

How to Avoid Hiring Mistakes: Oops! Too Late; Now What?!?

Panelists

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Agenda

- Overview of employment relationship
- Legal framework for effective hiring and defensible firing
- Practical considerations for effective hiring
- Principles of performance management and discipline
- Q&A

Employment Relationship

- Basic Rule: Employment Relationship is “at will”
 - either party may end relationship for any or no reason
- Basic Rule is riddled with exceptions
 - Statutory, Contractual, Public Policy

Employment Contracts

- Express Contract
 - Limits ability to terminate relationship
 - Usually provides for a just cause or good cause firing
- May arise by implication
 - Handbook or manual
 - Application or offer letter
 - Oral statements

Employment Laws

- Title VII
- ADA
- ADEA
- FMLA
- GINA
- DCHRA

Hiring the Right Person, Legally

- Why hire the right person?
 - Need to get the job done
 - Avoid the time and expense of training the wrong person
 - Avoid expense and anguish of terminating a wrong hire
 - Avoid litigation

Overview – Sourcing and Vetting Candidates

- Applications
- Interviews
 - It is presumed that you use the information that you ask for
 - Therefore, only ask for information you need and will use
- Background Checks
 - “Ban the box”
- Wait, what are we missing here ...?

Recruitment – Challenges to Best Practices

- Not knowing where to recruit
- Sole reliance on informal networks or word-of-mouth
- Failing to advertise widely, including in targeted fashion to diverse groups
- Failure to use posting and recruiting systems once developed

Recruitment – Best Practices

- Recruitment policy and procedures
 - Structured process
 - Responsible individuals
 - Training
 - Establish and communicate basic qualifications and essential job functions for each job
 - Use of internal and external job posting systems
 - Comprehensive and consistent job posting

Selection – Challenges to Best Practices

- Use of non-validated tools
 - Or use of no tools at all
- Overuse of subjective criteria
- “Like me” selections
- Stereotyping
- Absence of documentation
- Lack of formalized process for feedback
- Ignorance

Selection – Best Practices

- Recruitment policy and procedures
 - Responsible individuals
 - Established selection criteria
- Established interview questions
 - Derived from job analyses
 - Or at least derived from position description
- Structured interviews
- Objective rating scales “anchored” with exemplar responses
- Multiple and diverse interviewers or panel interviews
- Interviewer training

Selection – Communication

- Avoiding a process that provides no feedback
- Initial communications should confirm posting and set expectations
 - “This position will remain open for __ days”
 - “You are one of __ candidates posting for this position”
- Communication of status should be timely, particularly to unsuccessful candidates
- For internal candidates interviewed, guidance for career development should be provided

Selection – Avoiding Common Errors

- Disability bias
 - Have you ever been hospitalized?
 - Have you ever received workers comp?
- Age bias
 - Date of birth
 - Year of completing degrees
- Gender/marital status
 - What does your spouse do?
 - Do you have children?
- Financial status
 - Do you own your home?
 - How will you commute?

Selection – Record Maintenance

- Beyond disposition codes
 - Lists of interview participants
 - Questions utilized
 - **Interview notes**
 - Scores and other data
- Should be able to recreate decision-making process

Mistakes Were Made – Lawfully Disciplining and Discharging Employees

- Reducing the chance of claims
 - Documenting performance issues
 - Consistency
- Implementation
 - Communication
 - Ensuring fairness and proportionality

Reducing the Chance of Claims

- Accurate records and consistent enforcement of clearly communicated rules are best “defense” to potential charges
- Consistency in practices
 - Key is treating similarly situated employees alike, with supporting documentation
 - Follow written policies

Reducing the Chance of Claims

- Documentation is key, even with new hires
 - Performance: Ensure accurate, honest appraisals
 - Discipline: Contemporaneous records are more credible
 - Ensure “legal” reasons
 - Review documentation *prior to* implementation

Factors in Implementing Discipline

- Consistency
 - Legal as well as employee relations significance
- Proportionality
- Fairness and *perception of fairness*

Communication

- Counsel employee regarding violation
 - Identify violation
 - Identify expected future conduct and the consequences of future violations
 - If probation, identify length, terms, consequences
 - Instructions regarding confidentiality and retaliation
 - Document, Document

Demonstrating a Believable Basis for Discipline/Discharge

- Did the employee have ***notice*** of the rules?
- Was the rule or directive violated a ***reasonable*** one?
- Was there a ***fair*** investigation?
- Was there ***proof*** of a violation?
- Was the penalty ***reasonable***?
- Was there equal treatment – ***consistency***?

Contact Information

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