

Legal Briefs

Recruiting and Hiring

Participant's Desk Reference

Legal Briefs
Employment Law Training Series

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

Participant's Desk Reference

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FOR
PREVIEW
ONLY

INTRODUCTION

All organizations have to recruit and hire new employees. It is one of a manager's 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. In this guide, we are going to try and simplify these issues by focusing on the toughest issues managers face and provide you with some real-world actions to survive recruiting and hiring.

This desk reference contains critical information on the things you need to be aware of in terms of how recruiting and hiring impacts you as a manager, on a daily basis. It provides a complete review of the key information covered in the course, along with supplemental information regarding recruiting and hiring. Please keep this desk reference in your office as a permanent resource for information on recruiting and hiring.

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PRE-ASSESSMENT

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
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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KEY CONCEPTS & DEFINITIONS

1. Describing the Job

There are three key areas to pay attention to when describing the job. Omitting information and puffing up or exaggerating information about the job is a common problem. When it comes to language you have to be careful that the words you use don't imply some form of discrimination. Any information gathered regarding the candidate should be kept in a separate confidential file and access to that information should be limited.

2. Dealing with Members of a Protected Group

When it comes with dealing with members of a protected group, one of the most important things to keep in mind is that just about everyone is a member of at least one protected group. Protected groups can include:

- Race
- National Origin
- Religion
- Gender
- Age
- Marital Status
- Disability

Another very important point is that in almost all instances—you don't have to give preference to members of a protected group when making a hiring decision. What you are required to do under the law is provide everyone with an equal opportunity to be considered for a position. The key point to remember here is we're talking about equal opportunity. Nobody gets preference and nobody gets rejected just because they're a member of a protected group. As long as you give everyone an equal shot, chances are you won't have to deal with legal repercussions.

3. Avoiding Illegal Questions

Asking inappropriate or illegal questions is probably one of the areas that gets people into trouble more often than anything else. That is because the courts and EEOC guidelines have made it clear that you can't ask questions that:

- Discriminate against protected groups
- Don't predict successful job performance
- Are not job related

4. Personality Test and Profiles

Another issue that's somewhat related to illegal questions is the use of personality tests or profiles. Most states have strict guidelines about when and how these kinds of tests can be used as part of the recruiting and hiring process. If your organization uses, or is planning to use, personality tests or profiles, make sure you get an expert who is familiar with the legal restrictions involved. If you don't, you could end up facing a lawsuit.

5. Conducting Legal Reference Checks

Studies show that at least thirty percent of all résumés contain fabrications. So, checking out references and doing thorough background research on a candidate is becoming more and more important. Every day organizations come under fire for hiring people with a past the company should, and could have, been aware of. However, overly intrusive background checks may bring up issues of defamation, invasion of privacy, and violation of the Fair Credit Reporting Act. To avoid trouble, have prospective candidates fill out an employment application and have them sign a consent form giving you permission to check references. The consent should be worded so that it makes it clear that the candidate agrees they're not going to hold you or the reference liable for anything the reference might tell you. When you talk with references, keep your questions job related - things like skills, experiences, and attendance. Stay away from any kind of personal information question. Also, be sure to contact the same number of references per candidate.

Another thing to watch out for is gaps in a candidate's résumé. If a candidate omits listing a recent employer as a reference, or you notice gaps in his or her employment or education history, it's okay to ask the candidate to explain them.

Also, be careful when you are calling on references that you don't pretend to be someone you are not. Don't pretend to be an old friend or relative in order to solicit personal information about a candidate.

6. Avoiding Reverse Discrimination

You can encourage diversity in the workplace without committing reverse discrimination, or any kind of discrimination. The key is making sure everyone has an equal opportunity to compete for the position. That means making sure that you accommodate the needs of all potential candidates in your recruiting and hiring. It means making sure that your recruiting efforts include areas where a diverse group of people have the opportunity to find out more about the positions you have available. It also means advertising positions in the right mix of media to attract a broad pool of candidates.

In most cases, if you are making a good faith effort to ensure that everyone has an equal opportunity to prove they can do the job, then you shouldn't have too much to worry about.

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THE FOUR ACTIONS

There are four action steps to help make sure you stay out of legal trouble.

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 out.

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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FAQS ABOUT RECRUITING AND HIRING

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 can not 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*

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.*

NOTES

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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 Harassment and Discrimination Information

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

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CERTIFICATION OF TRAINING

I understand the information presented in the course, *Recruiting and Hiring: A Manager's Guide to Staying Out of Court*. I have also completed the post-assessment for this course and reviewed the correct answers with my session facilitator or manager.

Employee's Signature	Date
Facilitator's or Manager's Signature	Date

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This Certification of Training may be included in your personnel file as a record of having successfully completed this training.