

LEGAL BRIEFS

Employment Law Training Series



Recruiting and Hiring: A Manager's Guide to Staying Out of Court

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Facilitator's Guide

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Introduction

This program is designed to help your managers recognize the common pitfalls regarding recruiting and hiring as well as actions they can take to keep themselves and your organization on the right track and out of court.

Recruiting and Hiring: A Manager's Guide to Staying Out of Court provides answers to several of the most common questions managers struggle with regarding recruiting and hiring.

- Do managers have to disclose everything about a job?
- Doesn't everyone puff up the job in an interview so that you can get the best candidates?
- Do I have to cut applicants some slack if they look like they are over 40?
- Can I eliminate men for certain positions that I feel are better suited to women?
- Do I have to get consent before I do a reference check on an applicant?

In addition, the program provides managers with four actions that they can take to find and hire the right people and keep themselves and their organizations out of court.

This program is designed to cut through the legal jargon to provide clear and concise information in terms that everyone can understand.

Uses

This program may be used in many ways:

- 60 minute training session
- Staff meetings
- Conferences
- New manager orientation
- Self-study/self-directed learning

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Key Learning Points

During the program, participants will learn:

- The key areas to pay attention to when describing a job opening
- How to deal with members of a protected group
- How to avoid illegal questions during an interview
- The five common pitfalls of recruiting and hiring
- The four specific actions managers can take to hire the right people for the job and keep themselves and their organizations out of court

Training Materials

Video – The video, *Recruiting and Hiring: A Manager’s Guide to Staying Out of Court* is divided into two segments. The first segment provides information on the five pitfalls of recruiting and hiring situations. The second segment provides managers with four action steps to hire the right person and help their organizations stay out of court.

Facilitator’s Guide – The facilitation guide contains complete step-by-step directions for conducting this course. With the exception of the session evaluation, the facilitation guide is not reproducible. If additional guides are needed, please contact your vendor.

Participant’s Reference Guide – The participant’s reference guide contains a complete review of the key information covered in this course, along with supplemental information regarding recruiting and hiring. In addition, it includes a pre-assessment and post-assessment. The post-assessment is removable and designed to be included in the employee’s personnel file, if desired. The participant’s reference guide is not reproducible. If additional copies are needed, please contact your vendor.

Agenda

This program is designed to be presented in a one-hour training session.

60-Minute Agenda

| | |
|---|------------|
| Program Introduction | 5 minutes |
| Show and Review Video | 20 minutes |
| Optional Review of Supplemental Info. | 30 minutes |
| Program Debrief | 5 minutes |

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Facilitator's Checklist

Before Training

- Read through the entire facilitation manual
- Watch the video several times
- Determine the length of your session
- Send out a memo inviting participants to the training
- Locate audio/visual equipment and make sure it works
- Make copies of any exercises needed for the training
- Identify any personal stories that may make the session more meaningful to participants

Day of the Training

- Review your notes
- Check the TV/VCR
- Prepare flipcharts
- Check the lighting of the room
- Set up the room arrangement. Participants will need to get into small groups during the session

After the Training

- Review the post-assessment and session evaluation
- Document the recommended changes to your presentation or materials
- Follow-up with participants on next steps, comments, or action plans, as agreed

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Step-by-Step Facilitation Instructions

Step 1 – Introduce the program.

Communicate the following to participants:

All organizations have to recruit and hire new employees. It is one of your most important duties. Finding the right person for the right job can be a struggle for any manager, not to mention the myriad of legal issues that surround recruiting and hiring. Today, we are going to try and simplify these issues by focusing on the toughest issues managers face and providing you with some real-world actions to survive recruiting and hiring.

By the end of this program, you should know:

- **The key areas to pay attention to when describing a job opening**
- **How to deal with members of a protected group**
- **How to avoid illegal questions during an interview**
- **The five common pitfalls of recruiting and hiring**
- **The four specific actions managers can take to hire the right people for the job and keep themselves and their organizations out of court**

Before we go any further, let's take a few moments to introduce ourselves.

Step 2 – Introduce yourself and then have participants introduce themselves.

This would be a good time to share a story or personal experience regarding obstacles that you have encountered regarding recruiting and hiring employees. By opening yourself up and sharing something personal, you will give participants permission to do the same.

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Step 3 – Distribute a copy of the Participant’s Reference Guide to each participant.

Communicate the following:

Before we view the video, I’d like you to take a few minutes to complete the pre-assessment in your desk reference guide. This self-assessment is designed to give you a clearer picture of your present understanding of recruiting and hiring legal pitfalls.

Give participants a few minutes to complete the assessment. When participants are finished, collect assessments for comparison with the post-assessments that will be done at the end of the session.

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Pre-Assessment - Facilitator's Copy

Instructions: Please read the statements and circle the appropriate response.

1. Placing a help wanted advertisement that includes the phrase "we're looking for someone who is young and eager and ready to learn" is generally acceptable when recruiting for entry-level positions.

True or False

2. You should always accurately describe a job when advertising for a position, creating a job description, or talking with a candidate.

