What Is Emotional Intelligence?

Why do people get into accidents? Why do they violate company ethics policies? Why do they ignore personnel rules? Why do they use illegal drugs? Why do they put self-interest ahead of organizational values? Why do some people cause conflict while others are gifted at resolving it? Why do some people engage in “riskier” behavior than others? In many cases, the answer to each of these questions boils down to what has been labeled “emotional intelligence.” This two-part article will explore the latest research on the subject of emotional intelligence. This first part examines the nature of the emotional intelligence concept and then discusses its implications for the employment practices liability field. The second part (page 9) addresses whether and to what extent employee testing and evaluation tools can measure emotional intelligence, the legal implications of such tests, and their costs versus benefits.

Emotional Intelligence in Action: An Illustrative Scenario

Susan is a customer service representative who believes that her boss, Jim, the director of sales is sexually harassing her. She complained to Marcy, a human resources manager, that she was uncomfortable with Jim’s use of vulgar language and with his propensity to touch her and other women. Susan believes that Jim’s conduct makes it difficult to communicate with him and the situation is beginning to affect her productivity. She tried to make Jim aware of this fact, but his only reply was, “Get over it.” Marcy told Dave, the owner of the company, about the situation. Dave responded by saying that he has known Jim for years and that he is simply “…old school, he doesn’t mean anything by it. Try not to take it so seriously.”
**Employment Practices Issues and “Emotional Competency”**

Already we realize from this illustration that employment practices liability issues are influenced more by a person’s “emotional competency” than by the existence of a company policy against sexual harassment. This firm, like most, probably has a policy aimed at sexual harassment printed in its employee handbook or on a poster on the wall, and likely participates in regular training on awareness and prevention of sexual harassment. Yet Jim’s conduct and Susan’s reaction to it were not affected. That is because it is the emotional competency of these participants that will ultimately determine whether the situation eventually ignites into a formal complaint by Susan, and perhaps even a lawsuit, or if it can be resolved in some form of “win/win” fashion.

**What Is Emotion?**

Just what is “emotion?” The word emotion comes from the Latin *emoveo*, which means “to move from.” According to *Webster’s 1828 Dictionary*, emotion is “a moving of the mind or soul.” Historically, the word emotion has been associated with a strong sense of feelings or drama. Therein lies my trouble with the emerging use of the term emotion in relation to the workplace. I don’t know about you, but the last place that I want drama is in my workplace. As we soon shall see, Daniel Goleman’s books tie the term emotion to almost every type of personality variable. When a word means so many things that it loses distinction, it tends to cause confusion. For the sake of clarity throughout this discussion, the word emotion will be used interchangeably with “personality” or “character.”

**Working with Emotional Intelligence**

In his 1995 bestseller, *Emotional Intelligence*, Goleman argued quite convincingly that a person’s “emotional intelligence” (EI) or “emotional quotient” (EQ) is, in today’s evolving right-brained world, the single most important predictor of success. Subsequently, Goleman and his cohorts have continued to do an incredible amount of research in this area. His recently published follow-up book, *Working with Emotional Intelligence*, focuses on how these factors affect success in the workplace. Regardless of whether you call it character, emotional intelligence, emotional quotient, or apply some other verbiage, looking at how we think about ourselves and the world around us and what we do with those perceptions helps predict personal and professional success. The concept of emotional quotient becomes ever more important as we shift from a manufacturing to a services economy.

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**The concept of emotional quotient becomes ever more important as we shift from a manufacturing to a services economy.**
The Importance of Emotional Intelligence

In preparing this article, I researched numerous sources. Articles published in England, Canada, India, and Norway indicates this concept of EQ has not remained confined within our shores. Based on personal experience and abundant literature, it is clear to me that emotional intelligence has a far greater impact on a person’s personal and career success than does their IQ or particular skill set. Marcy, our human resources officer in the above scenario, may be an expert on compliance with the company’s sexual harassment policy. But she may or may not be adept at creating a dialogue with Dave or Jim. And, if Marcy values job security over her role as compliance officer, she may be more inclined to placate Dave and Jim instead of conducting a prompt and thorough investigation. Her attitude may send a message to Susan that her complaint was ignored.

