

Effective Hiring Practices

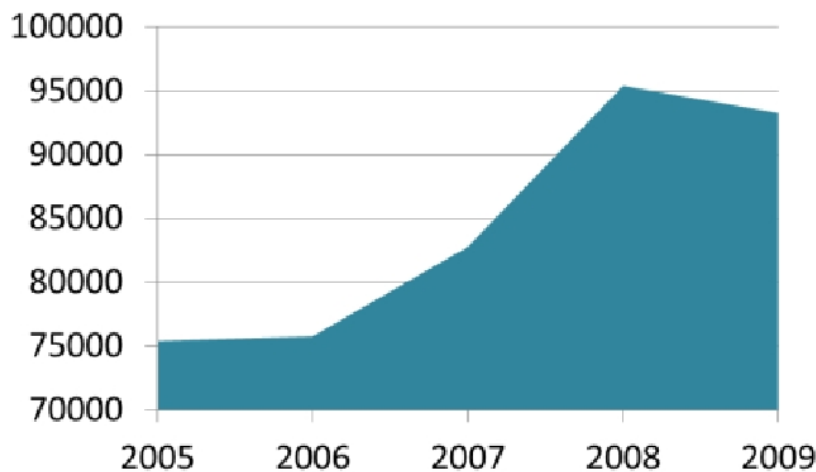
Hire the Best - Not the Rest

PURPOSE

This manual outlines specific steps to be taken during the hiring process. This process will result in higher qualified applicants, increased productivity, and a reduction in employment related problems while assisting the hiring manager in complying with both state and federal requirements.

HIRING PRACTICES

Hiring is a manager's most important job. This is emphasized in the graph below which highlights the increase in EEOC claims filed in the last few years.



Bad hires become bad employees. This includes managers as well as hourly workers. EEOC claims filed against a company are a direct result of a bad hire. According to a 2010 Jury Verdict Research Survey, the median award for an employment related claim in 2009 was \$326,640. The highest average cost was for retaliation. The highest average jury award was for age or disability discrimination. The most common lawsuit was for sex or race discrimination. These issues can be the result of a bad hiring process.

In order to hire the right employees, it is imperative to prepare prior to interviewing. Preparation must include the following steps:

- Creation of ADA position descriptions
- Interview worksheet / pre-written questions
- Determination of candidate sources
- Red flag screening process
- Interview
- Background checks
- Orientation of new employees

CREATION OF ADA POSITION DESCRIPTIONS

A position description questionnaire can be found under the Manager HR forms section of this website. This questionnaire should be completed for each position (not employee) within the Company. The purpose of a position description is to disclose the physical as well as the mental requirements of the position. When completing the position description questionnaire, base all criteria on the minimum qualifications for the job not the qualifications of the perfect candidate. For example, the organization may want all employees to have a minimum of a high school diploma; however, very few jobs in the United States require a high school diploma. A salesperson needs to have sales skills, be able to read and write, and operate a computer, but a high school diploma does not necessarily guarantee these skills.

As a result of the Americans with Disabilities Act, employers can no longer ask medically related pre-employment questions. In 1994, the EEOC issued enforcement guidance on pre-employment disability-related inquiries and medical examinations aimed at assisting its own investigators in their legal analysis of such inquiries and exams. The guidance presents a lengthy list of questions labeled “disability-related inquiries” that are illegal if asked before a conditional offer of employment is made. This prohibition against physical/health questions is an effort by the EEOC to ensure that employers do not discriminate against potential employees regarding their physical or mental disabilities. The following are examples of questions that could lead to problems with the EEOC and/or protected applicants/employees:

- How many days were you sick last year?
- Have you ever filed for workers’ compensation benefits?
- How much alcohol do you drink each week?
- Have you ever been treated for alcohol-related problems?
- What prescription drugs are you currently taking?
- Have you ever been treated for mental health problems?

If a question might solicit a response that would require an applicant/employee to disclose a disability, it is probably a prohibited question and should not be asked.

The position description questionnaire allows the manager of the vacant position to outline the physical and mental requirements of the position. The supervisor should complete the questionnaire and submit it to Human Resources for review. Human Resources will prepare the final position description and return it to the appropriate personnel within the Company. All completed position descriptions should be placed in a binder. The binder should be kept at the reception area or the location where applicants complete employment applications. Multiple copies of the acknowledgment page should be kept with the position descriptions as well. Prior to giving an application to a prospective applicant, the position description for the position in which they are applying should be presented to the applicant. Instruct the applicant to read the position description and complete the acknowledgment page along with the employment application.

If an applicant states on the acknowledgment page that he/she can meet the minimum physical and mental requirements of the position as outlined on the position description, the applicant should be given an application to complete. If the applicant states that he/she cannot meet the minimum physical/mental requirements of the position as outlined on the position description, the applicant should be asked if he/she would require a reasonable accommodation.

