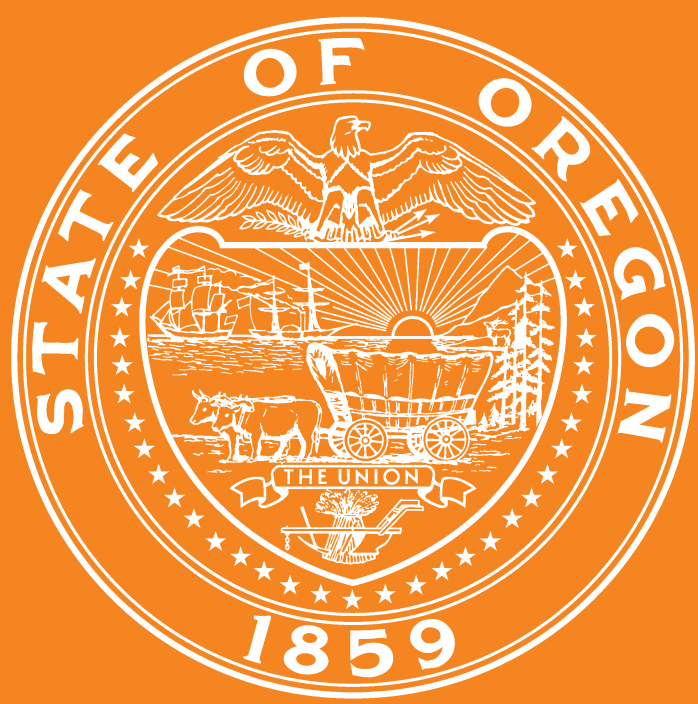
Bureau of Labor
and Industries

Legal Hiring Practices

A Handbook for Oregon Employers

2013 Edition



Oregon Bureau of Labor and Industries
Technical Assistance for Employers Program

Technical Assistance for Employers Program

Legal Hiring Practices

A Handbook for Oregon Employers

2013 Edition
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Oregon Bureau of Labor and Industries
Technical Assistance for Employers Program

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Bureau of Labor and Industries

Dear Friend of Technical Assistance (TA):

Welcome to the Bureau of Labor and Industries (BOLI)'s newest handbook, *Legal Hiring Practices*. Thank you for investing in this handy manual for human resources professionals, attorneys and managers and employers at all levels. *Legal Hiring Practices* is a concise guide to identifying and hiring the right person for the job without creating unnecessary legal claims.

BOLI is committed to helping Oregon's businesses and employers stay strong and successful. Our primary goal through TA is to help employers and businesses stay in compliance with the law and prevent costly litigation. When the law is known and followed in the first place, it's a win for all Oregonians.

Throughout the year, TA provides a variety of services to support Oregon employers. These services are funded almost entirely through the sales of publications like this one and attendance at public seminars on various employment law topics. Customized, on-site seminars for employers are also an important part of TA's work. Through your support, TA continues to answer 15,000 to 20,000 employer questions via phone and e-mail, conduct more than 130 public and private seminars, and produce a high-quality, two-day law conference each year.

I hope you find this book to be a helpful tool for understanding and complying with state and federal employment laws. Any feedback you may have should be directed to TA, and be sure to visit www.oregon.gov/boli/ta to learn more about the resources and services that TA has to offer.

Please do not hesitate to contact our offices if you have questions or thoughts to share.

Sincerely,

Brad Avakian, Commissioner
Oregon Bureau of Labor and Industries

A WORD FROM BOLI TECHNICAL ASSISTANCE …

Thank you for purchasing this book! Proceeds from the sale of this handbook support the Technical Assistance for Employers Program (TA), a self-supporting program that receives little taxpayer funding.

As an independent unit within the Bureau of Labor and Industries, TA is dedicated to providing the resources, information and training employers need to comply with state and federal labor and employment laws.

TA offers a number of free and low-cost resources for Oregon employers, including fact sheets, employer advice columns, required workplace posters, and personal assistance by telephone and email. Our informative and practical handbook series is currently available for purchase through our website and includes topics like:

- Civil Rights Laws;
- Family and Medical Leave Laws in Oregon;
- Wage and Hour Laws;
- Child Labor Laws;
- Employee Classification & Wage and Hour Exemptions;
- Documentation Disciple and Discharge; and
- Policy Writing Guidelines.

You can access the seminar descriptions, schedules and registration information for all of our public training sessions online, as well as information about arranging an on-site, customized seminar for your staff.

To contact us, feel free to visit our website at www.oregon.gov/boli/ta or call our Employer Assistance line at 971-673-0824.

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The mission of the Bureau of Labor and Industries is to protect employment rights, advance employment opportunities, and protect access to housing and public accommodations free from discrimination.

The four principal duties of the Bureau of Labor and Industries are to:

(1) Protect the rights of workers and citizens to equal, non-discriminatory treatment through the enforcement of anti-discrimination laws that apply to workplaces, housing and public accommodations;
(2) Encourage and enforce compliance with state laws relating to wages, hours, terms and conditions of employment;
(3) Educate and train employers to understand and comply with both wage and hour and civil rights law; and
(4) Promote the development of a highly skilled, competitive workforce in Oregon through the apprenticeship program and through partnerships with government, labor, business, and educational institutions.

If you have questions or concerns regarding any of these areas, please feel free to contact us!

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ABOUT THIS HANDBOOK

TA has produced *Legal Hiring Practices, A Handbook for Oregon Employers* as a general summary and teaching guide.

The purpose of this handbook is to help employers understand the basics of the hiring process and how to move through that process without creating unnecessary exposure to legal complaints, including claims of unlawful discrimination, negligent hiring or invasion of privacy.

Several sections of this handbook contain answers to commonly asked questions, best practice tips, updates, sample forms and checklists in order to illustrate the application of legal hiring practices. Please keep in mind, however, that this handbook is not intended as legal advice regarding any particular situation. Those seeking legal advice should contact an attorney. It is always prudent to have an attorney review a draft of new policies or procedures to ensure compliance within a particular workplace and industry.

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Legal Hiring Practices

"I hire people brighter than me and then I get out of their way"

- Bill Gates

Few decisions have a greater impact on the long-term success (or failure) of a business than those that have to do with selecting the right person for the job.

While no applicant is a perfect fit, the right person will bring certain minimum qualifications to the position, such as:

- The knowledge, skills and abilities necessary to hit the ground running,
- People skills necessary to interface with your organization and clientele, and
- Motivation to begin making a valuable contribution without constant supervision.

Of course, finding that person consumes time, energy, and resources. In addition, legal requirements place a number of restrictions on how potential employers go about advertising positions, soliciting applications, interviewing candidates and conducting background checks. A misstep here can create room for a potential complaint or lawsuit around issues like employment discrimination, negligent hiring or invasion of privacy.

The aim of *Legal Hiring Practices* is to assist employers to safely navigate the potential minefield of bringing on an employee. Along the way, this handbook provides helpful guidance, tips and resources on every aspect of the hiring decision, ranging from creating a position description all the way through to conducting a successful new-hire orientation. At the heart of *Legal Hiring Practices*, however, is the idea that creating and following a set of consistently applied legal hiring procedures is the key to:

- Identifying the right person for the job;
- Creating a fair and consist opportunity for a successful employment relationship; and
- Steering clear of potential legal pitfalls.

Discrimination in hiring

By far the widest of potential legal pitfalls within the hiring process facing employers is liability for discrimination. Employers are generally aware that discrimination in hiring decisions based on factors like race, gender or color is unlawful, but state and federal civil rights laws also protect a host of other factors or "classifications." Treating an employee (or a potential employee) differently because he or she fits into one or more of these protected classifications will usually result in a violation of civil rights laws and potential liability for the employer. Although it would be odd indeed to see an employer

advertise for "white help only" these days, it remains routine to hear of employers that do not want to hire a pregnant woman or a laid off 58-year old worker.

The chart on the following page summarizes the protected classifications set out under state and federal civil rights laws. A complete discussion on working with protected classes is also available in the 2012 edition of BOLI's *Civil Rights Laws, A Handbook for Oregon Employers*.

Disparate impact in hiring

In addition to the range of classifications protected by civil rights laws and the legal risk of intentional discrimination, employers also need to be aware of the impact (even if unintentional) that their hiring practices have on protected classifications. In other words, hiring practices that seem neutral, but result in fewer opportunities for members of a protected class may be deemed discriminatory in that they have "disparate" or "adverse" impact on one or more protected class.

