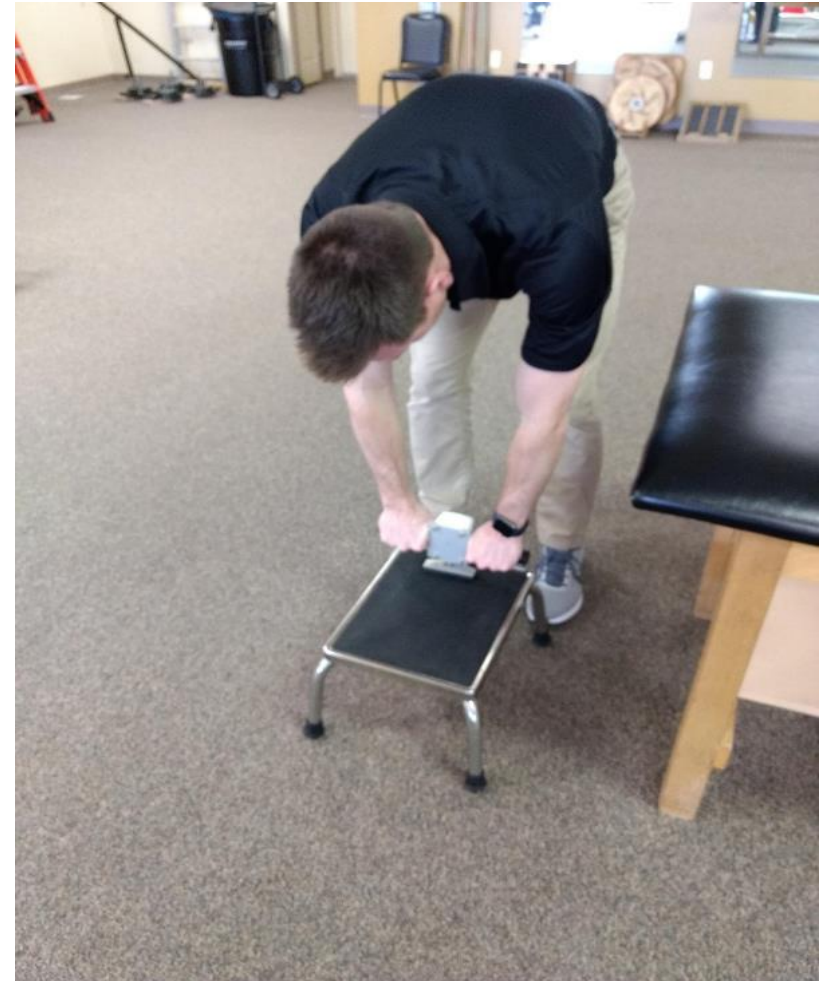
Job Simulation



Job Simulation



Job Simulation



Recommendations (Test Result)

- **Meets Job Demands**—met all physical demands criteria, no medical concerns
- **Does Not Meet Job Demands**— did not meet lift criteria or could not complete a job specific test
- **Possess an Imminent Risk to Self or Others**— capable on test criteria but risk issue identified related to job demands
 - Triggers interactive dialogue for planning and appropriate handling of medical information in cases of possible accommodation

Case Study 1

- Candidate- 30 year old female history of:
 - Cervical fusion April 2017
 - Ongoing pain in neck/low back
 - Current pain management care (injections, ablations, meds)
 - Pain during Musculoskeletal screening – Lumbar spine

- Job Position- Production line/manual labor
 - 35 lbs. maximum lifting requirement (12"-W, W-SH)
 - Push/pull 40 lbs. of force
 - Sustained reaching/bending
 - Constant lifting less than 10 lbs. waist level ranges

Case study 1 (cont.)

- Step 1: Sent for medical clearance due to
 - Current pain management care
 - Pain during Musculoskeletal screening portion
- Step 2: Medical Clearance received with no restrictions
 - Contacted employer to schedule/resume testing
- Step 3: Resume testing
 - Re-test items that created pain for consistency check
 - Progress with Lifting and Job Specific testing portions

Case Study 1 (cont.)