If the applicant completes the form and requests a specific accommodation, the employer must examine the potential reasonable accommodation. No employer should make any decisions based upon the nature of the disability itself without first examining what accommodation might be available that would permit the person to perform his/her essential job functions. Even in situations that may appear to be an obvious non-suitability for the job, failure to complete the process of analyzing potential accommodations as may be required under state or federal law is a mistake. However, if after analysis it is determined that no accommodation exists to enable a potential employee to perform his/her essential job function, the employer can stop the interview process at that time.

If an applicant states that he/she can meet the minimum mental and physical requirements of the job in which he/she applied for and does not ask for a reasonable accommodation, and then it is determined at a later date through either admission from the employee (once hired) or through actual job performance, that the employee cannot meet the minimum physical or mental requirements of the job, then the applicant may have knowingly misled the Company. In this event, the employer must review the facts and circumstances on a case-by-case basis to determine whether the employee knowingly was dishonest during the application process or could reasonably be deemed to have intentionally misled the Company during the application process. If the results of this review indicate that the employee was intentionally dishonest during the application process, the employer may terminate him/her.

Position descriptions are the only method of outlining the essential functions and the minimum physical and mental requirements of the job. Verbal non-documented attempts to convey the physical and mental requirements of the job leave the Company exposed to future claims. Position descriptions also improve the quality of the interview. The hiring manager can discuss the position thoroughly with each applicant, and every applicant will have a better understanding of the position and will be in a position to evaluate whether or not a match of interests exists.

Once the ADA position descriptions have been completed for all positions in the Company, an interview worksheet comprised of pre-written interview questions is ready to be completed. A sample worksheet titled "Sample Pre-Written Interview Questions" can be found under the Manager HR forms section of this website.

INTERVIEW WORKSHEET / PRE-WRITTEN QUESTIONS

When a manager begins an interview that he/she has not prepared for, the chance of problems arising from the interview or the chance of hiring the wrong applicant is high. The best way to eliminate this problem is creating a list of 10 - 15 questions that all applicants will be asked. In doing this the following will be accomplished:

- The pre-written interview questions will ensure all applicants will be given the same opportunity to succeed, resulting in fair and equitable treatment of all candidates.
- The pre-written interview questions will minimize the chance that illegal or inappropriate topics are discussed in the interview.
- The pre-written questions will serve as documentation as to how interviews are conducted and what questions are asked.

The position description must be reviewed prior to writing the interview questions. The questions should be based on legitimate occupational requirements as defined in the position description. Answers to the pre-written questions will elicit secondary follow-up questions; however, it is important to remember that questions concerning age, ethnic background, religious status, marital status, economic status, disability status, sexual orientation, or political persuasion should not be asked unless a bona-fide occupational reason exists to do so. For example, if an individual is being hired to serve as a spokesperson for the elderly, it would be acceptable to ask about age.

An interview that is professional does not include illegal questions. The following chart is based on guidelines and other directives issued by the various anti-discrimination agencies. It summarizes the types of questions often asked and the acceptable and non-acceptable questions associated with each topic.

Category	Questions NOT to Ask	Acceptable Alternative
Age	How old are you? What is your date of birth? These questions may be asked if they are accompanied by a statement that federal and state law prohibits age discrimination. However, age-related questions may create the wrong impression and should be avoided unless there is a valid age-related rule in effect: e. g. bona-fide apprenticeship programs are not subject to age discrimination programs.	Do you meet the state minimum age requirement for work? Are you over 18? 16?
Arrests, Convictions	Have you ever been arrested? As a general rule, this question should be avoided.	Have you ever been convicted of a crime?
Availability for work, Availability for travel	Can you work on Saturdays and Sundays? Do you have children? What are your child care arrangements? The first question may be interpreted as a sign of religious discrimination. The other two questions, as a sign of discrimination against women.	These are the hours of work... -or- Our work sometimes requires overtime. Can you work such a schedule? Do you have any obligations that would keep you from work-related travel?
Birthplace, Citizenship	Where were you born?	Are you legally authorized to work in the U.S.?
Clubs, Associations	To what organizations do you belong?	Do you want to provide any additional information that relates to your ability to perform the job?
Disabilities	Do you have a disability? Do you have any health problems? Have you ever filed for workers' compensation benefits?	Can you perform the essential functions of the job for which you are applying? Can you show me how you would perform those functions?

Economic Status	Have you ever had your wages garnished? Do you own your own home? Have you ever filed Bankruptcy?	No questions are appropriate.
Military Service	What type of discharge did you receive? Have you served in another country's armed forces?	Are you a U.S. veteran? List experience and special education received.
Name	Have you ever had your name changed? What is your maiden name?	Is there any additional information we need about your name to verify your employment/education record?
National Origin	What nationality are you?	No questions are appropriate.
Physical Characteristics, Photographs	Before meeting with applicant, requesting that the applicant submit a photograph.	No photographs until after hire.
Relatives	Who is to be notified in case of emergency?	Do you have any relatives who work for this company?
Religion	Do you have a religious preference?	No questions are appropriate.
Union Membership	Have you ever worked with in a union?	No questions are appropriate.