Elements of the hiring process

In order to identify the best qualified job candidate for a particular position *and* avoid running afoul of applicable employment laws, employers should consistently proceed through a hiring process that includes some form of each of the following elements:

- Job analysis;
- Written position description;
- Recruitment;
- Applications;
- Interviews;
- Background checks and references; and
- Orientation.

The structure of *Legal Hiring Practices* from this point forward is built around unpacking each of these elements as well as highlighting considerations for minimizing the risk of legal claims.

A Summary of Protected Classifications

FEDERAL LAW	OREGON LAW
TITLE VII OF CIVIL RIGHTS ACT OF 1964 Federal laws apply when an employer has 15 or more employees (except where noted)	OREGON REVISED STATUTES CHAPTER 659A State laws apply when an employer has 1 or more employees (except where noted)
Race **Color** **National Origin** **Sex** (includes pregnancy-related conditions) **Religion** **Retaliation** **Association with Protected Class** **Genetic Information** (under Genetic Information Nondiscrimination Act)	**Race** **Color** **National Origin** **Sex** (includes pregnancy-related conditions) **Religion** **Retaliation** **Association with Protected Class** **Prohibition on Genetic Screening and Brain-wave Testing**
AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967	OREGON REVISED STATUTES CHAPTER 659A
Age (40 and older in companies with 20+ employees)	**Age** (18 and older)
Uniformed Services Employment and Reemployment Rights Act of 1994 and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (all employers)	Members of the Uniformed Services (ORS 659A.082) Taking leave to Serve in State-organized Militia (ORS 399.065)
Veteran Status **Leave to Serve in the Military** **Veterans Preference in Hiring and Promotion** (Public Employers)	**Veteran Status** **Leave to Serve in State-organized Militia** **Veterans' Preference in Hiring and Promotion** (Public Employers)
AMERICANS WITH DISABILITIES ACT OF 1990	OREGON REVISED STATUTES CHAPTER 659A
Physical or Mental Disability	**Physical or Mental Disability** (in companies with 6+ employees)
Family and Medical Leave Act of 1993 (in companies with 50+ employees)	Oregon Family Leave Act (in companies with 25+ employees)
Protected leave for: • **Serious health condition of employee (including pregnancy-related conditions)** • **Serious health condition of employee's family Member (includes spouse, parent, biological or adopted or foster child)** • **Parental leave for birth or placement of newborn, adopted or newly-placed foster child**	**Protected leave for:** • **Serious health condition of employee (including pregnancy-related conditions)** • **Serious health condition of employee's family Member (includes spouse, parent, biological or adopted or foster child, parent-in-law, grandparent, grandchild, same-sex domestic partner and parent or child of same-sex domestic partner)** • **Parental leave for birth or placement of newborn, adopted or newly-placed foster child** • **Non-serious health condition of a child requiring home care**
Leave by Spouse, Son, Daughter or Parent of a Covered Military Service Member on active duty or call to active duty status for a qualifying exigency **Leave by Parent, Spouse or Child of Next of Kin** to care for a seriously ill or injured service member or veteran (26 weeks)	**Leave by Spouse or Same-sex Domestic Partner of Member of the Armed Forces** prior to or during leave from deployment (under the Oregon Military Family Leave Act, ORS 659A.090 to 659A.099 in companies with 25+ employees)

ADDITIONAL CLASSES PROTECTED BY OREGON LAW
OREGON REVISED STATUTES CHAPTER 659A (Except where noted, laws apply when an employer has 1 or more employees)
Access to Employer-owned Housing **Credit Records or Credit History** **Expunged Juvenile Record** **Injured Workers** (in companies with 6+ employees) **Lawful Use of Tobacco Products on off-duty hours** **Leave to Donate Bone Marrow** **Leave to Serve in the State Legislature** (ORS 171.120-125) **Limits on Breathalyzer and Blood Alcohol Testing** **Marital Status** **Medical Release as a Condition of Continued Employment** **Opposition to Health or Safety Conditions** (ORS 654.062(5)(a)) **Prohibition on Employer Requiring Medical Release unless Employer pays out-of-pocket costs** (ORS 659A.306) **Prohibition on Polygraph Exams** **Family Relationship** **Right to File a Lawsuit, Testify in Criminal or Civil Proceedings or Report Criminal Activities** **Right to Report Health Care Violations** **Right to Testify at Employment Division Hearings** **Right to Testify Before the State Legislature** **Sexual Orientation and Gender Identity** **Victims of Domestic Violence, Harassment, Sexual Assault or Stalking, including Leave Provisions**

Job Analysis

Among the elements of a solid legal hiring process, pre-hire job analysis is probably the most frequently neglected.

Most employers tend to look for an employee only after a previous employee leaves or when it becomes impossible to move forward without another "hand on deck". Too often, however, this pressure leads busy employers to simply dust off a previous job description and hire someone for the same position as the last time around. Instead, employers should give careful consideration to identifying the specific business needs they assume a new hire will be able to meet – before moving forward with the hiring process.

Employment is a relationship, and like any relationship, an employment relationship can get "complicated." Unmet expectations around issues like performance measures, promotional opportunities, job competencies, attendance requirements, compensation, benefits, and any number of other items have the potential to poison an employment relationship.

Employers that begin the hiring process by identifying and clearly articulating their needs and expectations will be able to use that information to narrow down the pool of individuals who are most likely to be a good fit for a particular position and for the company in general. By the same token, a hiring process that attempts to elicit and clarify the needs and expectations of potential job candidates up front can help to head off high turnover due to job dissatisfaction down the road.

By separating out business needs from a given position or title (or the afterimage of the departing employee) it may become clear that hiring a replacement, or adding another person to perform a job others are already doing would not be the best option for meeting those business needs. For example:

- Does a vacancy really need to be filled?
- Could the tasks at issue be performed more efficiently if they were redistributed among existing staff?
- Do the tasks make up a discrete process that could be contracted out?
- Is the need temporary or routine?
- If not routine, could a temporary employee take on enough of the routine tasks to free up a more experienced employee?

FAQ

INDEPENDENT CONTRACTORS

AN EMPLOYEE BY ANY OTHER NAME IS STILL AN EMPLOYEE!

QUESTION: We need another hand on deck, but with the added cost of employment taxes, insurance, recordkeeping requirements . . . couldn't I just hire someone on a 1099 as a contractor?

ANSWER: It is true that many of the legal obligations placed on employers do not apply to their business relationships with independent contractors. Unfortunately, businesses and workers alike too often fail to recognize that under Oregon law, there are specific legal criteria that distinguish an "independent contractor" from an "employee." Confusing these two working relationships can result in the misclassification of workers – and some very expensive consequences!

Beyond claims for unpaid wages, overtime, penalties and interest, businesses that engage workers as "independent contractors" (who do not meet the specific requirements of the law) also risk liability for unpaid back taxes and unpaid insurance premiums. In addition, businesses may be responsible for workers' compensation claims and liability for employee benefits or negligent acts of the worker.

So what separates an employee from an independent contractor? In general, a worker who provides services for remuneration is generally considered an employee by the courts and state regulatory agencies - unless that worker also meets the criteria required of an independent contractor.

In making classification determinations, both the courts and regulatory agencies (including BOLI) apply certain criteria to the facts of each case to determine:

1. Whether the worker in question is free from direction and control; and usually,
2. Whether the worker is, as a matter of economic reality, independent of the business to which services are being provided, i.e., whether the worker is in business for himself or herself.

If these requirements are not met, it is a safe bet that the worker in question will be considered an employee, regardless of how the relationship is characterized on paper, on tax forms, or by the parties involved.

For more information, including the specific criteria used by state enforcement agencies, be sure to check out BOLI's 2012 edition of *Employee Classification & Wage and Hour Exemptions, A Handbook for Employers*.

If bringing on another employee is the best option, the process of carefully defining specific business needs, that is to say doing a "job analysis," will set out the fundamental reasons why a given position should exist within the organization.

A pre-hire job analysis seeks to answer at least three questions:

1. What are the production and/or managerial business needs facing the company?
2. Would an additional employee be the best way to meet those needs?
3. If so, what are the essential job functions an employee would need to fill in order to meet those needs?