- Possible Outcomes:
 - Capable: Able to do all lifting and job tasks no issues (typically not in cases with active pain)
 - Not Capable: Impairment – could not perform at least one of the lifting tasks or job specific tasks but due to existence of medical condition (illness/injury) *Qualifies as ADA Impairment and interactive dialogue can begin and considering reasonable accommodations*
 - Not Capable: Medical Risk – able to complete all lifting and job tasks but condition creates high enough safety risk for a “direct threat” to themselves/others for injury to occur

Case study 1 – Final Results

- Not Capable- Medical Risk
 - Candidate can have time to get full physician clearance to work with the medical condition
 - Employer can begin interactive dialogue evaluating reasonable accommodation options
 - Employer supplied with documented reasoning for determination being made by the Physical/Occupational Therapist, being familiar with both job demands and Musculoskeletal issues and also additional MD follow up

Case Study 2

- The Man with the funny handshake
 - Right handed male applying for position with underground/overhead cable company
 - Flinched/grimaced when shaking my hand/introductions
 - No reported injury during medical history
 - Musculoskeletal – pain, cold sweats, nausea when compressing Metacarpals and tapping through long finger
 - “I may have been in a bar fight over the past weekend....”

Case Study 2 (cont.)

- Sent for medical clearance
- Alerted employer
- Follow up revealed Boxer's Fracture of Right hand
- He received conservative medical care (6 weeks)
- Received medical clearance
- Employer still had opening
- Resumed testing, re-tested hand, no pain, no dysfunction, no symptoms – “Capable”