The candidate evaluation form can be found under the New Hire forms section of this website. Informing the candidate of what the interview process entails is recommended. Explain to the applicant that the Candidate Evaluation form will be used to ensure each application is given the same opportunity for the position by being asked the same questions. Let the applicant know that you will be writing down their responses and that they should not be concerned; it does not mean it was a bad response or good response. Inform the applicant that immediately after the interview they will be scored in three areas: professionalism (as it applies to the job), experience (as it applies to the Company needs), and desire (passion or just a job). Tell the candidate that at the end of the interview process the candidate with the highest score will be hired. If the applicant asks if they will be contacted after the interview, tell them only the successful candidate(s) will be contacted.

Once the interview worksheet, comprised of pre-written interview questions is completed, interviews need to be scheduled.

Scheduling Interviews

Give the ADA position description for the position in which the candidate is applying upon their arrival. Have them read the position description and then sign the acknowledgement. If the applicant states they can meet the minimum physical and mental requirements of the job, proceed by giving them an application to complete.

If the applicant states they cannot meet the minimum requirements and a reasonable accommodation is not available, thank them for coming in and wish them the best. If the applicant requests an accommodation, review the request (the Hotline is available for assistance). If the accommodation is reasonable, can be accomplished, and will allow the applicant to meet the essential functions of the job, proceed by giving the applicant an application to complete. If the accommodation does not appear to be reasonable, contact an attorney or the Hotline at (877) 416-1405 for assistance. Once the candidate has completed the application, red flag screening on the application will need to be conducted prior to the interview.

DETERMINATION OF CANDIDATE SOURCES

It is always a good idea to promote from within whenever possible. This sends a positive message to all employees that the Company provides opportunity for upward mobility. Hiring new personnel may not be necessary; job sharing (giving an employee additional responsibilities as well as additional compensation) is a common form of promotion.

Promoting from within accomplishes two things. First, the character of the employee is known which has obvious benefits. Second, the internal candidate understands how the Company operates which reduces the learning curve significantly. However, situations do exist where hiring an employee from outside is needed. This is typical in sales or management positions in which the Company is looking to change the way things are done in order to increase production or profits.

Before hiring an external candidate establish the pay and benefits package. Due to the Lilly Ledbetter Act it is very important to review previous hiring practices for this position to ensure the pay and other benefits are consistent with what this position has been paid in the past, regardless of gender, race, age, religion, national origin, etc. In addition, review the exempt/non-exempt status of the position. Once these determinations have been made, decide how candidates will be recruited, such as newspaper advertising, Internet advertising, networking, referrals, head hunters, etc. If a print advertisement is used ensure the Human Resources Department or the Hotline (877) 416-1405 reviews it before posting.

RED FLAG SCREENING PROCESS

The red flag screening process is based on the philosophy that good people do good things and bad people do bad things. How employees performed at their last employer(s) is often how they will perform in their next job.

In reviewing the application of thousands of employees that had either become problems or filed adverse claims against their employer, a list of common problems found on the applications was created. These common problems are considered red flags. The applications used to create this list did not have all 8 red flags present, but the majority had at least 2 to 3 red flags. It will take just a few minutes to review the candidate's application to determine how many (if any) red flags exist. The red flags are clearly defined with justification below. It is strongly recommended that a red flag screening take place after the application is received, prior to the interview. In the event an application has three 3 or more red flags, it is recommended that the application not be considered for an interview. Simply thank the applicant for applying and let him/her know their application will be kept on file. The results of the red flag screening will be extremely beneficial for managers as well as the Company.

- **Incomplete application** – Applicants who fail to complete the application will fail to complete job tasks in the future. In addition, these applicants present an increased risk for accidents and injuries as they tend to take short cuts and not follow established procedures, including safety procedures.
- **Sloppy application** – Applicants present an increased risk for causing personal injury to either themselves or others, as well as property damage to equipment, due to sloppy work.
- **Multiple jobs in the past 3 years** – If an applicant has had six jobs in three years, there is a good chance they will stay with your organization for six months. We are all creatures of habit; what we did in the past we will repeat in the future. Multiple jobs can also indicate a failure to become a part of a team environment.
- **New vocation after many years in one industry** – Unless the applicant has recently graduated from an educational program and is now certified or degreed in a new field, this applicant is typically problematic because they are leaving the industry they have worked in for years for reasons that are typically negative.
- **Employment gaps** – This applicant may have gaps for numerous reasons some acceptable, some not acceptable. Explore the reasons for the gaps with the applicant during the interview. However, ensure illegal interview questions such as “Did you miss any work due to workers’ compensation claims or illness?” are not asked. Ask the candidate simply to explain the gap in employment. If they provide an unsatisfactory answer, this would be considered a red flag.
- **No references listed or previous employer(s) are now out of business** – One of the ways applicants hide prior employment or prior negative issues such as prison time, is to either not list references, list themselves as self-employed, or find businesses in town that have closed to use as references.
- **Self-employed for more than 7 years** – Most studies show that entrepreneurs who make it 7 years will be successful. If an applicant states they have been self-employed for 7 years but now need a job, the applicant is either a poor business person or is attempting to hide something; neither situation presents a good applicant.
- **Military without DD214** - Prior military personnel are very familiar with the form DD214 discharge document. If an applicant states they are prior military but they do not have or have never heard of a DD214, they are not being honest and this is a red flag.