Moreover, Jim may conclude that his conduct is acceptable, and he may have license to retaliate against Marcy for her complaints. The next thing the company may hear from Susan, after she quits, is in the form of a letter from her attorney demanding hundreds of thousands of dollars in damages. In Working with Emotional Intelligence, Goleman makes the point that the “emotional intelligence” or culture of an organization starts at the top. Accordingly, you cannot consider risk management to be a priority of the rank-and-file employee if it is does not occupy a similar priority in the executive boardroom. Marcy can-not be expected to be focused on doing the “right thing” if she is more concerned about Dave’s relationship with his friend, Jim.

Emotional Intelligence and the Claims Resolution Process

Assume Susan decides to file a lawsuit alleging sexual harassment and retaliation. What impact will the emotional intelligence of the attorneys, judges, and jurors play in resolving the conflict?

Again, experience tells me that it is the emotional skill of the attorneys that often wins cases and successfully resolves conflicts. Most important is their ability to create a dialogue and communicate toward a win/win resolution. Unfortunately, attorneys are trained in an all-out, adversarial approach to dealing with conflict. Lawyers are supposed to “fight” for their side. We must protect our clients at all costs, even at the expense of our personal well-being. Many attorneys counsel their corporate clients to contest all claims vigorously, regardless of their level of merit, so that they do not become known as an “easy mark.” This mindset applies despite the fact there is a glaring absence in the legal literature on the collateral impact of taking a “no holds barred” approach to litigation. Such attitudes must be weighed against their effect upon the lives and well-being of the participants in the litigation and their families, its impact upon the loyalty and commitment of the workforce, and the manner in which it defines a company’s culture.
**Risk Management and Emotional Intelligence: A Disconnect**

After an extensive, web-based search effort looking for the terms "risk management" and "emotional quotient" (or emotional intelligence), it was surprising to find that neither of these concepts were combined in the same article or paper. This is despite the fact that at its most basic level, employment practices liability is about people and how they think and act. While I would not expect to find much discussion about emotional intelligence when it came to flood loss, fire loss, or business interruption claims, I did expect to see more published material applying to “people losses,” such as directors and officers, employment practices, workers compensation, and employee theft. One reason for the lack of research and writing in this area may be attributed to the “fuzzy” or “soft” nature of the issue. Until recently, it has been difficult to catalog and quantify. Suddenly, however, we appear to have strategies and tools that will allow us to do just that.

**Emotional Intelligence Profiles**

What if we could develop an emotional intelligence profile of a harasser (or their victim), of an unethical executive, of a warehouse thief, or a malingering claimant? There are certainly challenges associated with such an inquiry.

First, is obtaining permission from the person you wish to profile. That may be difficult, if not impossible, especially in the event they were fired from your company for being a sexual harasser. On the other hand, there is the potential for building a profile with input contributed by those who worked in the presence of such a person. In fact, this may be of greater value than the individual’s self-awareness. Since the self-awareness of the wrongdoers is, by definition, flawed, what good does it do to know what they think about themselves? Perhaps more important, we need to know what others around them observed, how they felt, and what, if anything, they did.
Specific Personal and Social Competencies

Goleman’s emotional competency framework is effective in furthering this discussion. I believe these factors also apply in the risk management and employment practices liability context. They include the following personal competencies:

♦ Self-awareness – knowing one’s internal states, presences, resources, and intuitions
♦ Self-regulation – managing one’s internal states, impulses, and resources
♦ Motivation – emotional tendencies that guide or facilitate reaching goals
  o Social competencies:
♦ Empathy – awareness of others’ feelings, needs, and concerns
♦ Social skills – adeptness at inducing “desirable responses”
  o Consider a high-quality customer service representative, for example. This person would display a high level of self-control, conscientiousness, and empathy.

Personal Competencies are “Company-Specific”

Goleman indicates that the competencies we need to master will change as we grow into different roles. For example, senior-level managers need a greater political awareness than do their subordinates. In addition, Goleman observes that a person’s competencies are also related to the company’s emotional ecology.” Depending on a company’s vision, mission, core values, and goals, a different blending of emotional competencies may be required. To use another example, a nurse dealing primarily in pediatrics will need a different set of emotional skills than one specializing in geriatrics. Moreover, such profiles may also be affected by whether the nurses work in a private or public healthcare setting.

Depending on a company’s vision, mission, core values, and goals, a different blending of emotional competencies may be required.

