



How to Hire the Best People without Breaking the Law

Keep abreast of new employment laws by following these guidelines.

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The field of employment law is rapidly changing. To accommodate these changes, sidestep lawsuits, and avoid hiring problem employees, follow these guidelines:

Rethink Your Hiring Practices.

The movement today is toward dismantling the traditional organization in which employment was well-defined and secure. “Jobs” will soon cease to exist. In their place will be employees completing tasks on a project-by-project basis. Old forms of hiring, compensation, and hierarchy will be gone. The organization that fails to rethink its compensation, hiring practices, evaluations, and structure will be in serious trouble. The people who do the work for today’s and tomorrow’s organizations are contractors, not employees. The benefits of de-jobbing and outsourcing are greater quality, flexibility, and a greater pool of talent than any organization can have in-house.¹

At the same time, finding the right people is the only way you can assure your organization’s success. When hiring people, you must go beyond checking their education, experience, training, and basic skills.

You must also consider the characteristics that make individuals what they are. Recent research found that *attributes* such as trustworthiness and commitment are at least as important as *skills*, such as conflict management, in predicting job performance in nonprofit organizations.²

Screen Applicants Thoroughly.

One of the biggest mistakes employers make is insufficient screening. Courts are holding employers liable for negligent hiring if they don’t adequately screen applicants. Staggering numbers of employment-related claims are being filed in state and federal courts. Such claims often result in tremendous employer liability and expense, causing employers to settle cases that may seem frivolous in order to avoid the risks and costs of litigation.³

Screening will alert you to applicants who may become problem employees. Effective screening predicts behavior in one of two ways—by evaluating the applicant’s past behavior or by making inferences based on psychological assessments. A polygraph examination, for example, analyzes past behavior. Pre-employment screening procedures

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elicit information either directly from the applicant or indirectly through reference or record checks. Background checks can verify people’s reliability and honesty—crucial predictors of successful employment.

Update Your Interview Procedures.

In one study, researchers found that a computerized interview of applicants was more likely to develop accurate information than traditional interview methods.⁴ Interviewing via computer assures that all applicants are asked the same questions in the same way. In case of a lawsuit, such techniques will weigh in your favor.

Useful as it is, however, the computerized interview shouldn’t stand alone. Follow it up with a face-to-face meeting. Take careful notes during the interview and document the factors influencing a decision. You mustn’t decide on the basis of emotional feelings. Under the law, instincts and



favorable impressions aren't sufficient reasons for selecting one candidate over another.

The hiring decision must be based on how well a person can perform now. You can't reject qualified people for fear they'll become too ill to work in the future. Likewise, you can't decide not to hire qualified people with HIV or AIDS for fear of higher medical insurance costs, worker compensation costs, or absenteeism.

Create Application Forms with Care.

Application forms are more than papers for the personnel file; they're important legal documents. Every application form should ask for the following information:

- full name, address, social security number, and residence addresses for the past five years
- employment history, names and addresses of previous employers, job titles, dates of employment, supervisor references, and reasons for leaving
- whether the individual has ever been convicted of a felony or serious criminal offence that may bear upon the application; if so, the date, place, and nature of the crime; and a statement that an affirmative answer will not automatically disqualify the applicant from consideration for employment
- request for the applicant's written consent for you to investigate their employment, educational, and personal references and for third parties to release such information to you; if the applicant refuses such consent, you should ask why and you may wish to decline further consideration of any such applicant
- request for the applicant's written consent to a credit report, criminal background check, and investigative consumer report.

You may require fingerprints and photographs of applicants if you use them solely for internal investigations and legitimate business purposes.

Test with Caution.

You may not conduct a medical examination until after a job offer is made and then only if you give the same exam to all recipients of offers for that job. While the offer can be conditioned on passage of a physical examination, the Americans with Disabilities Act (ADA) prohibits the exclusion of disabled applicants based on non-job-related physical criteria that are not consistent with business necessity. You may, however, ask questions about the ability to perform specific job functions. The application form may contain a broad authorization for you to seek information from doctors, hospitals, and others about the employee's prior medical record. Any medical information obtained through medical-related inquiries or examinations must be kept confidential and may be disclosed only to supervisors, managers, first-aid personnel (if emergency treatment may be required), and government officials investigating compliance with the ADA.⁵

Testing to detect illegal drugs isn't considered a medical examination and isn't prohibited by the ADA. Therefore, you may conduct such testing and make employment decisions based on the results. But you must avoid unnecessary surprise. Let applicants know at the very start of the application process that a drug test is required. Note this requirement clearly on the employment application and at the employment office.

Seek Help.

There are many agencies that match people and jobs. According to Barry Shammis, president of

Selecting Winners, Inc., many employers are unprepared to make hiring decisions. They lack a systematic approach and make mistakes based on behavior patterns that affect their ability to make clear decisions. Also, they often lack enough information about the candidate due to mishandling the interview. Employment agencies offer a systematic approach based on objective data. ■

Footnotes

¹See "Outsourcing in the Nonprofit Sector," "Here Comes Your 21st Century Workforce!", and "Brave New Workers in a Brave New Workplace," *Nonprofit World*, (Vol. 15, No. 5, Vol. 17, No. 4, Vol. 18, No. 6).

²See "Study Shows Gaps in Nonprofit Management—and Ways to Improve," *Nonprofit World*, Vol. 19, No. 3.

³See "Recent Developments in Employment Law," *Tort and Insurance Law Journal*, Winter 1995.

⁴Christopher Martin, College of Business Administration at Louisiana State University, and Dennis Nagao, College of Management, Georgia Institute of Technology, performed this study.

⁵See "Nonprofits & the Americans with Disabilities Act," "Do Your Job Descriptions Comply with ADA?" and "How to Accommodate Disabilities under ADA," *Nonprofit World*, (Vol. 11, No. 2, Vol. 11, No. 3, Vol. 18, No. 5).

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