The answers to these questions can come from a number of places:

- **Direct observation** of current work flow or operations. Where are the bottlenecks? Is the bottleneck due to insufficient machinery or physical plant limitations, a shortage of operators, or perhaps, a lack of expertise among the current staff?
- **Existing employees**. Long term front line employees can often provide the historical reasoning behind why things have been done in a given way in the past and they tend to have excellent ideas for how work processes could be improved.
- **Past position descriptions**. There is no reason to reinvent the wheel so long as "the way it's always been" is not mistaken for "the way it has to be" going forward.
- **Exit interviews** with departing employees.
- **Management personnel**. Because they are responsible for handling human resources in order to best meet the company's business goals or legal obligations, management staff will obviously have a critical perspective on the need for additional staff. They will also have input on the types of knowledge, skills and abilities those new employees will need to bring with them in order to best meet the obligations of an ever-changing business climate.

While no law requires that employers carry out a pre-hire job analysis, it does make good sense. A thorough job analysis will not only ensure that the decision to hire a new employee is the best option for the organization, but it will also provide the information needed to create a solid written position description.

Written Position Description

A thorough job analysis should articulate the essential job functions of an existing or potential position within the company, and ideally, it will also identify the knowledge, skills and abilities necessary to successfully perform the job.

A position description builds upon the job analysis by setting out in written form the essential job functions as well as the duties and responsibilities of the position in specific terms. In addition to describing essential job functions, a good job description should define the specific knowledge, skills and experience that are *necessary* to perform those essential job functions. These requirements in turn become the objective job qualification standards for the position.

A word on "essential job functions" and position descriptions

Oregon disability law and the federal Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act, prohibit discrimination against a qualified individual on the basis of disability. The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the ***essential functions*** of the position.[1]

If the position description is to be used as evidence of which functions of the position are essential (and which are not), an employer must have an established position description (including essential job functions) in writing ***before*** having advertised the position or interviewing applicants. As a practical matter, employers will need a list of essential job functions handy in order to ask applicants whether they would be able to perform the job, with or without reasonable accommodations.

Factors to consider in determining whether a function is essential to the job include:

- Does the position exist to perform that function?
- Are other employees available to perform the function (can the function be distributed among other employees)?
- What degree of skill or expertise is required to perform the function?

Under OAR 839-006-0205(4), "Essential functions" are the fundamental duties of a

[1] An individual is "qualified" for a position if the individual, with or without reasonable accommodation, can perform the "essential functions" of the position. For the purpose of determining the essential functions of the position, due consideration shall be given to the employer's determination as to the essential functions of a position. If an employer has prepared a ***written*** description before advertising or interviewing applicants for a job, the ***position description*** shall be considered evidence of the essential functions of the job. See ORS 659A.115.

position an individual with a disability holds or desires. A job function may be essential for any of several reasons, including but not limited to, the following:

1. The position exists to perform that function;
2. A limited number of employees is available to carry out the essential function;
3. The function is highly specialized so that the position incumbent was hired for the expertise or ability required to perform the function.

Evidence of whether a particular function is essential includes but is not limited to:

1. The amount of time spent performing the function;
2. The consequences of not performing the function;
3. The terms of a collective bargaining agreement;
4. The work experience of past incumbents in the job; and
5. The current work experience of incumbents in similar jobs.

Job qualifications

Employers may establish any qualification requirement for a position, as long as such requirements are job-related and consistent with business needs. For example, an employer could require that a typist be capable of typing 65 words per minute, or that a stevedore be able to move 50 pounds from the dock to a truck throughout an eight-hour shift.

It is important to identify the job requirements in clear and detailed terms. One method of establishing job qualifications is to list job duties and skills needed to perform those duties

For example:

Essential job function	Knowledge, skill or ability required
Provide customer service	Ability to operate a 20-line switchboard. Ability to explain complicated sales information. Good interpersonal communication skills.
Process purchase orders	Ability to read and write. Basic math skills. Ability to use a word processor, calculator, copier and other standard office equipment.

Essential job function	Knowledge, skill or ability required
Establish and maintain filing systems	Ability to organize, file and maintain records, files and reports and other correspondence in a confidential manner.

Job-related qualification standards may be established in any of the following areas:

- Education
- Work experience
- Knowledge
- Skills
- Physical and mental standards
- Personal qualities
- Certificates or licenses.

The points to keep in mind here, however, are that such qualifications should be (1) directly related to and necessary for the job and (2) tested to see whether they tend to screen out or exclude members of protected classes at a higher rate than the general population.

Case in point: In *Griggs v. Duke Power Co.*, the employer required a high school diploma as a qualification standard for employment. Griggs, a minority, was denied employment because he lacked the necessary high school diploma. The courts held that requiring a high school diploma excludes more minority applicants than white applicants, and that the employer failed to demonstrate that a high school diploma was necessary for successful job performance. *Griggs v. Duke Power Co.*, U.S. Sup. Ct. 3 FEP 175 (1971).

The take away: If a neutral job-related qualification adversely affects a protected class, there must be an established business necessity for the standard. A qualification standard is not considered a business necessity if it can be demonstrated that employees who do not meet the standard have been performing the job successfully.

A word on "Bona Fide Occupational Qualifications"

Discrimination is not unlawful if it is based on a bona fide occupational qualification (BFOQ), as provided in ORS 659A.030(1)(a). Against the claim that a BFOQ is discriminatory, however, an employer must show that the BFOQ is reasonably necessary to the normal operation of the business. In addition, the employer must also show:

1. A factual basis exists for believing that all or substantially all individuals in the protected class adversely affected by the BFOQ would be unable to perform safely and efficiently the tasks required in the job; or
2. It is impossible or highly impractical to screen applicants on an individual basis.

In plain language, a legitimate BFOQ is a requirement that is essential to the job. To use a BFOQ exception to the rule against discrimination, an employer must be able to prove that no member outside the desired group could perform the job. A simple example would be a bar tender job that requires the individual be at least 21 years old.

An employer may NOT claim a BFOQ for such reasons as: customer, co-worker or employer preference; stereotypes or assumed characteristics of a protected class. OAR 839-005-0013

Drafting the position description

In drafting the written position description, employers should focus the document on the positions, primary purpose and major duties, including a listing of both essential and non-essential functions, as well as working conditions.

Position descriptions should be drafted in terms of the results to be achieved, not how the task is performed, so the position description should only include factors necessary for the successful performance of the job.

For example, the written position description will likely include the following items, among others:

- Position title
- Department
- Title of direct supervisor
- Employment status (exempt or non-exempt)
- Essential functions
- General description of the position
- Work location, Shift
- Working conditions
- Physical activity level
- Knowledge, skills and abilities required
- Equipment used
- Revision date of the description

Practice Tips: Review the draft position description with other stakeholders in the organization before moving forward to a final draft.

- Conduct interviews with workers currently performing similar positions to determine whether the description accurately reflects the functions of that job.
- Ensure that the position description matches the expectations supervisors will have for the successful candidate by getting their feedback as well. Emphasize the importance of flagging any expectation for the position that does not actually appear in the description.

Sample Job Description

Company Name:	*ABC Company*	**Work Location:**	Portland HQ
Department:	Human Resources	**Reports to:**	HR Director
Job Title:	Personnel Specialist	**Exempt classification:**	Non-Exempt
Employment Status:	Regular	**Shift:**	8 am to 5 pm

General Description: This position provides direct support and service to the Human Resources department on matters relating to recruiting, hiring, selection and training employees. Also acts as a resource to managers and employees, helping them to operate with the greatest flexibility within the framework of personnel policies, rules and the law.

Knowledge, skills and abilities required: Excellent oral and written communication skills. Good working knowledge of state and federal employment laws, and current human resources theory, research and practices. Skill in using word processing and spreadsheet computer programs.

Essential Functions: Responds to inquiries from employees and the public with regard to job openings, the application and recruitment process, and all other factors included with appointment and promotion within the company.

- ✓ Prepares all recruitment announcements. Ensures appropriate postings are complete.
- ✓ Prescreens candidates and schedules interviews.
- ✓ Conducts reference checking.
- ✓ Acts as the records manager in overseeing the processing, retention, purging, and confidentiality of all the official personnel files.
- ✓ Interprets personnel rules, policies and procedures to all levels of staff.
- ✓ Conducts or assists in research and statistical studies regarding all phases of personnel operation; i.e., layoff, procedures, training, turnover, etc.
- ✓ Performs other duties and projects as assigned.

Working Conditions: General office environment. Spends at least 50 percent of time working at a PC terminal; 2-3 hours of phone work per day. One day of travel per month to field offices in neighboring counties.

Equipment Used: PC, CRT, calculator, and other standard office equipment for recording, storing and presenting information.