Self-Esteem: A Key Personal Competency

A perfect workplace would be populated only by true gentlemen, who would never consider harassing a woman, and emotionally strong women, who would not allow themselves to be sexually harassed for very long. Honesty, integrity and self-control are critical factors when it comes to preventing wrongful conduct. But probably the most important competency in this area is self-esteem.
Consider self-esteem as it relates to the role of the victim in these circumstances. Although it would seem that people with low self-esteem would blame them- selves for their undesirable circumstances, some are quick to externalize: everything is some- one else’s fault. Quite frankly, I have yet to meet anyone (including those in a legally protected category) who has succeeded in life by pointing fingers at some- one else. For example, studies of “whistle-blowers” reveal that their efforts take a huge personal toll—they end up divorced, broke, or bitter. While I applaud their efforts, win or lose, I believe it is sometimes better to leave the company to its criminal or unethical ways, and find a workplace that shares one’s core values.

The same concept holds true for the employer. While channel-surfing last month, I came across a speaker at the National Convention for Attention Deficit Disorder who told her audience that the first question they should be asking themselves when an employee is not succeeding at a job is not, “What are company’s legal obligations?” But, rather, they should ask, “What are we going to do to ‘own’ the problem?” That is sound emotional advice, especially when 80 percent of ADA disability claims are decided in the company’s favor. The point is this: blaming or justifying doesn’t work—taking responsibility does.

**Emotional Intelligence and Technical Skills: A Crucial Evolution**

What is interesting is that, to a large extent, it has been the software and information technology industries that have focused on the issue of EQ. Because of the intense com- petition for qualified workers, these industries are not only having problems finding people with good technical skills, but it is also becoming increasingly difficult to promote these workers to levels that require management skills. As computers continue to take over technical, left-brain functions, the value of the right-brain emotional functions will assume ever-greater importance.

**Emotional Maturity**

The EQ movement has generated some opposition from psychologists who vehemently object to the idea of trying to measure emotional skills as an “intelligence.” A hopeful aspect of these studies is that, as we become older, the ability to grow in our emotional intelligence improves. The studies imply that this blossoming into emotional maturity occurs around the age of 25. Query: Will our young, technically savvy but emotionally deficient new workforce cause greater risk for us than their predecessors?

If the emotional intelligence of an organization is so important, then there may be an even darker side to downsizing than we had first considered. Arguably, our oldest and highest paid workers are also the most emotionally mature. If two-thirds of a manager’s or executive’s success is based on his or her EQ, then the “emotional competency drain,” not just the “technical brain drain,” can have a critical impact on an organization. Although that new salesman earns only half as much as his or her predecessor and is also computer literate, his or her emotional immaturity just caused you to lose two of
your biggest clients and get sued by the third. I have litigated more than one case where a “hot-shot” young manager capable of delivering incredible “numbers” has created sexual harassment lawsuits, caused stress claims, and increased turnover within an organization. I call these managers million-dollar employees, and it’s not because of what they’re getting paid. In such instances, their companies would have been better off training the older worker in technical skills, rather than vice versa.

The Importance of Feelings

Employment practices liability risk management has historically focused on the back-end of a situation, namely, the point at which a claim is made. As lawyers, risk managers, and consultants, we typically become involved only after a problem has surfaced. We are very analytical in both our approach to preventing problems and in bringing them to closure. We want the facts and the figures before we are ready to defend ourselves. And if our position fails, we will fight to maintain it, which only raises the emotional and financial stakes.

The truth is that we are not very interested in how others feel. We are too busy worrying about how we feel. Let me give an example. Once a claim surfaces, a “prompt and thorough” investigation becomes the critical action. As lawyers, we are trained to ask for, as Sergeant Joe Friday would say, “just the facts ma’am.” We are not supposed to ask how anyone “feels.” That’s the forensic psychiatrist’s job. Unfortunately, this is one of the critical gaps in our thinking.

It is no surprise that even companies that conduct investigations with the best intentions find themselves with an employee who is upset and waiting to quit or be fired.

Having represented a significant number of women in sexual harassment cases, I can tell you that almost every one of them was offended by the fact that, although the company did conduct an investigation, the company never once asked how they “felt.” After reporting only the facts and not the feelings, the women felt drained and manipulated. In their minds, these women thought, “You don’t care about me, you don’t acknowledge or validate me, all you really care about is protecting yourself.”