INTERVIEW

The interview should not take place until the red flag screening has been accomplished. After the interview has been completed, reference checks and the criminal background checks will be processed for successful applicants.

As discussed above, every attempt should be made to have a pre-written list of bona-fide occupational interview questions. This will assist in controlling the interview and preventing the applicant from taking control and discussing issues that should not be discussed. This list of questions will also allow the interviewer to gather the information needed to make a fair and impartial decision. The interview should be scheduled for a time when the interviewer will not be interrupted and remain professional. Stick to the list of pre-written interview questions and the position should not be described to the applicant until after the interviewer has asked all their questions. If the applicant knows what the ideal candidate would be and what the job entails, he/she will structure their answers around the position and what they think the interviewer wants to hear. In the event the applicant goes off on a tangent and begins discussing issues that you do not want to discuss in an interview, simply raise your hand and respond with “I understand, but let me ask you this...” and proceed to the next question. Regardless of how the interview went or what you thought of the applicant, always thank them for their time and wish them success in their job search. You may be the only person from the Company that the applicant will ever come in contact with. Make sure the interview is professional and a positive experience for the candidate. Once the interview has concluded, the hiring manager should evaluate the applicant. The 10 point system is one method of evaluation. It is recommended that candidates be evaluated utilizing the following criteria:

Professionalism (as it applies to the job)

The professionalism required of a janitor is significantly different than the professionalism required of a Chief Financial Officer.

Related Experience

Has the applicant worked in the same position or in a similar position before? Has the applicant worked in a similar environment? For example, a person that has never worked outside would probably not be an ideal candidate for a construction superintendent position. Some career field changes take place as a result of completion of an educational program or college degree. However, it is not always a good idea to take a person who has established a career path in one area and without valid reason is making a career change; these hires typically are not successful and lead to other problems.

Desire for the Job

Did the applicant ask for the job? Did the applicant show genuine interest in the position and the Company? Most successful candidates that become successful employees will ask for the job. Hiring a salesperson who did not try to “close” you on hiring them will more than likely result in a below average producing salesperson. Hiring an accountant who did not ask for the job is more than likely going to result in an employee that will stay until a better offer is received.

The 10 point system method of evaluation involves awarding the applicant a score of 10 in their strongest category (10 being the highest score). For example, if five candidates score as follows:

	Professionalism	Experience	Desire	Total
Candidate #1	7	8	10	25
Candidate #2	10	9	8	27
Candidate #3	6	7	10	23
Candidate #4	8	10	8	26

Candidate #1 has average professionalism, good experience, and outstanding desire for the job. Candidate #2 has outstanding professionalism, great experience, and above average desire for the job, etc. By utilizing the 10 point system, you will remember a candidate's strongest quality and will be in a better position to justify your hiring decision. Based on the 10 point system, the candidate with the highest overall score will be hired. In the above example, Candidate #2 would be offered the position. Utilizing this process will ensure the best candidate is hired and the hiring manager will be able to justify the selection in the event a claim or charge of discrimination is filed. All candidates should be scored immediately after their interview. This will reduce the potential of confusing applicants and their responses, and therefore hiring of the wrong applicant. A candidate's score should be recorded at the top of the interview worksheet. Once all interviews are completed, calculate the interview scores and select the applicant with the highest score to proceed to the next step, checking references and a background investigation.

REASONABLE ACCOMMODATION

The goal is to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. Qualified individuals are those applicants or employees who can perform the essential functions of the position with or without a reasonable accommodation.

In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of "reasonable accommodations":

1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such candidate desires; or
2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
3. Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

Reasonable accommodation is available to qualified applicants and employees with disabilities as defined by the ADA. Reasonable accommodations will be provided to qualified employees regardless of whether they work part-time or full-time, or are considered probationary. Generally, the individual with a disability must inform the employer that an accommodation is needed.

Requesting an Accommodation

While an individual with a disability may request a change due to a medical condition, this request does not necessarily mean that the Company is required to provide the change. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the employer.

In some instances, before addressing the merits of the accommodation request, the Company needs to determine if the individual's medical condition meets the ADA definition of "disability," a prerequisite for the individual to be entitled to a reasonable accommodation.

A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability. Of course, the individual with a disability may refuse to accept an accommodation that is not needed.