A word on exempt employment status

The review of business needs and the ways in which a potential new hire would be able to meet those needs (undertaken as part of the job analysis described above) will also impact the nature of the position as "exempt" or "non-exempt." The terms exempt and non-exempt are a kind of shorthand for employers that refer to whether the minimum wage, overtime or recordkeeping requirements of wage and hour laws apply to a given position.

Employers determining whether a position is exempt from wage and hour requirements should keep the following basic points in mind:

- **Not all exemptions are created equal**. Some exemptions apply to minimum wage and overtime and others apply only to overtime.
- **Employers claiming an exemption are responsible** to ensure that the work of the position in question fits "plainly and unmistakably" within the criteria for a specific exemption. For example, many employers mistakenly assume that the payment of a salary automatically creates an exemption. While there are specific exemptions for individuals who are paid on a salary basis and who meet a specific job duties test, payment of a salary alone does not qualify the employee for the exemption.
- **Most employers are subject to both state and federal wage and hour laws**. While these laws are often similar, they are not identical. A given position may be exempt under state or federal law but ineligible for the exemption under the other law.

Position description maintenance

Once established, position descriptions provide one of the objective bases for performance evaluation of the successful candidate, documentation of essential job functions, and support for classification determinations.

As job duties and responsibilities of the position evolve, the job description should be revised and updated, ideally on a set schedule and at least each time it is used for a new round if hiring.

Recruitment

Having established a detailed position description, crafting job announcements should be as simple as repackaging the essential job functions and required knowledge skills and abilities into an attractive package. That said, it is critical just here, when employers are set to go public with a position, that they make sure their recruitment program and job advertisements do not create any inadvertent violations of employment law.

Job advertisements

Job advertisements should describe the job and include essential job functions. They should include only Bona Fide Occupational Requirements, i.e., requirements or qualifications necessary to do the job, and they should list the minimum requirements – education, licenses, certification, experience, etc.

The advertisement should NOT include any potentially discriminatory language. In fact it may also be wise to include an EEO statement, e.g., "XYZ Company is an equal opportunity employer," or "ABC Company does not discriminate on the basis of race, religion, color, sex, age, national origin, disability, veteran status, or any other classification protected by law."

The job advertisement should provide applicants with ample notice if pre-employment drug testing is required and whether the hiring process will include credit or criminal background checks (assuming those checks can be lawfully made, *see below*).

Of course, the advertisement should also include instructions for how to apply and a closing date for applications, if applicable.

Job advertisement checklist

Does the advertisement include the following basic elements?

- Job title
- Essential job functions
- Experience needed
- Educational requirements
- Special skills needed
- Special job requirements / working conditions
- Salary information, if appropriate
- EEO statement

- Application instructions

When writing advertisements, employers should avoid language that directly or indirectly expresses any limitation or preference on the basis of protected class status unless such preference related to a BFOQ.

Keep in mind that an employer may NOT claim a BFOQ for such reasons as: customer, co-worker or employer preference; stereotypes or assumed characteristics of a protected class. OAR 839-005-0013. For example, avoid language that denotes one sex, such as "Strong man wanted" or "Girl Friday needed."

Job advertisement don'ts

- "One girl office"
- "Strong guy"
- "Prefer single (married, older, mature, etc.)"
- "No accent"
- "Must speak English"
- "Will train bright young graduate"
- "Junior position"

Review draft advertisements to ensure that they use neutral, non-gendered terms to specify job titles. All information should relate to the skills, education and experience necessary for successful job performance.

Employers need to keep copies of the all advertisements used for a recruitment for one year.

Employers should consider advertising in a variety of publications/websites to help ensure that the information will reach a representative population base.

Recruitment methods

An effective recruitment program aims to attract qualified applicants for current and future positions. State and federal laws do not require employers to establish any particular method to recruit employees. Several methods are available, each potentially resulting in a different outcome.

Naturally, the larger the pool of applicants, the more likely a qualified candidate will be found. The size of the applicant pool necessary may be determined by the type of job. Although several methods of recruitment are available, again it is important to avoid using any method that results in a discriminatory outcome.

***Practice tips**:*

- Review all aspects of the recruiting process to determine if methods used have the effect of screen out protected classes.
- Audit the current workforce to determine if its composition is representative of the population.
- Conduct periodic reviews of recruiting methods to make sure they are in compliance with state and federal laws.

Legal hiring practice update:

As a result of SB 1548 (2012) employers are prohibiting from publishing job advertisements which requirement current employment as a condition of consideration. The new law does, however, provide an exception for recruitments limited to current employees of the employer.

Word-of-mouth recruitment/employee referrals

Recruiting by "word-of-mouth" can produce a pool of highly desirable job candidates in that it typically takes advantage of a network of people with some knowledge of the hiring organization, its culture and perhaps, the position itself. A solid recommendation from a trusted source with knowledge of the candidate and the job can be invaluable.

Of course, there is also the potential for referrals of friends and family that really do not have the knowledge, skills and abilities needed to do the job well.

More troubling, however, is that when "word-of-mouth recruitment is used exclusively, it may create a perception of discrimination. This is especially true if protected classes are underrepresented in the referring group or there has been historical exclusion of protected classes. The makeup of the workforce and the method for disseminating job opportunities can be key factors in defending legal challenges regarding recruitment methods. In the end, it may be best to avoid using exclusively work-of-mouth or employee referral as a recruitment method. (See *Gaines v. Boston Herald, Inc*., 20 F. Supp. 91 (1998); *Franks v. Bowman Transportation Co*., 495 F2d 398 (1974).

FAQ

NEOPOTISM

IT'S NOT AGAINST THE LAW TO HIRE FRIENDS OR RELATIVES.

QUESTION: We have two new openings at our company, one for a supervisor and one for a production worker. We've neither advertised nor recruited for either position, but we already know whom we'd like to hire. John, currently our foreman, does a great job, and we'd like to promote him to the supervisory position. John referred his nephew Eric to us, and after talking with Eric, we think he'd be perfect for the production job.

Can we go ahead and place these two people in these jobs? There's disagreement among our management members as to whether we're required to first post the jobs internally or advertise in the newspaper.

ANSWER: So long as you're not discriminating and not violating an employment contract or your own company policies, you can certainly hire John and Eric. In general, there's no legal obligation for you to advertise, post, or recruit for any particular job opening. However, if you always hire employees in this fashion, you may be susceptible to claims of discrimination and unlawful hiring practices.

Some of your managers may have worked for a unionized employer. Often, a collective bargaining agreement will require internal posting of job vacancies for a specific time period to allow interested employees to bid on available jobs. Also, employment contracts may give employees seniority rights when jobs become available. Of course, if you have such a contract, you must comply with those requirements, or you risk grievances and breach of contract claims.

On the other hand, if you're an at-will employer (as are most employers in Oregon), you're free to determine how and when you advertise job vacancies. Employment laws don't prohibit you from promoting an individual internally and don't prohibit you from hiring an individual who heard about the job by word of mouth.

Your current employees may have friends or relatives who are very qualified for positions with your company, and referrals from your existing staff can be a great way to recruit. Although your company may have policies on nepotism, it's not against the law to hire friends or relatives. In fact, under Oregon civil rights laws, it's illegal to refuse to hire an applicant simply because the applicant is related to a current or former employee. Your company can legally refuse to employ family members, but only when one individual would be in a supervisory-subordinate relationship with his or her relative.

Even though employment laws don't require any specific recruitment methods, all methods used by employers may be subject to legal scrutiny. There's a danger in always hiring employees the way you're planning to hire John and Eric. If you continue to hire just by word of mouth, or you continue to hire friends and relatives of employees, you're likely to wind up with an imbalanced workforce -- for instance, a workforce made up primarily of white males in their 30's. And you could later face claims by women or minorities that your hiring practices were discriminatory, since these protected groups were adversely impacted and didn't have a fair opportunity to apply for openings with your company.

Therefore, you should check for imbalances in your workforce and in the pool of applicants that you attract. Be prepared to show that your recruiting methods are generally designed to reach all qualified people in the local population. It's a good idea, at least some of the time, to increase the scope of your recruitment. Consider advertising on the internet, in newspapers with broad circulation, in community service radio and TV announcements, with the Oregon Employment Department, or with agencies geared towards women and minorities.

Employment agencies

Employment agencies are a resource for recruiting qualified applicants; however, employers may still be legally responsible for unlawful hiring practices of any outside agency used.