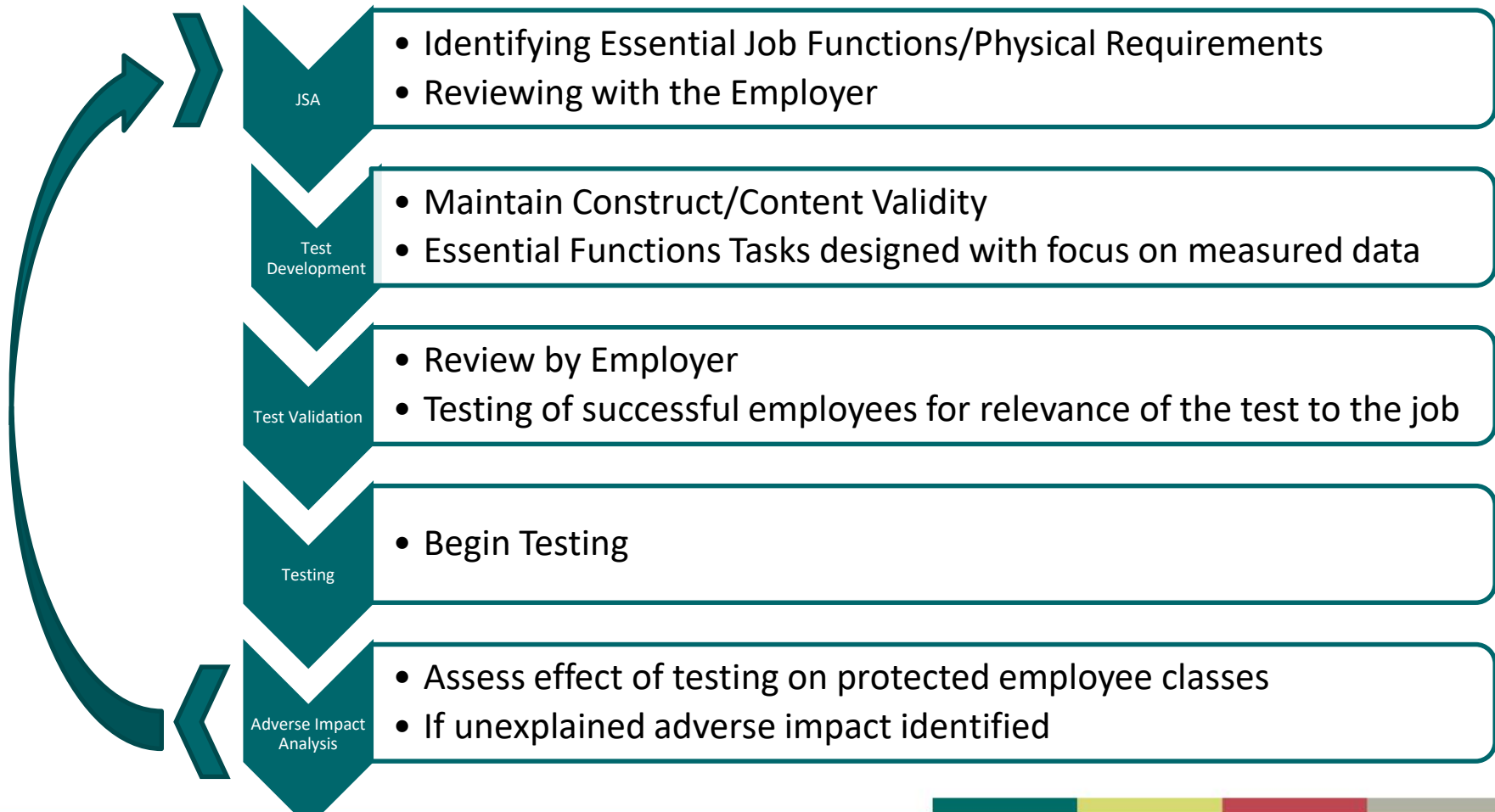
Case Study 3

- The aspiring DOT worker
 - 50 y.o. female applying for Streets Maintenance position
 - Job requires 75 lbs. lifting to Floor to Waist, 50 lbs. Shoulder to OH and Pulling simulating Concrete Saw (175 lbs., up to 213 lbs. force)
 - Healthy, no significant past medical history, prior physical labor experience lifting up to 40 lbs., physically active lifestyle
 - 5'7", 165 lbs.

Case Study 3 (cont.)

- No issues with musculoskeletal screen
- She was unsure of her capabilities
- Dynamic Lift Testing- we always education on proper body mechanics, most advantageous lifting patterns
- Able to pass all lifting criteria
- Able to pass all job specific demands and meet the lower end criteria for pulling task for the smaller concrete saw work

Post Offer Agility Testing Development



Return on Investment

- Data Analysis for ROI Outcomes
 - Assumption
 - The type of injury that would have resulted
 - Fact
 - Not a matter of “if” the applicant will be injured, but a matter of “when”
 - Majority of the time it will be years 1-5

Return on Investment

- Using OSHA Safety Pays Calculator
 - <http://www.osha.gov/>
 - <http://www.osha.gov/dcsp/smallbusiness/safetypays/index.html>

- One Strain Injury
 - Direct Cost \$32,959
 - Indirect Cost \$36,254
 - **Total Cost \$69,213**

Employment Test Benefits

- Identifies the applicants where demonstrated strength may not meet the strength / lifting demands of job
- Identifies applicants with endurance issues or possible cardiovascular issues
- Screen out applications who cannot meet positional demands of job
- Screen out medically unstable clients
- Identify pre-existing history and pre-injury baseline status

Employment Testing Pro's & Con's

- Average Return on Investment of program is 4:1 to 10:1 with cost savings
- Employers have experienced substantial savings with reduced WC costs as well as increased productivity, reduced turn-over and can have reduced insurance premiums
- If set up / administered in discriminatory fashion, can have substantial penalties

Maximizing Success of Employment Testing

- Maintain attention to test administration and management
- Ensure validity of screening process
- Collect & track data
- Utilize standardized process
- Update program with changes in jobs
- Focus on safety in the process

Tools for entire hiring process

- It starts with Job Posting
 - Incorporate Job Analysis with your Job Description
- It continues with the Interview Process
 - Review of Job Description with applicant
 - Ask- Do you meet the qualifications and can you safely perform the physical demands of this job?
- Extend offers to the Most Qualified Applicant
 - Conditional on post offer testing (Physical Ability, Drug, Background, Etc.)

In event of injury send JA to the evaluating physician

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