Determining Reasonable Accommodation or Undue Hardship

The Company will assess on a case-by-case basis whether a particular reasonable accommodation is needed or whether the accommodation would cause an undue hardship. Whenever an accommodation is requested or is obvious to the Company, an interactive discussion with the employee regarding the possible need for an accommodation will begin. The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the Company may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation.

In some situations, including FMLA leave, it may be necessary for the Company to submit an ADA Reasonable Accommodation Questionnaire (which can be found under the Manager HR forms section of this website) to the employee's treating physician in an effort to ascertain the need for and the type of accommodation required.

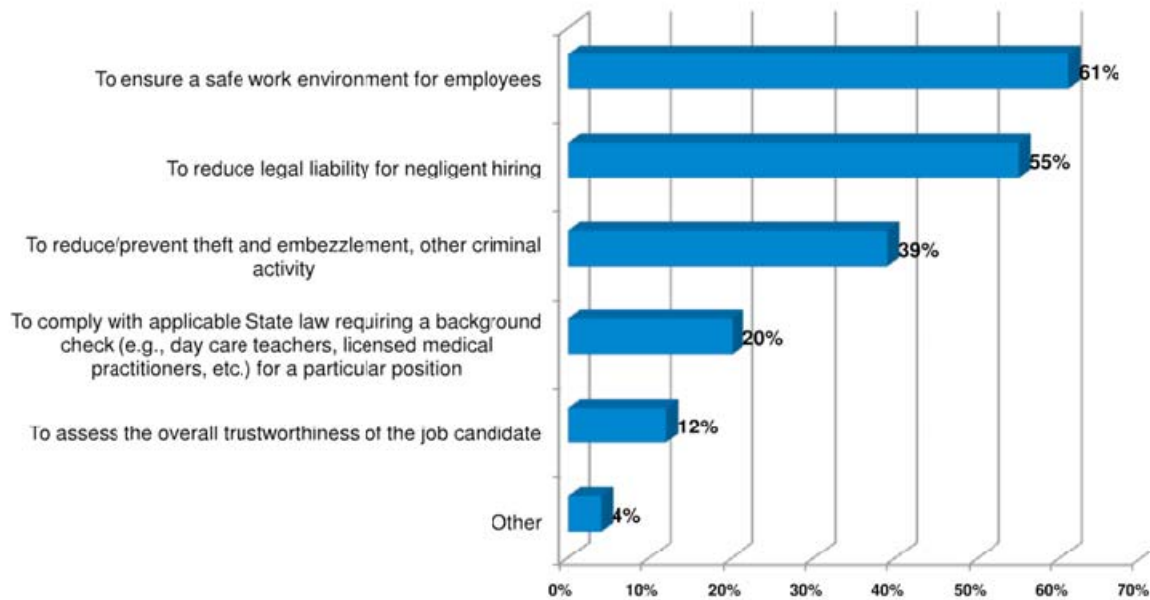
While the individual with a disability does not have to be able to specify the precise accommodation, he/she does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the Company in determining the type of reasonable accommodation to provide.

Undue hardship is defined as a significant difficulty or expense, and focuses on the resources and circumstances of the Company in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty but also to reasonable accommodations that are unduly extensive, substantial, disruptive, or those that would fundamentally alter the nature or operation of the business.

BACKGROUND CHECKS

Recent studies show that 80% of employers conduct some form of a background investigation on job applicants. This in turn tells us that criminals will apply for positions at 20% of companies that do not conduct background checks. A recent study conducted by the Society for Human Resources Management revealed the reasons employers conduct background checks is charted below:

What are the primary reasons that your organization conducts criminal background checks on job candidates?



Note: n = 310. Percentages do not total to 100% as respondents were allowed multiple choices. Respondents were asked to select top two options.

The table below displays the information found in these background checks:

Types of Offenses		back to top
Drug Offenses:	100,627 (51.3 %)	
Weapons, Explosives, Arson:	29,740 (15.2 %)	
Immigration:	22,327 (11.4 %)	
Robbery:	8,631 (4.4 %)	
Burglary, Larceny, Property Offenses:	6,868 (3.5 %)	
Extortion, Fraud, Bribery:	9,997 (5.1 %)	
Homicide, Aggravated Assault, and Kidnapping Offenses:	5,450 (2.8 %)	
Miscellaneous:	1,862 (0.9 %)	
Sex Offenses:	8,430 (4.3 %)	
Banking and Insurance, Counterfeit, Embezzlement:	840 (0.4 %)	
Courts or Corrections:	661 (0.3 %)	
Continuing Criminal Enterprise:	532 (0.3 %)	
National Security:	94 (0.0 %)	

* Data calculated for those with offense-specific information available.

The federal Occupational Safety and Health Act (OSHA) applies to virtually every employer. OSHA regulations include the General Duty Clause which requires the employer to furnish employees with employment that is free from recognized hazards (thieves, rapists, and murderers) likely to cause death or serious injury. Today managers can be held personally responsible for who they employ. Areas of concern that apply to the hiring process include:

Negligent Hiring – Hiring someone whom you knew or should have known was a recognized hazard, had you done your due diligence as a hiring manager. For example, hiring a convicted rapist and exposing your employees to which results in a rape.