"It is an unlawful employment practice…

For an employment agency, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to ORS 419a.260 and 419a.262, to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against the individual. However, it is not an unlawful employment practice for an employment agency to classify or refer for employment an individual when the classification or referral results from a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business." ORS 659A.030(1)(e).

As with direct recruitments, employers should maintain accurate records regarding which positions were recruited for by way of employment agencies.

Applications

Job application materials can serve more than one purpose. To begin with, application materials provide potential employees some information about the position and their prospective employer. For example, application forms provide an opportunity to communicate the intent to employ "at will," (meaning the employment relationship may be terminated at any time with or without notice for any lawful reason.)

More importantly, however, the job application is an indispensable tool for determining if the applicant is qualified for the opening. At a minimum, a good application form should solicit enough basic information to determine whether the applicant is qualified for the job – i.e., possesses the minimum knowledge skills and abilities necessary to perform the essential job functions.

In seeking information about the applicants, some employers inadvertently ask questions that discriminate against qualified candidates in protected groups. To minimize the potential for employment bias liability, application forms should solicit only job-related information that directly pertains to the applicant's current skills, training and ability to perform the job. Employers should review existing forms and eliminate any questions that are not job-related or are personal in nature. Likewise employers should remove questions relating to employees rather than applicants, such as benefits information, Social Security number and emergency contacts. This is information that may be collected if and when it becomes necessary (i.e., upon hire).

Equal employment opportunity statements

While an Equal Employment Opportunity (EEO) statement is not legally required, an EEO statement placed on the application does demonstrate a company's commitment to following applicable civil rights laws.

Sample (EEO) statement

> *ABC Company* is an equal opportunity employer and does not discriminate on the basis of race, religion, color, sex, age, national origin, disability, veteran status, or any other classification protected by law.

"At-will" employment status

Oregon is an employment at-will state. In general, this means that an employer can terminate an employment relationship at any time for any reason. Over the years, however, there have been a variety of laws and court cases that have placed major restrictions on an employer's right to terminate employees. For this reason, employers should signal their intention to employ at will as clearly and as often as necessary, including before an employment relationship has been forged. Employers may choose for example to clearly state in their recruitment materials or application materials that nothing set out there is a contract, that the company reserves its right to employ at-will, and that both the employer and employee can terminate the employment relationship at any time for any reason.

Sample at will employment statement

> *ABC Company* is an employment at-will company. That means that both the employer and employee can terminate the employment relationship at any time for any reason.

A word on arrest and conviction records

There is no state or federal law that clearly prohibits an employer from directly asking candidates about arrest and conviction records. Nevertheless, employers should keep in mind that an arrest alone does not necessarily mean that an applicant has committed a crime. The prospective employer should not assume that the applicant committed the offense. Instead, the employer may wish to allow the applicant the opportunity to explain the circumstances of the arrest(s) and make its own determination as to whether the explanation is reliable.

Even if the employer believes that the applicant did engage in the conduct for which he or she was arrested, that information should prevent the individual from obtaining employment only to the extent that it renders him or her unfit to perform the duties of the position when considering:

- The nature of the job,
- The nature and seriousness of the offense, and
- The length of time since it occurred.

There is some risk for employers that invoke a blanket ban on hiring any individual with an arrest or criminal conviction record. Although such policies are neutral on their face – individuals with convictions are not hired regardless of their race or ethnicity for example

– the Equal Employment Opportunity Commission (EEOC) has held such policies to be discriminatory. Insofar as the EEOC has found that certain minority groups are overrepresented in the criminal justice system, blanket bans on hiring individuals with a criminal record could have a disproportionately negative effect on those minority groups.

Be sure to refer to the section below regarding additional requirements pertaining to background information (including criminal reports) obtained for an employer by a third party consumer reporting agency.

FAQ

STANDARD APPLICATION FORMS

EMPLOYERS CANNOT ASSUME PRE-PRINTED APPLICATION FORMS WON'T LAND THEM IN HOT WATER!

QUESTION: My company uses a standard job application form that was obtained at a stationery store several years ago. Among other things, the form asks the applicant to indicate if he or she is in "good health" and if he or she is a U.S. citizen. Are these kinds of pre-employment questions still permitted?

ANSWER: No. The federal Americans with Disabilities Act (ADA) and Oregon disability statutes prohibit medical inquiries on a job application, in a job interview, or in a reference check. An employer may ask whether the applicant is able to perform the essential functions of a job, either with or without accommodation, but may not ask questions likely to elicit information about physical or mental conditions, prior back injuries or workers' compensation claims, prescription medication the applicant may be taking, or general health status.

Upon making a job offer, an employer may require the employee to pass a physical exam before beginning work, provided that this is required of all individuals in that job category and that medical records are kept confidential. Medical inquiries of current employees are legal only if job-related and consistent with business necessity.

The question about the job applicant's citizenship is also improper, leaving your employer susceptible to lawsuits for national origin discrimination. One needn't be a U.S. citizen to work in this country, and the Immigration Reform and Control Act (IRCA) makes it illegal to ask applicants about citizenship. However, an employer does have a right to advise a job applicant that if hired, he or she will be required to complete a Form I-9 to demonstrate eligibility to work and remain in the U.S. Even then, it's illegal under IRCA for an employer to demand specific forms of identification, such as a "green card" or social security card. Instead, the employee may choose which documents to present to satisfy the I-9 requirements.

> As an employer, you should be cautious of "standard" job application forms that may be out of date and may include questions that violate Oregon employment laws. It's a good idea to tailor a job application to your particular workplace and to have your employment attorney review the forms you use.

Citizenship

Employers should not ask (by way of an application or subsequent interview) whether a job applicant is a United States citizen. The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for employers to discriminate with respect to hiring, firing, or recruitment or referral for a fee, based on an individual's citizenship or immigration status. For example, the law prohibits employers from hiring only U.S. citizens or lawful permanent residents unless required to do so by law, regulation or government contract; it also prohibits employers from preferring to hire temporary visa holders or undocumented workers over qualified U.S. citizens or other protected individuals, such as refugees or individuals granted asylum.

IRCA requires employers to verify the identity and employment eligibility of all employees hired after November 6, 1986, by completing the Employment Eligibility Verification (I-9) Form, and reviewing documents showing the employee's identity and employment authorization. The law prohibits employers from rejecting valid documents or insisting on additional documents beyond what is legally required for employment eligibility verification (or the Department of Homeland Security (DHS) Form I-9), based on an employee's citizenship status or national origin. For example, e.g., an employer cannot require only individuals the employer perceives as "foreign" to verify their employment eligibility or produce specific documents, such as Permanent Resident ("green") cards or Employment Authorization Documents. It is the employee's choice which of the permitted documents to show for employment eligibility verification. As long as the document appears reasonably genuine on its face, and relates to the employee, it should be accepted.

Because of potential claims of illegal discrimination, employment eligibility verification should be conducted after an offer to hire has been made. Applicants may be informed of these requirements in the pre-employment setting by adding the following statement on the employment application:

> *In compliance with federal law, all persons hired will be required to verify identity and eligibility to work in the United States and to complete the required employment eligibility verification document form upon hire.*

Application checklist

1. Is it tailored to the needs of your company and to the job positions for which you are recruiting applicants?

2. Does it include an EEO statement?

3. Does it include “at will employment” language?

4. Does it require the applicant to sign a statement affirming the accuracy of information provided, and acknowledging that inaccurate information could disqualify the applicant or result in termination if the applicant is hired?

5. Does it include an authorization allowing you to verify information provided and conduct reference checks?

Tips

- Remove any questions soliciting protected class information
- Review application materials periodically for compliance
- Ensure every applicant completes an application

Evaluating applications

While a particular recruitment may generate only a handful of responses, depending on the job market and the type of position advertised, it is not uncommon for employers to find themselves inundated with hundreds of responses to a single vacancy. From a practical perspective, therefore, employers ought to evaluate applications as soon they come in.

One way to begin the task is to separate applications into one of three categories:

1. Yes
2. No
3. Maybe

The “yes pile” should include those applications that meet each of the required qualifications as well as a high level of desired, relevant education and experience.

The “maybe pile” will include those applications that meet minimum qualification requirements but lack strong evidence of relevant education or experience. Whether these applications progress to the next step in the hiring process will depend on the relative strength of the rest of the applications received.

