

HR 101: A Three-Part Series, Part I – Hiring Essentials

Session 2



2016 Employment Law Conference ~ *Strength in Balance*

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Agenda

- Recruiting Considerations
- Vetting Applicants
- The Interview Process
- Requests for Reasonable Accommodation
- Compensation

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Recruiting Considerations

- Job Description
 - Establishes the requisite skills and functions of a position
- Soliciting Resumes & Applications
 - Various methods available
- Recruiting via Social Media
 - 75% of employers report using social media as a recruiting tool (SHRM Survey, 2013)
 - Benefits vs. Pitfalls
- Legal Implications of Recruiting from the Competition
 - *Bourns Inc. v. Raychem Corp.* (9th Cir 2003) 331 F3d 704 (misappropriation of trade secrets)
 - *Reeves v. Hanlon* (2004) 33 Cal.4th 1140 (interference with the “at-will” relationship)

Vetting Applicants



- Thoroughly screening applicants determines whether an applicant is qualified and provides a clearer picture of the applicant.
- Failing to investigate an applicant during the hiring process can pose legal risks, i.e., negligent hiring
 - *Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828; Underwriters Ins. Co. v. Purdie (1983) 145 Cal.App.3d 57, 69.)

Hire Right

1 Carefully Review Resumes & Applications

- Pre-Employment Documents
 - The following can be trouble spots for applicants:
 - Dates, or lack of same - watch for job hopping/gaps in employment
 - Titles - look for inflated titles
 - Responsibilities – do responsibilities match title/experience?
 - Actual Experience – look for catch phrases “*assisted with*” vs. “*in charge of*”
 - Lengthy education section – can be a plus, but watch for lifetime students
 - Writing ability – punctuation, grammar, and spelling show attention to detail

Hire Right *Continued*

2 Using Social Media to Screen Applicants

- Legal Implications
 - The following can be trouble spots for applicants:
 - Information relating to a protected characteristic
 - Arrest records
 - Any adverse information older than seven years
 - Workers' compensation claims
- Benefits
 - May save time and money
 - Decide when, the sites, and who will screen in the hiring process

Hire Right *Continued*

3 Reference Checks

- Verify information listed on resume or application
 - Although many times information limited, helps to confirm dates of employment & job titles

Hire Right *Continued*

4 Background and Credit Checks

- Federal & California law limits use
 - Be mindful of the Federal Fair Credit Report Act, the California Investigative Consumer Reporting Agencies Act, and Consumer Credit Reporting Agencies Act.

Hire Right *Continued*

5 Criminal History

- Watch that background checks don't lead to claims of discrimination
 - *Remember, you can't ask certain questions regarding convictions*
 - EEOC Consideration of Arrest and Conviction Records in Employment Decisions

Hire Right *Continued*

6 Drug Testing

- Pre-employment, post-offer drug testing with advanced notice allowed
 - *Wilkinson v. Times Mirror Corp.* (1998) 215 Cal.App.3d 1034
- Medical Marijuana
 - *Not required to provide reasonable accommodation*
 - *Ross v. Ragingwire Telecommunications* (2008) 42 Cal.4th 920
 - Marijuana use remains illegal under federal law

Hire Right *Continued*

7 E-Verify

- Unless required by federal law or federal funding, CA employers cannot use E-Verify until a conditional offer of employment

The Interview Process



- The interview process provides employers the opportunity to learn more about an applicant.
- Interviews can pose legal risks if not conducted properly

Avoiding Claims

- Proper Hiring Inquiries – Protected Characteristics

Acceptable vs. Unacceptable...

- Age, Gender, Sexual Orientation/Expression
- Birthplace/Citizenship
- Sex, Marital Status, Family
- Physical/Mental Condition/Disability
- Arrest, Criminal Record

Are you planning to retire soon?

What religions holidays do you observe?

Do you have childcare?

Interview Techniques

- Ask open-ended questions
- Start with broad questions, then move to narrow questions
- Ask . . .



Do you prefer working alone or as part of a team?

?

Describe your greatest accomplishments in a prior job

?

Document Responses

- Make sure the notes are objective and focus on the responses given
- Statements made should not be interpreted as discriminatory
- Document the reason why it was decided to either hire or not hire the applicant
- Think about creating a standardized form to record the comments during the interview
 - Records must be kept one year (29 CFR § 1627.3; 29 CFR §1602.14.)

Other Interview Tips

- ✓ Second interviewer
- ✓ Develop a consistent set of acceptable questions
- ✓ Avoid making misrepresentations about the terms and conditions of employment

Responding to Requests for Reasonable Accommodation



- Applicant may request reasonable accommodation to apply for a position
- Employer must engage in timely, good-faith interactive process
 - Undue hardship

Examples of Reasonable Accommodation During Recruiting

- 1 Place information about a job posting in an accessible location
- 2 Provide alternative forms of the job application (e.g., allow blind applicants to apply orally)
- 3 Provide alternative methods of contacting the employer (e.g., a hearing-impaired individual may be better able to communicate via e-mail than over the phone)
- 4 Make documents available in alternative formats, such as braille or large print

Examples of Reasonable Accommodations for Interviews

- 1 Have a sign language interpreter or reader available during the interview
- 2 Allow an applicant to provide written responses to interview questions
- 3 Have documents available in alternative formats, such as braille or large print
- 4 Hold the interview in an accessible location
- 5 Provide job-related tests in alternative forms

Accommodation to Perform the Essential Functions

- *Remember*, you cannot explicitly or implicitly ask whether an applicant has a disability.
- If an applicant indicates they will need accommodation, you can ask what type would be appropriate.
- *Remember*, you are obligated to engage in the interactive process to identify if the applicant can perform the essential functions of the position.



Legal Requirements for Setting Compensation



- Effective 1/1/16, CA minimum wage is \$10.00 per hour
- Don't forget to check wage requirements for cities and counties
- Effective 1/1/16, exempt employees must be paid at least \$41,600 a year
- California's Fair Pay Act
- Practical Considerations

Thank You

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