Negligent Entrustment – Entrusting someone in a position or duty in which a reasonable person would determine such trust was negligent due to current or previous actions on the part of the employee or the applicant. For example, hiring someone with multiple DWI convictions to be a driver and they cause an accident while under the influence.

Under the General Duty Clause you are responsible for who you hire and who you expose employees, vendors and customers to. The best way to avoid such claims is to conduct a background investigation. However, prior to conducting a background investigation, you must have documented approval from the applicant; this can be accomplished using the Employment Background Investigation Authorization form, which can be found under the New Hire forms section of this website.

Reference Checks

All applicants should be informed that each previous position listed on their application must be accompanied by a reference name and telephone number, and those references are required and will be checked. In doing this, you may dissuade a dishonest applicant from completing an application. In addition, you are informing them that they must complete the application. Once the Pre-Employment Screening Acknowledgement form is completed, it should be mailed or faxed to the applicant's previous employers, notifying them that you will be calling. The hiring manager should follow-up with a phone call to check each reference. When conducting a reference check, it is imperative to verify dates of employment, job titles and duties, and when possible, eligibility for rehire. You cannot ask previous employers any questions that you cannot legally ask the applicant themselves. Questions concerning previous workers' compensations claims, marital status, etc., must be avoided. The information you gather from each reference check can be written on the application next to the previous employer's name and address. In the event an applicant has lied about previous employment, either dates or duties, they should be disqualified from further consideration for employment with the Company. When conducting reference checks the following should be considered:

- What was the general demeanor of the person giving the reference?
- Did you feel at ease talking to them or did they immediately get nervous once you mentioned the employee's name?
- Did the dates of employment match what the applicant listed on the application?
- Did the job duties match what the applicant described on the application?
- Did the pay match what the applicant claimed they were being paid?

- Was the reason for leaving consistent with what the applicant claimed?
- Is the applicant eligible for rehire?

Once the reference check has been conducted, a criminal background check needs to be completed.

Criminal Background Check

All applicants being considered at the point in the hiring process should have a criminal background check performed. This can be accomplished either through Human Resources or other outside vendors. Inquiries or questions concerning *criminal arrest* records are strongly discouraged. The EEOC states that because members of certain minority groups are more likely to be arrested, these inquiries can have an illegally adverse impact on such groups. In some states (i.e. Michigan) it is a violation of an applicant's civil rights to inquire as to his/ her arrest record, except for information related to felony charges. In other states, it is now illegal to ask about convictions or any criminal record on the application. Ensure you are familiar with the laws specific to the state. The EEOC states that inquiries regarding criminal convictions can have an adverse impact on members of certain minority groups. However, the EEOC and the courts recognize that employers have a legitimate right to know whether an applicant has ever been convicted of crimes. This concern is particularly significant when considering the recent activity regarding negligent hiring and the requirement for the employer to provide a workplace free from recognized hazards.

For example, a day care center would have tremendous liability if they hired a convicted child molester and did not complete due diligence and check employees before they are hired. The same philosophy could be utilized in all places of employment. How much liability would an employer have after a current employee brutally assaulted a fellow employee, and it was later shown that the employee committing the assault had a criminal record for assault?

In addition, when cash, drugs, valuable property, or one-on-one customer, patient, or client contact is involved, the employer has a moral as well as legal responsibility to ensure the safety of all involved. In these cases, the criminal background check is valid. However, if a question regarding criminal convictions is included on the application and a criminal background investigation will be conducted, a statement such as "Criminal convictions are not an absolute bar to employment, but will be considered only with respect to the specific requirements of the job for which you are applying." This will help in avoiding discrimination claims. In several states job applications that ask about prior arrests or convictions must include a statement advising applicants that they can answer "no record" in response to questions about sealed or expunged records of arrests, criminal court appearances, or convictions. Another method of avoiding discrimination claims is to be consistent with decisions. If the policy of the Company is not to hire convicted rapists within a specific department, that policy should be followed regardless of the race, age, ethnicity, gender or religion of the applicant. Applicants that lie on their application regarding felony convictions should be disqualified from the application process.

Fair Credit Reporting Act

The Fair Credit Reporting Act requires employers to give prior notice of background checks and obtain the applicant's written consent before using the Employment Background Investigation Authorization form, which can be found under the New Hire forms section of this website. When an employer utilizes an outside third party to gather such information or pays for such information, it is considered a consumer report or investigative report. These reports must be treated in the same manner as a credit report. Hiring a job applicant with an undesirable background, criminal record, or falsified credentials can carry enormous economic and legal consequences. As such, it is recommended that employers conduct background screenings on all applicants prior to making a job offer. Background prescreening is normally conducted by outside agencies called Consumer Reporting Agencies (CRA). Beyond calling former employers as references, employers generally cannot conduct such screenings in-house due to the specialized resource and knowledge involved.