It is no surprise that even companies that conduct investigations with the best intentions find themselves with an employee who is upset and waiting to quit or be fired. Often, the only thing we
need to feel better is validation. The opposite of validation is to be ignored: i.e., told we shouldn't feel that way or are too sensitive, and unfairly judged or criticized. When employees do not feel validated, a whole slew of bad things happen, including a breakdown in communication, defensiveness, evasiveness, fear, and loss of productivity. Make no mistake about it: negative emotions, just like positive ones, are contagious. The negative emotions of a former employee are contagious. Negative emotions ex-pressed between lawsuit participants and their counsel are contagious. They spill over not only into our workplaces but also to our families and deep into our own minds.

**Emotional Intelligence and the Ability to Generate Win/Win Solutions**

When it comes to the attorneys and adjusters who manage employment practices claims, their emotional competency will be the single most important factor in determining their ability to generate win/win solutions. Consider also the human resource manager and the investigator. Do they really understand others, engage in active listening, and acknowledge and validate? Are they sympathetic to the person’s circumstances? Will they unite or will they create dissention among the defense team? Do they have the ability to facilitate the plaintiff and their attorney in making reasonable, as opposed to unreasonable, demands?

Or, will they upset the plaintiff to such an extent that he or she and their attorney are determined to fight, regardless of the possible outcome? Ideally, the company and its representatives will be adept at shifting the plaintiff’s focus away from blaming and justifying and toward helping the plaintiff accept responsibility, at least to some degree.

It is my experience in dealing with opposing counsel during the past 15 years that the best attorneys are not those with the strongest grasp of the rules of evidence or legal technicalities, but rather those who are adept at relating to people. The attorney who will best serve the client is one who can develop a rapport and communicate with a jury effectively. Such lawyers also have the greatest chance of keeping their client out of court in the first place.

My experience tells me 80 percent of workplace risks are relationship failures, rather than the failure to have or properly implement policies and procedures. As stated by Kevin M. Quinley, CPCU, ARM, in *Claims* magazine, “Good relations between employers and employees are key to low or no losses. Be sure that employees feel comfortable in reporting or discussing any problems and that managers and supervisors respond to any complaints in a positive and caring manner.”
**Concluding Thoughts**

The bottom line is that EQ, not mastery of the legal technicalities, is the most important factor in determining whether, and to what extent, an organization will experience employee claims. But, because it is a “soft” issue, risk management literature has virtually ignored the subject. Nevertheless, since EQ is such a critical issue, this won’t last long.

I note that very few employment practices claims appear to emanate from today’s newer and more challenging and exciting work environments. For example, I see more auto dealerships being sued than dot.coms. Perhaps this trend provides a key to the root of all employment practices risk management: place people in an environment where they feel good about themselves and they are much more likely to be focused on adding value and taking responsibility. Such environments will have no room for abusive, discriminatory, or blameworthy conduct.

In this issue we opened the door to EQ as a risk management variable; in the next issue, we’ll explore some additional components of EQ. The article will address questions such as the following.

1. What are the various testing mechanisms available for assessing EQ?
2. How effective are these tools?
3. What are the legal pitfalls associated with these assessment efforts?
4. What is the ultimate cost/benefit of assessment tools?
Part II: The Legality and Effectiveness of Employee Assessment Tools

The military first used character assessment tools, designed to evaluate what we now call emotional quotient, as far back as World War I. Private employers adopted these tests after World War II and used them at an increasing rate until threats of law suits and agency regulation scared them away. In a series of public-sector cases, some tests were found to have had a disproportionate or disparate impact on protected classes of persons. More recently, employees have made claims alleging the tests also violate their right to privacy under state and federal legal theories. (We will discuss the legal issues associated with testing later in this article.)

Despite such claims, I have found a half-dozen of these assessments to be accurate in their ability to identify my core character traits. Moreover, the assessments have afforded me valuable insight for personal and professional improvement. Indeed, there are a number of effective tools on the market that should be used every time a company makes a hiring or promotional decision. Such tools should also be used to further develop effective communication and understanding between employees and management.

Since we are pursuing a risk management/legal analysis of employee testing issues, the appropriate starting point in the legal analysis begins with guidelines the Equal Employment Opportunity Commission (EEOC) promulgated in 1973. These guidelines are summarized in Figure 1.

Today, construct validity is the standard by which most current assessment tools are validated.