The “no pile” is reserved for those applications that do not evidence the required knowledge, skills and abilities identified in the job description. The “no pile” is also the

final resting place for applications that are incomplete, illegible, wrinkled, coffee stained or altered. Neatness counts. So does following instructions. An applicant that fails to put forth the basic effort to make a good impression at this stage is unlikely to have a better follow up act. Ineligible candidates should receive a courteous but direct form letter informing them that their application will not be given further consideration.

Sample Rejection Letter (Pre-interview)

[Date]

Dear _____:

Thank you for your interest in the _____ position. We have received a number of impressive applications regarding this position

At this time, *ABC Company* has elected to pursue other candidates whose qualifications most closely matched those required for this position.

While your application was not selected for further consideration, please feel free to submit an application in the future regarding any open position for which you feel qualified.

Sincerely,

_____
HR Director

Prompt review of applications can help to keep a daunting task from becoming overwhelming. In addition, a pre-emptive screening for applications that clearly fail to meet minimum qualifications can save time that would otherwise be spent responding to the inevitable requests from ineligible candidates on the status of their application.

A word on veterans' preference in public employment

Public employers should be aware that in addition to the prohibitions on discrimination in employment on the basis of veteran status, Oregon law requires that a preference for veterans and certain disabled veterans be applied to any initial application screening.

In addition to this, the 2011 legislative session dramatically changed the landscape for public employers hiring or promoting workers into civil service positions by passing House Bill ("HB") 3207 was an effort to assist veterans seeking employment after serving in the armed forces by allowing them to demonstrate that they acquired "transferrable skills" in the service. Those skills, obtained through military education or experience, substantially relate, directly or indirectly, to the civil service position for which the veteran is applying. The Bill went into effect on January 1, 2012.

HB 3207 provides that when an interview is a component of the selection process for a civil service position or eligibility list (ranking eligible candidates through one or more tests, after which candidates are considered in ranked order), the public employer must interview each veteran: (1) who meets the minimum qualifications and special qualifications for the position or eligibility list; and (2) who submits application materials that the employer determines show sufficient evidence that the veteran has the transferrable skills required or requested by the employer for the position or the eligibility list.

This may mean that public employers will be conducting more interviews of qualifying veterans, even if those veterans are not near the top of the eligibility list. However, by applying the 5 or 10 point preference to the score of a veteran or disabled veteran, respectively, qualifying veterans will move up the list. There is a narrow exception in the bill to the requirement that employers interview qualifying veterans if the hiring is done from the eligibility list without further interviews or if an interview is not required to get on that eligibility list. See ORS 408.230 for details.

Legal pitfalls regarding selection criteria

Under employment discrimination laws, an employer commits an unlawful employment practice if it knowingly and purposefully discriminates against an applicant because of that applicant's membership in a protected class, (unless the employer can show that a bona fide occupational qualification or a court-ordered affirmative action plan allows the action). Although it would be odd indeed to see an employer advertise for "white help only" these days, it remains routine to hear of employers that do not want to hire a pregnant woman or a laid off 58-year old worker.

In determining what criteria will be used to select applications for continued consideration, employers also need to be careful that their selection criteria do not create an unintended "adverse impact" on members of a protected class.

Remember, even where there is be no intent to discriminate, an employer's policy, written in non-discriminatory terms (facially neutral), may still disproportionately affect a protected class adversely. If the employer's standard or policy has the effect of screening out members of a protected class at a significantly higher rate than others who are not members of the protected class, an "adverse impact" occurs. In such cases, the burden is be on the employer to show that there is a business necessity for such selection criteria. OAR 839-005-0010(2).

***EXAMPLE*:** Consider an employer that requires all employees to be able to lift 50 pounds. Since this requirement will likely have an adverse impact on women and some people with disabilities, the employer will likely need to establish that this requirement is necessary for the operation of the business. Other examples of adverse impact that would require a showing of business necessity include:

- Certain educational requirements;
- Height and weight requirements; or
- Language requirements, such as requiring all employees or applicants to speak English fluently.

The U.S. Supreme Court in *Griggs v. Duke Power Co.* states, "[G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds'…Congress directed the thrust of [Title VII] to the consequences of employment practices, not simply the motivation."

The key for employers is to ensure their selection criteria are job related and consistent with business necessity. Employers should also give consideration to any request for suitable alternative selection procedures to ensure selection procedures have as little adverse impact as possible. (See *Albemarle Paper Co. v. Moody,* 422 U.S. 405 (1975).

The EEOC recommends the following "Employer Best Practices for Testing and Selection":

- Employers should administer tests and other selection procedures without regard to race, color, national origin, sex, religion, age (40 or older – 18 or older under Oregon law), or disability.

- Employers should ensure that employment tests and other selection procedures are properly validated for the positions and purposes for which they are used. The test or selection procedure must be job-related and its results appropriate for the employer's purpose.

- If a selection procedure screens out a protected group, the employer should determine whether there is an equally effective alternative selection procedure that has less adverse impact and, if so, adopt the alternative procedure. For example, if the selection procedure is a test, the employer should determine whether another test would predict job performance but not disproportionately exclude the protected group.

- To ensure that a test or selection procedure remains predictive of success in a job, employers should keep abreast of changes in job requirements and should update the test specifications or selection procedures accordingly.

- Employers should ensure that tests and selection procedures are not adopted casually by managers who know little about these processes. A test or selection procedure can be an effective management tool, but no test or selection procedure should be implemented without an understanding of its effectiveness and limitations for the organization, its appropriateness for a specific job, and whether it can be appropriately administered and scored.

Source: http://www.eeoc.gov/policy/docs/factemployment_procedures.html

Dealing with unsolicited applications and résumés

Simply ignoring or discarding unsolicited applications is risky; applicants may conclude they are being considered for future job openings.

Instead, employers should formulate a plan for responding to all job inquiries.

When unsolicited application materials or a résumé are submitted, employers should follow a consistent policy. For example, an employer may send a letter or postcard (with or without the submitted materials) advising that unsolicited applications are not considered and that the individual should reapply when a job vacancy is advertised. Or, an employer may choose to retain the materials for review and advise the individual as to the period of time during which the materials will be considered.

In any event, employers should retain any applications or records actually considered for a position for one year from the date of the final employment decision.

Interviews

The purpose of interview questions is to elicit relevant information about the applicant's qualifications and suitability for the job. A good interview question:

- Helps the employer determine if the applicant is qualified for the job,
- Provides a comparative basis determining which applicant is *best qualified* for the job, and
- Gives employers an opportunity to verify "soft skills."

Unfortunately, employers often pose interview questions that may expose them to legal liability. Employers should be careful to structure their interview practices in order to minimize this risk. Some of these measures include:

- Setting aside personal biases,
- Asking only job-related information, and
- Asking all applicants the same questions.

A word on inquiries regarding BFOQs

Pre-employment inquiries that adversely impact protected groups at *any stage* of the hiring process are inappropriate unless they are necessary to meet a bona fide occupational qualification (BFOQ). Employers should be aware that they have the burden of showing a business necessity for discriminating based on a BFOQ, and BFOQ defenses are seldom accepted by the courts. For BFOQ status, the qualification must be necessary for successful job performance and essential to the normal operation of the employer's business.

For example, although Oregon civil rights law prohibits discrimination in employment on the basis of age (beginning at age 18), applicants for a bartender position must meet the state's minimum age requirement of 21. In this instance being at least 21 is a BFOQ, however, prudent employers should phrase a pre-employment inquiry (whether on an application or during an interview) as narrowly as possible. An employer might say, "By law, bartenders must meet the state's minimum age requirement of 21; could you provide documentation that you meet this requirement prior to employment?" Note that the employer has not asked the applicant's age at all – only whether the applicant can document that he or she can meet the BFOQ.

Interviews can be broadly divided into two categories: screening interviews (over the phone and in-person interviews (by either an individual or a panel of interviewers).

An employer should provide reasonable accommodation in the application process for applicants with disabilities. Invitation to interview should contain an invitation to request reasonable accommodation, or if not an invitation, at least a statement that the employer will make reasonable accommodations in the application process for individuals with disabilities.

Screening interviews

Where a recruitment generates a high volume of applications, employers may find that a telephonic screening interview is a good way of narrowing down the field of applicants who will be invited for the more time consuming process of an in-person interview.

During a telephone interview, the aim is to identify any "deal breaker" regarding basic features of the position or with the applicant's qualifications. Although a telephone interview is typically less formal than an in-person variety, an interviewer may still get a good sense of the applicant's ability to communicate. A telephone interview is also an ideal opportunity to clarify any ambiguous items on the application or résumé such as a pattern of frequent job changes or gaps in employment history. Finally, employers should consider discussing the applicant's salary requirements; if one side is simply outside of the other's price range there is little point to continuing the hiring process.