True or False

3. Race, national origin, gender, and age are the only legal criteria you can use to determine if a candidate is a member of a protected group.

True or False

4. When recruiting and hiring, you are required to give preference to a person who is a member of a protected group.

True or False

5. According to EEOC guidelines, it is acceptable to ask questions during an interview that are not job specific as long as you can document that the questions are needed to gain a well-rounded, accurate picture of the candidate.

True or False

6. You can ask questions about a candidate's personal situation, as long as you ask the same question of every candidate.

True or False

7. In checking references, you can never be held liable if you fail to talk to the same number of references for each candidate.

True or False

8. You should always have a candidate sign a consent form before conducting reference and background checks.

True or False

9. You could face a discrimination lawsuit if you rely primarily on recommendations from a network of trusted associates and friends in order to find potential job candidates.

True or False

10. One of the best ways to avoid claims of discrimination in recruiting and hiring is to ensure everyone has an equal opportunity to compete for a position.

True or False

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Step 4 – Show the video.

Communicate the following:

Now we are going to watch a video that addresses some of the tough questions managers have asked regarding recruiting and hiring. When we are done we will take a few minutes to review the information the video covers and talk about how those ideas apply within our organization.

Play the video from start to finish.

Step 5 – Review the key points.

Communicate the following:

The four actions you can take to make sure you are staying out of trouble are:

- 1. Be Prepared. Being prepared means making sure all of your job descriptions are up-to-date and clearly list the essential functions of the job.**
- 2. Don't Omit/Puff Up. Don't omit or puff up information about the job. Make sure you provide a complete, accurate picture—the good stuff and the challenges they'll face.**
- 3. Provide Equal Treatment. Make sure everyone gets equal treatment—from the questions you ask, to the skill tests you give, to the number of references you check.**
- 4. Make it Job Related. Make sure what you ask, say, do, or write down is job related. Absolutely everything should be directly related to determining a candidate's ability to succeed on the job. No exceptions.**

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Step 6 – Discuss the case study.

Communicate the following:

In order to gain some perspective on the information covered in the video, let's take a few minutes to discuss a hypothetical situation that you might face as a manager.

You have had three applicants respond to an ad that you recently put in the Sunday paper. You did not post the position internally, because you don't want someone in the job who has any of the "political baggage" that's being carried around since your organization went through a merger nine months ago. In addition, the employee who previously had the position decided to become a stay-at-home dad. You thought you had someone in the position for a while because you didn't expect a man to be a stay-at-home parent. You want to make sure you get applicants that are going to want to stay in the position for a while. Your applicants are:

- A middle-aged female who has 20 years of great experience under her belt**
- A male Jamaican-American graduate student who is really enthusiastic about the job**
- A deaf applicant with 12 years of experience doing the exact same job functions as the current job opening**

Your assistant walks in and sees the resumes on your desk and comments about the fact that she went to school with the graduate student. She said that he was accused of stealing from the dormitories when they were getting their undergraduate degrees.

The ad you placed in the paper discussed the job functions, salary, and the many opportunities for promotions within the company.

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Q. What are the manager's potential potholes with this scenario?

- A. *All three of the applicants are in a protected class. The deaf applicant may need an interpreter for the interview. The manager has not posted the position internally. The manager is looking for someone to stay in the position for a while, but has been stressing the opportunities for promotion as a way to attract candidates. The manager may automatically reject the Jamaican-American candidate based on the assistant's comments, even though, to his knowledge, the candidate was never convicted.*

Q. What should the manager make sure to do during the interviews?

- A. *Be prepared for the interview. The manager needs to make sure to have all the job descriptions up-to-date and clearly list the essential functions of the job. Make sure not to omit or puff up information about the job during the interview. Make sure all questions are job-related. Make sure all applicants are treated equally.*

Step 7 – Complete the post-assessment.

Ask participants to complete the post-assessment in their Participant Reference Guide. Then take a few minutes to review the correct answers with the participants.

Ask the participants to sign and date the Certification of Training and then remove it from the back of the reference guide. The certification should be turned in at the end of the session.

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Post-Assessment - Facilitator's Copy

Instructions: Read the statements and circle the appropriate response.

1. Placing a help-wanted advertisement that includes the phrase "we're looking for someone who is young and eager and ready to learn" is generally acceptable when recruiting for entry-level positions.
True or False (False – It could lead to charges of age discrimination.)
2. You should always accurately describe a job when advertising for a position, creating a job description, or talking with a candidate.
True or False (True)
3. Race, national origin, gender, and age are the only legal criteria you can use to determine if a candidate is a member of a protected group.
True or False (False – You can also be a member of a protected group based on your religion, marital status, pregnancy, etc.)
4. When recruiting and hiring, you are usually required to give preference to a person who is a member of a protected group.
True or False (False)
5. According to EEOC guidelines, it is acceptable to ask questions during an interview that are not job specific as long as you can document that the questions are needed to gain a well-rounded, accurate picture of the candidate.
True or False (False – All questions should be job-related.)
6. You can ask questions about a candidate's personal situation, as long as you ask the same question of every candidate.
True or False (False – Asking questions about a candidate's personal situation can open the door for a lawsuit.)
7. In checking references, you can be held liable if you fail to talk to the same number of references for each candidate.
True or False (True)
8. You should always have a candidate sign a consent form before conducting reference and background checks.
True or False (True)
9. You could face a discrimination lawsuit if you rely primarily on recommendations from a network of trusted associates and friends in order to find potential job candidates.
True or False (True)
10. One of the best ways to avoid claims of discrimination in recruiting and hiring is to ensure everyone has an equal opportunity to compete for a position.
True or False (True)

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Step 8 – Wrap up the session.