The guidelines recognize that in 1973 construct validation was a relatively new field. That is no longer true. Today, construct validity is the standard by which most current assessment tools are validated. The guidelines suggest that when evaluating construct validity, the following occur:

1. There should be a job analysis identifying critical work behaviors and the constructs behind them. For example, if the willingness to open a dialogue is an important work behavior of a salesperson,
candidates may be most successful if they have an outgoing or extrovert personality type.

2. A selection procedure should be identified that measures the construct.

3. The guidelines then suggest that the relationship between the construct, selection procedure, and work behaviors be supported by one or more criterion-related studies.

Based upon the summary of the EEOC guidelines in Figure 1, the following points become clear:

- To anyone but an expert, these definitions are confusing at best.
- The EEOC does not prohibit the use of psychological testing.
- Assessment tools are only prohibited where they have a disparate impact on a protected class.
- Even if a particular assessment does have a disparate impact, the employer is not liable under Title VII if the employer can show that the tool accurately predicts successful job performance. This is what construct validation is all about.

**Summary of Case Law Involving Employee Assessment**

The legal issues surrounding the use of personality assessment tools can be boiled down to two subject areas: (1) disparate impact claims under Title VII of the Civil Rights Act (and similarly related statutes) and (2) invasion of the right to privacy claims.

I will summarize the core issues in these two areas. Since this is not a legal brief, I will not supply you with a litany of case citations. Websites are provided later in this article to help you obtain such information.

**Figure 1: Summary of Uniform Guidelines in Employee Selection Procedures (1978) CFR Title 29, Volume 4 Section 1607, et seq.**

The CFR guidelines apply to tests and other selection procedures which are used as a basis for any employment decision, including hiring, promotion, demotion, member-ship, referral, retention, licensing, certification, training or transfer. 1607.2(b). The guidelines are not intended, nor should they be interpreted, to discourage use of a selection procedure so long as it has been validated in accordance with the guidelines for each purpose for which it is used. 1607.2(c)

If the use of any selection procedure has an adverse impact on the hiring, promotion, or other employment opportunities of members of any race, sex or ethnic group it will be considered discriminatory and inconsistent with the guidelines unless properly validated. 1607.3(a)

An adverse impact is determined by the 4/5ths rule. A selection rate for any race, sex, or ethnic group that is less than 4/5ths of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact. 1607.4(d)

When developing assessment tools, employers may rely on construct validity studies. Evidence of the validity of a test or other selection procedures through a construct validity study should consist of data showing that the procedure actually measures the degree to which candidates have identifiable characteristics which have been determined to be important in successful performance in the job [emphasis added] for which the candidates are being evaluated. (For example, the ability to type well is important for a secretary.) 1607.5(b)
**Title VII Claims**

As the EEOC guidelines pointed out, any test may be used, provided it does not create an “adverse impact” on a protected class. In fact, when objective assessment/testing tools are properly used to make hiring or promotional decisions, statistics indicate that these tools actually reduced exposure to “adverse impact” claims.

The good news for small employers is that there have been few lawsuits filed against them alleging adverse impact. Most likely, this is because plaintiffs’ attorneys find it inefficient to litigate such claims. Proving disparate impact cases requires a large number of similarly situated employees to obtain statistical significance.

Assuming a test does have an adverse impact, the burden is on the employer to show that the test actually predicts successful job performance through validation and reliability studies. Having done so, it then becomes the burden of the employee to show that despite its apparent validity, the test was used as a "pretext" in the hiring decision. The majority of cases researched in this area either attacked the test as being inappropriate under the circumstances (i.e., not structured to help in the hiring process) or discriminatorily administered. (It is important to note that it is as much the implementation of an assessment tool as the tool itself that determines its validity. For example, if a company only uses an assessment tool with one particular group, then its administration could be considered discriminatory.) The courts have also appeared to grant greater leniency where the job in question is highly stressful or involves public safety (e.g., firefighters, police, executives).

**Invasion of Privacy Issues**

The most well-known case in this area is *Soroka v Dayton Hudson Corp.*, 235 Cal F App 3rd 654 (1991), in which a California Appellate Court found that the *compelling interest test* determines whether a psychological test violates an applicant’s right to privacy. In this case, Target department stores were using a blend of tests to help in hiring security officers. Among other areas, the tests contained questions concerning the applicants’ sexual, religious, and moral preferences. Because Dayton Hudson was unable to show that the tests directly measured the characteristics of a qualified security officer, the court determined that these intrusions invaded the applicants’ privacy.