In-person interviews

Employers should arrange to conduct in-person interviews in a private yet professional setting and feel free to establish rapport with a few minutes of small talk (subjects might include the weather, traffic, parking, sports, etc.)

Prior to a panel interview, employers should ensure any panelists understand the purpose of the interview and their role in the hiring process. Panelists should be instructed not to pose personal questions (unrelated to the essential job functions of the position) or questions that may elicit information pertaining to an applicant's membership in a protected class. It may be helpful to provide panelists with a copy of the protected classes under civil rights law (see the section above on Discrimination in Hiring).

For the interview itself, employers should set out a uniform slate of questions for all applicants.

Avoid choosing questions that can be answered with a yes or no. ("Do you think you can do this job?") Instead, include open-ended questions designed to allow the applicant to elaborate on the answers. An applicant's responses to such questions will provide a much better perspective on intangibles like his or her ability to communicate, enthusiasm for the position and strength of character than closed-ended questions.

Employers should also consider whether to include behavioral or situation questions. Behavioral (or competency-based) questions ask the applicant to describe past experiences in which the he or she exercised a work-related competency or skill. For

example, “Can you tell us about a time when you faced competing deadlines and how you handled that problem?” The responses to such questions will help to provide a feel for what real world experience the applicant has and how he or she responds under stress. Such questions also generate material that the employer can further verify through background checks and contact with previous employers or coworkers.

An alternative to the behavioral approach would be to pose hypothetical situations and ask the applicant to describe how he or she would respond and why. This approach may be more appropriate where applicants may not have much in the way of prior experience (entry level positions). It also may shed light on the applicant’s decision making process.

During the interview, interviewers should paraphrase what the applicant is saying, in order to ensure accuracy and enhance rapport. For example, an employer might ask, “So what you’re saying is...” or “It sounds like your approach has been....”

Interviewers may also want to probe further where responses are thin or it appears the applicant has not understood the question. The important point to keep in mind is that the interview should then return to script and follow the slate of questions set out for each candidate. Of course, follow up questions, too, need to steer clear of soliciting any information regarding protected class status.

Interviewers should take abbreviated notes during the interview and try to find a balance between writing down accurate information and maintaining eye contact. Interviewers should record what is said, not their interpretation of an answer.

Interview questions to avoid:

- What is your age?

  Tip: If it is necessary to verify age for child labor requirements, it is better to ask, “Are you 18 or older?” An employer may only inquire about age when the employer can show it is a bona fide occupational requirement (“BFOQ”).

- Where were you born?
- Are you are a citizen of the United States?

  Tip: Only ask this question if the job requires citizenship. The Immigration Reform and Control Act prohibits employers from knowingly hiring illegal aliens. The Act also prohibits discrimination on the basis of citizenship.

- Are you married? Single? Doesn’t your wife work here?
- How many children do you have?

  Tip: If you are concerned about attendance or availability for work it is better to ask, “Can you meet our attendance standards?”

- Are you pregnant?
- What is your religion?

Tip: If a work schedule is your real concern, ask if the applicant can work specific days. Employers are required to accommodate workers' religious beliefs unless to do so creates undue hardship.

- Have you ever filed a workers' compensation claim?
- Have you ever had back problems?

  Tip: Hiring decisions must be based on an applicant's present ability to perform the job.

- Do you have any physical or mental impairments that may affect your performance in this position?

  Tip: Employers may ask about the applicant's ability to perform the essential functions of the job, including whether the applicant can perform the job functions with or without reasonable accommodation.

- Are you taking prescription medication?
- Have you ever been treated for drug addiction or alcoholism?
- How many days were you absent from work because of illness last year?
- Have you been arrested in the last year?

  Tip: Limit questions to arrests that result in convictions.

- What is your height? Weight?

  Tip: Ask only if a BFOQ.

- Are you an Olympic athlete? Have you ever served in the state legislature? Do you have an expunged juvenile record? Do you ever donate bone marrow? Do you respond to riots or floods as a member of the National Guard?

  Tip: Limit your interview questions to those which would reasonably elicit information regarding your essential job functions.

Appropriate interview questions:

- Why do you want this position?
- How are you qualified for this job?
- Describe your training and experience that will enable you to perform the essential functions of this job.
- What did you like best about your last position?
- What did you like least about your last position?
- What was your best accomplishment on your most recent job?
- Why did you leave your last job?
- How does this job relate to your career plans?

- What research have you done about our organization to prepare for today's interview? What do you know about our company? What do you want to know?
- What qualities would you desire in a manager?
- How would you describe your management style?
- Do you prefer working alone or with other people?
- Can you describe how you handle pressure? Can you provide examples of how you've successfully handled high-pressure jobs?
- Are you able to work overtime?
- How would you handle the travel requirements of this position?
- How do you feel about the paperwork associated with this position?
- What do you expect from this company?
- Why should I hire you?
- What will your current supervisor say about your performance when I talk to him/her?
- What was the most important lesson you learned in your last position?
- If you were starting over at your current position, what would you do differently?

FAQ

THE APPLICANT SAID WHAT?!?

APPLICANTS THAT VOLUNTEER INFORMATION ABOUT PROTECTED CLASSES REQUIRE A READY RESPONSE.

QUESTION: I know I'm not supposed to ask job applicants about medical conditions or disabilities, but often, the individual volunteers the information. Today, in the middle of a job interview, the candidate blurted out that he was diabetic and that he hoped that wouldn't be a problem. How can I legally handle this situation?

ANSWER: When a job applicant has an obvious disability or voluntarily discloses a disability, the Americans with Disabilities Act regulations permit you to ask only limited questions as to what type of accommodation the individual might require to perform the job duties.

Since you're prohibited from using disability status in making your hiring decision, you should not dwell on this area. Your best bet is to tactfully change the subject. When an applicant discloses his disability – or marital status, national origin, age, or religion, for that matter -- you could say, for example, "We don't

> use that kind of information to evaluate applicants. Let's move on and talk more about your qualifications and why you feel you'd be the best candidate for this position."

Evaluating interviewees

Employers should have some way of rating and evaluating each job candidate's performance in the interview phase of the hiring process.

A significant advantage of using a standardized slate of questions for interviews is that lends itself to an "apples to apples" comparison between job candidates. One of the most common systems has the interviewer or panel of interviewers assign the applicant a score (say from 1 to 5) for each question. See *Sample Interview Evaluation #1,* below.

An alternative way to evaluate interviewees involves setting out each of the essential knowledge, skills and abilities required for the position and have the interviewer or the panelists assign an overall score for each. See *Sample Interview Evaluation #2,* below.

Public employers should be aware that in addition to the prohibitions on discrimination in employment on the basis of veteran status, Oregon law requires that a preference for veterans and certain disabled veterans be applied to any application examination subsequent to the initial application screening. See ORS 408.230.

Sample Interview Evaluation Form #1

Candidate Name: _____ Interview Date: _____
Position: _____ Interviewer: _____

Question Scoring Guide:	
4 = Outstanding	Complete articulate response draws upon extensive successful real world experience and thoughtful preparation
3 = Above Average	Complete response demonstrates prior experience and/or awareness of issues germane to the ABC Company and the position in particular
2 = Acceptable	Complete response, lacking anything beyond basic evidence of prior experience or awareness of issues germane to the business of ABC Company or the position in question
1 = Unacceptable	Incomplete / incoherent response

_____ **1.** Why do you want this position?

_____ **2.** How are you qualified for this job?

_____ **3.** Describe your training and experience that will enable you to perform the essential functions of this job.

_____ **4.** What did you like best about your last position?

_____ **5.** What did you like least about your last position?

_____ **6.** What was your best accomplishment on your most recent job?

_____ **7.** Why did you leave your last job?

_____ **8.** How does this job relate to your career plans?

_____ **9.** What research have you done about our organization to prepare for today's interview? What do you know about our company?

_____ **10.** What qualities would you desire in a manager?

_____ **11.** How would you describe your management style?

_____ **12.** Do you prefer working alone or with other people?

_____ **13.** Can you describe how you handle pressure? Can you provide examples of how you've successfully handled high-pressure jobs?