Distribute the session evaluation and give the participants a few minutes to complete it.

Communicate the following:

When it comes to recruiting and hiring, we don't expect you to grasp every nuance of the law. However, to protect yourself and the organization, you are expected to follow the four actions we've just discussed.

Your Participant Reference Guide contains answers to more frequently asked questions regarding recruiting and hiring, as well as a list of additional resources available to you.

I encourage you to take the time to review the information, and keep the booklet in a handy place for future reference.

Thanks for your time.

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Session Evaluation

Instructions:

Please answer the following questions. Your answers will help assess the effectiveness of this training and identify areas for improvement.

As a result of this training, are you better able to:

1. Accurately describe a job to a potential candidate without omitting or puffing up information?

Yes No Not Sure

2. Deal with members of a protected group?

Yes No Not Sure

3. Provide all job applicants with an equal opportunity to be considered for a position?

Yes No Not Sure

4. Avoid illegal questions during an interview?

Yes No Not Sure

5. Identify four specific actions to take to stay out of legal trouble?

Yes No Not Sure

6. My overall rating of this presentation is:

a. Excellent b. Good c. Satisfactory d. Needs Improvement e. Unsatisfactory

Comments for Presenter:

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Supplemental Reference - Facilitator's Copy

The following supplemental reference information is contained in the Participant's Reference Guide.

Q. Is it legal to ask a potential candidate to take a medical exam before you offer them a job?

A. *No, you may not ask an applicant to take a medical test prior to making the applicant an offer of employment. Asking applicants to take an exam prior to an employment offer allows you to obtain information regarding an applicant's disability that may alter your hiring decision. Under the Americans with Disabilities Act you may not discriminate against an applicant because of a disability.*

Q. What is behavior-based interviewing?

A. *Behavior-based interviewing focuses on the past behavior of a candidate to show how they may behave in the future. The interviewer asks questions to get the applicant to discuss specific behavioral examples from the applicant's past life and work experience.*

Q. Why is behavioral interviewing effective at staying in legal compliance?

A. *Behavior-based interviewing questions are focused specifically on the functions of the job and the skills needed to perform the job. Behavior-based interview questions are prepared in advance and easy to ask to each candidate to maintain consistency in the interview process.*

Q. What is a bona fide occupational qualification (BFOQ)?

A. *This means that you cannot discriminate against a candidate because of age, gender, disabilities, ethnic origin, sexual preference, or marital status. The BFOQ basically means that there are some interview questions that you are just not able to ask.*

Q. What are some examples of questions that should not be asked?

A. *Some examples of questions that should not be asked are:*

- *When did you graduate from college?—age discrimination*
- *Which Sunday school do your children go to?—religious discrimination*
- *Do you live by yourself?—marital status discrimination*
- *Do you have any back problems we should be aware of?—disability discrimination*
- *Is English a second language for you at home?—ethnic origin discrimination*
- *Do you belong to the gay and lesbian coalition?—sexual preference discrimination*

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Q. What are some examples of questions that may be asked?

A. *Some examples of questions that may be asked are:*

- *This job requires you to be proficient in Microsoft Office; how much experience have you had using the software and could you describe a challenging project that you had to complete using the software?*
- *Everyone in the department has to work an occasional Friday night in order to maintain adequate phone coverage for our clients. Will that be a problem for you?*
- *This job requires that the employee be able to lift boxes that weigh up to 75lbs; are you able to perform this job function?*
- *One of the most important qualifications for this job is that the candidate must speak Spanish fluently to deal with our Hispanic customers. Do you meet this qualification?*

Q. What if the candidate volunteers information that is not appropriate for you to know and may impact your hiring decision?

A. *You need to politely stop the candidate and let them know that you appreciate them sharing the information, but the information they shared will not be used as part of the hiring decision.*

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For Further Information

Here are some sources for additional information on recruiting and hiring:

Web Sites

The U.S. Equal Employment Opportunity Commission Home Page—
<http://www.eeoc.gov/>

Findlaw.com labor and employment law links—
<http://guide.biz.findlaw.com/01topics/27labor/index.html>

Telephone Numbers

Equal Employment Opportunity Commission
1-800-669-4000

Equal Rights Advocates
1-800-839-7372

Addresses for Recruiting and Hiring Information

U.S. Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20590

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