A number of privacy cases decided across the country over the last several years have made it very clear that the “expectation of privacy” is at its lowest during the application stage. Conversely, courts appear to place a higher burden on employers who use assessment tools when making promotional or downsizing decisions. It also appears that the manner in which a test is presented and how its results are communicated go a long way in creating the perception of whether it was fair or invaded a person’s privacy.
Figure 2 provides a summary of effective guidelines for using character assessment tools in the hiring or promotional processes, based on case law and EEOC guidelines. An extensive review of the claims alleging discrimination or invasion of privacy reveals a minimal risk to employers. In fact, proper use of these tests actually reduces an employer's exposure because it moves beyond the interviewer's subjective analysis to a more objective standard. For example, while an interviewer may have some prejudgments and perhaps discriminatory notions about what makes a good salesperson, use of the proper assessment tools will enable the interviewer and the organization to move beyond these potentially destructive beliefs.

**Costs versus Benefit Analysis of Testing**

As with any risk management analysis, a company must weigh the costs versus the benefits when conducting an employee assessment. The cost of an assessment tool includes administration time and any fee paid for using the tool (any-where from $25 to $200 per use). Should someone file a lawsuit or make a claim with an administrative agency resulting from the use of such a tool, defense costs must also be considered. As already discussed, however, a very small number of claims have actually been filed against companies using assessment tools. My review unearthed less than a dozen such claims filed against private employers.

**Figure 2: A Checklist for Using Character Assessment Tools**

- Conduct a job analysis and profile critical factors for success.
- Make sure that any assessment used is both reliable (consistent in its application, meaning that an applicant taking the test on multiple occasions receives similar scores or results) and valid (it accurately assesses the requisite skills for the trade or job in question), before the test is used. Ask that any assessment provider furnish you with these studies.
- Verify that the assessment is designed for the specific process being undertaken (i.e., hiring, team facilitation, promotion).
- Obtain permission for use of the assessment from the applicant.
- Be consistent in using the assessment (i.e., use it for all job applicants and promotional decisions in a specific job class).
  - Don’t use the assessment as a gatekeeper. Rather, it should be only one of several factors for making employment-related decisions.
  - Make sure the assessment focuses on major aspects of the job. Preferably the assessment correlates with any applicable job descriptions.
  - Maintain the confidentiality of assessment results.
  - Avoid asking about sex, religion, politics, and social beliefs.
- Consider outsourcing the assessment function to a third-party testing firm whose credentials you have checked.
On the flip side of the equation are the myriad benefits that can be derived from using employee assessments. These benefits include not only the potential for greater productivity, but also the avoidance of conflict and job failure, which may turn into a lawsuit or agency claim. In addition, because validated tests do not discriminate according to age, sex, and race, using tests can reduce an interviewer's subjective biases, ultimately making the selection process fairer for all candidates.

Some Emotional Intelligence/Employee Assessment Links

There is a wealth of useful material addressing the topic of employee testing and emotional intelligence available on the Internet. Figure 3 lists a number of useful web sites that provide background material concerning employee assessment tools and several actual tests that can be taken online.

Employment Liability Profiles: Victims and Victimizers

While I have seen a number of psychological workups, I am aware of no published studies (which is not to say that there aren't any) providing the emotional profiles of either the victim or the accused in today's employment practices liability cases. To date, little or none of the empirical inquiry has focused on the interrelationship between emotional quotient and susceptibility to employment liability risk claims. It is therefore necessary to design studies with those issues in mind. Cooperation between the corporate, legal, and insurance communities could go a long way toward facilitating this research.

To achieve that end, the following are the kinds of questions to be asked when things go wrong at the emotional level:

1. How was that secretary feeling when she didn't use the company's sexual harassment complaint procedure?
2. Why was the executive willing to jeopardize his job and career in exchange for a fling at the office that could only end in disaster?
3. Why do we hold beliefs that someone who is different from us cannot be as competent as we are?
4. How could someone possibly get so angry that they would be willing to injure a coworker?