Pulling criminal background reports or other consumer reports without permission can create problems. **Ensure that prior to pulling these reports an authorization has been received in writing from the applicant as discussed above.**

Following the four steps below is recommended.

Step 1 – Prior to supplying a consumer report, an employer must certify to the Consumer Reporting Agency (CRA) that they will follow all steps set forth in the Fair Credit Reporting Act. These requirements are explained in a document prepared by the Federal Trade Commission entitled, "Notice to Users of Consumer Reports."

**NOTICE TO USERS OF CONSUMER REPORTS:
OBLIGATIONS OF USERS UNDER THE FCRA**

The federal Fair Credit Reporting Act (FCRA) requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. This first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. The FCRA, 15 U.S.C. 1681-1681u, is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>).

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

The FCRA requires that a Consumer Reporting Agency provide a copy of that document to every employer who requests a report. The notice can be found on the FTC's website.

A special procedure is necessary when the employer requests a Consumer Reporting Agency (CRA) obtain employment references. When the CRA is merely verifying factual matters, such as the dates of employment or salary, no special procedure is necessary. However, when the CRA is asking for information such as job performance, it is an investigative consumer report.

Step 2 – When an employer receives a consumer report and intends not to hire the applicant based upon the report in any way, then the applicant has certain rights. The EEOC recently released a statement which prohibits companies from having a blanket “no hire convicts” policy. The criminal offence must be evaluated and matched against the specific position. The following questions should be considered:

- How long ago was the crime?
- Was it a violent crime?
- If it was drugs, did the person go through rehab? (may be qualified under the ADA if so)
- Is the crime related to the job in which they are applying for? (i.e. applying for a controller position with an embezzlement crime)
- Each situation is different and needs to be reviewed as a standalone situation.

A special procedure is necessary when the employer requests a Consumer Reporting Agency (CRA) obtain employment references. When the CRA is merely verifying factual matters, such as the dates of employment or salary, no special procedure is necessary. However, when the CRA is asking for information such as job performance, it is an investigative consumer report.

If the consumer report reflects a violent crime that was recent, the employer is well within their rights to reject the applicant and discontinue the process. However, if an applicant has a DWI on their record, but the position in which the applicant is applying does not include driving as a job duty, the employer should not use that previous act against them. Clearly, an applicant with a criminal record relating to financial improprieties would not be eligible to work in an area in which they would have access to the Company or customer’s financial information. However, before taking the adverse action, the employer must provide the following information to the applicant:

Step 3 – A letter to the applicant explaining the situation (Pre-Adverse Action Notice), a copy of the consumer report and the FTC document, “A Summary of Your Rights under the Fair Credit Reporting Act,” which can be found under the New Hire forms section of this website.

Even if there are other reasons for not hiring an applicant in addition to matters contained in a consumer report, the adverse action notification procedures still apply. If the intended decision was based in whole or part on the consumer report, the applicant has a right to receive the report.

The applicant should be given a reasonable period of time (72 hours from receipt of initial adverse action notice) to dispute the information on the consumer or investigative report. If the dispute is unacceptable or lacks substance, then you would proceed to the next step as defined below. However, if the applicant provides documented evidence that they are a victim of identity theft, or the records should have been sealed or expunged, contact the Hotline at (877) 416 – 1405 as soon as possible.

Step 4 – In the event the applicant did not dispute the information or his/her dispute was unacceptable, and you intend to make the decision final, the employer must take one additional step. The employer must send the applicant a Final Adverse Action Notice informing the job applicant that the employer has made a final decision, another copy of the “A Summary of Your Rights under the Fair Credit Reporting Act” FTC form, and another copy of the consumer or investigative report. The Final Adverse Action Notice can be found under the New Hire forms section of this website.

Internet Background Checks

A June 2010 survey by JobVite reported that 92 percent of companies hiring in 2010 currently use, or plan to recruit through, social media sites. Problems posed by such searches are serious. The information posted on social media sites typically is intended only for social, not business, purposes. Because false and misleading information can be posted, the reliability of the information can be questionable at best. Even if the posted information is true (e.g. historical information about Nazism), someone other than the applicant might have been responsible for posting it. In addition, Internet searches can be used to support claims of discrimination or invasion of privacy if they reveal information that a prospective employer is not legally permitted to explore, such as arrest records, gender, gender identity, genetic information, sexual orientation, race, color, national origin, marital status, and disability. Many states have laws that protect individuals against adverse action based on certain types of lawful conduct, such as political activity or consumption of tobacco products.

The Fair Credit Reporting Act (FCRA) and comparable state laws pose other potential problems with Internet searches. While it is clear that the FCRA requires employers to obtain written consent from applicants before hiring a background check company to conduct background checks, no court has yet addressed whether the FCRA applies to a company's screening of candidates' social networking pages. So, given the lack of clarity in the law, how can employers fulfill their responsibility to provide a safe and secure workplace and protect their own business interest while avoiding claims (discrimination, defamation, invasion of privacy)?