Researchers have asked similar questions when it comes to criminal activity for hundreds of years. (What is in the mind of the mass murderer? Why do illegal drugs have such a hold on people?) But we seldom ask these questions about behavioral issues as they pertain to the workplace. Perhaps if testing procedures were able to collect emotional competency profiles of the plaintiffs and defendants in employment practices liability cases, we would have a better understanding of why these claims surface in the first place.
Over the past two years I have seen a great deal of literature indicating that claims exposure in the employment practices area is related to the culture of the organization. This is a realization that has been long in the making. When you think about corporate culture is the collective EQ or “character” of an organization. I submit that a company’s employment practices litigation profile has infinitely more to do with its collective emotional intelligence level than does its level of technical compliance. For example, a number of my clients display an enviable degree of cultural synergy and corporate cohesion, yet poor adherence to compliance standards. However, none has ever been involved in even a single employment-related lawsuit. In sharp contrast is the fact that I have never represented a corporate client in a sexual harassment case that did not have a highly detailed, well-documented sexual harassment policy.

**Conclusion**

So, what can we learn from Daniel Goleman (see Figure 3) and the work of others in this field of employee assessment? First, we are certainly going to learn a number of new technical terms. Somebody doesn’t just have a “good personality.” Now, they score high on 8 out of 12 “relevant emotional competencies.” Top salespeople don’t merely know how to communicate with the customer; they possess a set of measurable skills including high empathy and tolerance. The risk is that such terminology causes more confusion than it provides clarity. As an example, whenever I argue a matter before a jury, I stick to the “rule of three.” If I can’t convince a jury with my three best arguments, then I should have settled the case before it even reached a jury.

**Figure 3: Emotional Intelligence/Employee Assessment Web Sites**

- **www.zeroriskhr.com.** A state-of-the-art assessment tool designed to assist recruiters, managers, and human resource personnel in the interviewing process and, ultimately, in making effective hiring choices. The product is offered by International Risk Management Institute, Inc., and is supported by more than 20 years of validation studies.
- **www.testpublishers.org.** Frequently asked questions regarding the use of testing tools.
- **www.eiconsortium.org.** The Consortium for Research in Emotional Intelligence in Organizations was founded by Daniel Goleman and his associates. There are a number of excellent articles available at this site including “The Business Case for EI,” prepared by Cary Cherniss PhD.
- **www.eqi.org.** This site contains a very frank approach to the subject of emotional intelligence.
- **www.homearts.com.** This site contains a free 12-question emotional intelligence test.
- **www.queendom.com.** This is a fascinating site that offers a number of free EQ tests and other assessments. It contains a 70-page quiz that provides an EQ analysis.
- **www.utne.com/azEQ2.tmpl.** A free EQ test, apparently prepared by Goleman. The test-taker is given an EQ score based upon a response to 10 multiple-choice questions. I like the fact that it provides an explanation of each question and scores for each of the choices, but I don’t necessarily agree with all of assumptions supporting what are considered the most desirable answers.
If you really care about being good at what you do, you must first focus on your own emotional competencies.

The question then becomes, “What are you doing about EQ in your organization?” As the saying goes, “What comes to you comes from you.” If you really care about being good at what you do, you must first focus on your own emotional competencies. Begin by taking several of the assessments noted in Figure 3. If you seek to go further, have yourself analyzed by up to five different sources. The cost is but a drop in the bucket—compared to the impact such assessments could have on you and your relationships.

In addition, ask other people to assess your emotional intelligence. What can they see about you that you can’t see for yourself? Don’t be afraid to find this out. The key question is, “What are you going to do about it?” Once you have undergone a thorough self-analysis and improved your own competencies, you can then challenge the people around you to do likewise. You will have to lead by example. If you can’t get support for this effort on a companywide basis, pursue it on your own. Then, go to work on the organization, your law firm, or your insurance company.

In writing this article I anticipated raising many more issues than I could resolve. That said, let me offer four specific steps you can take.

1. Identify the emotional competencies of key stakeholders in the risk management/employment liability equation, including the employees (at all levels), the risk manager, the human resources department, corporate attorneys, and compliance officers.

2. Analyze the emotional quotient of both the victims and the accused in employment liability cases. Much of this input will by nature have to come from former coworkers. This is necessitated by the fact that both the victim and the victimizer will generally no longer be with the company. In reality, coworker input may actually be more accurate given the limitations of the litigants’ self-awareness.

3. Once your research has been completed, identify the 80/20 of critical emotional competencies (i.e., the 20 percent of competencies that, when they appear to be lacking, seem to cause 80 percent of all claims).

4. Incorporate this knowledge into compliance training programs for all stakeholders within the organization.

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