Employers can secure the written authorization for Internet searches on the job application. A disclaimer can be added to the application stating that refusing to authorize an Internet/electronic media search will not result in the automatic rejection of a candidate's application, as well as a confirmation of their firm commitment to nondiscrimination and equal employment opportunity. In addition, the employer should be consistent in conducting Internet searches; inconsistency for any reason could expose the employer to a discrimination claim.

Once the background check process has been completed, an offer of employment can be extended. This offer should come in the form of a letter. An offer letter is written to a job candidate to formally offer a position. The offer letter should specify the title of the position being offered, the person to whom the new employee will report, the start date, the starting salary, and any special requirements or compensation. The letter also can note the working hours, where the person reports the first day, and pertinent information about the commencement of benefits or other programs. Many companies now include an at-will employment paragraph and reserve the right to change benefits. Be sure the wording of the letter does not promise the prospective employee employment for a specified period of time if you do not wish to create a contract of employment. Some companies have specific requirements that need to be indicated in the letter as well. A drug test that is a condition of employment should, for example, be mentioned in the offer letter.

Candidates often request letters to verify the terms of offers prior to giving notice at their current place of employment. Some organizations require individuals accepting offers to sign and return documents indicating they accept the terms.

NEW EMPLOYEE ORIENTATION

It is important to introduce the employee to the Ethos HR Online website and show them where the employee handbook is located and the contact information for the email hotline and phone hotline. All new employees should be required to complete the training listed on their Ethos HR Online homepage under My Curriculum as soon as possible. Several of the training topics such as the Emergency Action Plan and ADR training (if applicable) are required to be taken the first day of employment. The best time to accomplish this is on the employee's first day of employment before they begin their actual job duties.

The Buddy System

We do not always realize the cost of hiring a new employee. Not to mention the cost of hiring the wrong employee! When we consider the cost of the advertisement and the manpower to screen applications, perform reference checks, interview, and select new employees, hiring is very expensive. In addition, most new employees are a liability for the first 30 days until they learn their job. A lot of time and money is spent on recruiting the ideal candidate and on their first day they may be approached by the one employee in the Company that never has a positive thing to say and dwells on the negative. All the Company's good employees are working and doing what they are being paid to do. After a couple days of the new employee being ambushed by the negative employee, the new employee begins to question his/her decision to come to work for the Company. The new employee often either joins this negative mindset or quits after just a few weeks. An applicant's first impression is based largely on their initial few days at work. For this reason, it is very important that these first few days begin in a positive manner. It will play a huge role in determining the applicant's longevity and success with the Company. As a professional manager, it is important to invest a few days in all new employees. This investment begins with the buddy system. Take the time to introduce the new employee to everyone. Once the introductions are completed, assign a great employee to be a buddy for the new employee. Let the new employee know that should he/she have any questions, the employee assigned to them can help him/her get the answers they need. Upon completion of the first week of work, take approximately 10-15 minutes to sit down with the new employee and answer any questions they have and at the same time find out if they are pleased with their decision to come to work at the Company. An ideal time for this is when the new employee returns a signed acknowledgment sheet from the policies and procedures manual. Lastly, you should follow-up with the employee periodically during the first 90 days of employment.

HIRING PRACTICES SUMMARY

Step 1: Create ADA position descriptions for each position within the Company. A position description questionnaire can be found under the Manager HR forms section of this website. Completed ADA position descriptions should be kept in a binder located where applicants arrive to apply for positions within the Company.

Step 2: Create an interview worksheet comprised of pre-written interview questions for each job within the Company. A sample worksheet, titled "Sample Pre-Written Interview Questions" can be found under the Manager HR forms section of this website.

Step 3: Prior to hiring for a vacancy, review the position to determine if it needs to be filled, if job sharing is possible, or if an in-house promotion is a possibility. If not, determine where you will get your exterior candidates. In the event you write an employment advertisement, have Human Resources review the ad prior to submission.

Step 4: When applicants arrive have them read the ADA position description and complete the ADA position description acknowledgment form. If they can meet the requirements as outlined on the position description or a reasonable accommodation exists, give the applicant the application to complete.

Step 5: Once the application is complete, conduct the red flag screening. If the application has less than 3 red flags, conduct the interview.

Step 6: Utilize the interview worksheet with the pre-written questions for the interview. Explain the process to the candidate and then score the applicant immediately upon completion of the interview.

Step 7: Conduct background checks and reference checks on the top applicant(s). Adhere to the requirements of the Fair Credit Reporting Act in regard to authorization/releases and adverse action requirements if applicable.

Step 8: After selection of applicant, orientate the new employee, make sure training is completed, and assign a mentor to the new employee. You should follow-up with the employee periodically during the first 90 days of employment.

Should you have any questions please contact the phone hotline at (877) 416 – 1405 or the email hotline using the link located on your Ethos HR Online homepage.