_____ **14.** Are you able to work overtime?

_____ **15.** How would you handle the travel requirements of this position?

_____ **16.** How do you feel about the paperwork associated with this position?

_____ **17.** What do you expect from this company?

_____ **18.** Why should I hire you?

Sample Interview Evaluation Form #2

Candidate Name: _____ Interview Date: _____
Position: _____ Interviewer: _____

Question Scoring Guide:
5 = Outstanding; 4 = Above Avg.; 3 = Acceptable; 2 = Presents Concerns; 1 = Unacceptable

_____ **EDUCATION**: Did applicant's responses evidence the required level of education for this position?

_____ **WORK EXPERIENCE**: Was applicant able to demonstrate previous experience provided transferrable knowledge, skills, or abilities applicable to this position?

_____ **COMMUNICATION SKILLS**: Was the applicant able to provide articulate complete responses to interview questions?

_____ **PROBLEM SOLVING SKILLS**: Did applicant's responses to questions reflect a demonstrated track record of successfully handling time management and interpersonal conflicts?

_____ **OVERALL IMPRESSION AND RECOMMENDATON**:

FAQ

WORKING INTERVIEWS

EVALUATING AN APPLICANT'S SKILLS AND ABILITIES ON THE JOB CAN CREATE AN EMPLOYMENT RELATIONSHIP.

QUESTION: We operate a small family style restaurant downtown and we are considering our options for hiring a sous-chef. With our reputation tied to each entrée that goes out to our customers, we need to be sure that our applicants can do what they say they can do and whether they will be able to keep up with our fast-paced operation. Can we have an applicant come in for an evening shift and make a trial run?

ANSWER: The heart of the hiring process is all about making sure the person you ultimately hire will be able to perform the job to your satisfaction. The balance of the hiring process, though, is about making sure you do not create any unnecessary legal obligations or liability along the way.

Under wage and hour law any work "suffered or permitted" to be performed would constitute employment for which minimum wage, any overtime and recordkeeping requirements would apply.

As a practical matter, you may want to consider "skills testing" rather than a live "trial run." For example, you could have your top three candidates work up a slate of your menu items on a timed basis during your off hours. By requiring the dishes within a given time frame (and testing them) you've given yourself a couple of objective measures for separating out the best candidate.

If you do choose to have an applicant out for an evening of work and their work product benefits the business (say, the dishes an applicant prepares do go out to real customers) just keep in mind that you have hired the individual for the evening. You should be clear in arranging the period of probationary employment that you are not offering to continue employment or benefits and you should clearly communicate, preferably in writing the rate at which the applicant will be paid.

Post-interview considerations

Even though the applicants are no longer present, interviewers should still be careful with the language they use during their evaluations of the candidates and in choosing which of the candidates will advance to the next step of the selection process. An applicant's protected class status should not be used during the deliberation unless there is a bona fide business related reason.

As mention above, Human Resources mangers should consider providing some basic training on EEO laws to members of the interview panels. This is an especially important consideration when non-management staff is participating in the selection process.

Notes should be kept on the criteria used in ranking the candidates and making the selection. The discussions and written notes may be disclosed; for that reason, it pays to be judicious. Some managers mistakenly believe that the deliberation is confidential. It is not. When and if the hiring decision is challenged the decision-makers may be interviewed during the investigative process or subpoenaed to testify in court and the notes may be disclosed and put into public records.

Background Checks

To minimize liability under the tort of "negligent hiring," employers may choose to conduct background checks of applicants, in addition to obtaining references. It is prudent to conduct background checks when reviewing candidates for safety-sensitive jobs (e.g., child care provider) or jobs involving a great deal of public contact (e.g., a television repairperson that regularly enters customers' homes).

Practice tips:

- Conduct a criminal record search on all high-risk employees where it is job related and consistent with business necessity.
- Investigate gaps in the employment history.
- Follow through on all reference checks.
- Make the job offer contingent on a satisfactory background check.

A word on negligent hiring

The concept of negligent hiring is based on the legal principle that a company has a duty to protect employees, customers, clients and visitors from injury caused by those it hires. When a company hires someone that it knows or should have known to be unfit and others are harmed or injured as a result, the company will likely find itself defending against a claim of negligent hiring.

For example, in March of 2012, an Oregon jury rendered a verdict awarding $5.2 million to the family of a man killed by a truck driver who fell asleep at the wheel under the influence of methamphetamines. Attorneys for the family successfully argued that responsibility for the event extended even to the trucking broker that had hired the motor carrier that employed the driver because it failed to properly investigate the carrier prior to hire (negligent selection). Had it done so, it would have discovered that the carrier did not have insurance and its operating authority had been revoked for failure to conduct drug testing on drivers. *Linhart v. Heyl Logistics LLC, et al.*, Case No. 10-03100 (D. Or. Judge Panner, Docket No. 230).

Employers have a duty to conduct a reasonable and thorough investigation of an applicant's past employment and background, especially in regard to high-risk positions, such as those involving access to private homes, access to unprotected children, unsupervised circumstances, and the use of vehicles or weapons.

FAQ

BACKGROUND CHECKS AND NOTICE

USING A THIRD PARTY TO CONDUCT A BACKGROUND CHECKS TRIGGERS OBLIGATIONS UNDER FCRA.

QUESTION: If we use an investigation service to check out job applicants, are we legally required to tell the applicants that we conduct background checks?

ANSWER: Yes. Using an investigation agency to conduct employee background checks triggers a number of employer obligations under the federal Fair Credit Reporting Act (FCRA).

Employers may choose to conduct background checks of applicants, in addition to obtaining job references, to minimize liability for "negligent hiring." If one of your employees harms someone, you could be held liable under the theory that you were negligent in hiring, supervising or retaining the employee. Since you don't want a jury to conclude that you knew or should have known an employee was unfit for the job or posed a danger, it's important to diligently investigate an applicant's history by conducting careful job interviews and checking references.

It's prudent to also conduct background checks when reviewing candidates for safety-sensitive jobs (e.g., a child care provider) or jobs involving public contact (e.g., a repairperson who enters customers' homes).

FCRA applies when you evaluate a job applicant using "consumer reports" and "investigative consumer reports" provided by an outside organization. You must comply with FCRA requirements anytime you obtain information from a credit bureau or private investigation agency that assembles second-hand information about the applicant gathered by others.

FCRA applies not only to credit-related information, but also to criminal history reports, driving records, and reports on an individual's character obtained by interviews with friends or neighbors.

The law doesn't apply to you if you merely obtain a direct job reference on an applicant, because the former employer is providing first-hand information about the applicant.

When FCRA does apply, you must follow several steps. Before requesting a consumer report on a job applicant or current employee, you must provide the individual with a clear disclosure – in a document that is separate from application materials – that you may obtain a consumer report for employment reasons. Prior to requesting the report, you must also have the individual sign an authorization

form, and you must certify to the reporting agency that you are following the required steps.

Before taking an adverse employment action based on the background check (deciding not to hire the applicant, for example), you must provide the applicant with a copy of the report and a written description of a consumer's FCRA rights. You must also provide the individual with contact information for the reporting agency and advise the individual that he or she has the right to obtain a free copy of the report and to dispute the information it contains.

Additional information on the FCRA is available online from the Fair Trade Commission at: http://business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know.

Employers should be aware that background checks could also form the basis of a discrimination claim if they are unnecessary for the position in question or if they result in a disparate impact on members of protected classes. Specifically, the Equal Employment Opportunity Commission (EEOC) has sued employers whose systematic use of background checks had the effect of eliminating people of certain races. The EEOC has provided guidance on the use of arrest and conviction records in employment decisions online at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

Effective July 1, 2010, Oregon employers are also prohibited from obtaining or using information relating to an individual's creditworthiness, credit standing or credit capacity for employment purposes (e.g., pre-employment screenings or promotions).

Exceptions: This new law does not apply to certain employers, such as federally insured banks, credit unions, law enforcement agencies in hiring law enforcement officers, employers required by law to use individual credit history for employment purposes and employers, who can show substantial job relatedness, (e.g., employees who handle financial information beyond that required for a retail transaction) and with proper disclosure in writing. See Oregon Administrative Rules 839-005-0060 to 0085.

FAQ

BACKGROUND CHECKS & SOCIAL MEDIA

DEMANDING FACEBOOK PASSWORDS A RISKY MOVE.

QUESTION: As a company we have an image to protect – can we require job applicants to provide us with passwords to social media sites like Facebook?

ANSWER: This is a risky move. One state, Maryland, has already passed legislation prohibiting employers from demanding access to applicants' social

> media sites. While Oregon law does not currently prohibit the practice, employers certainly create legal liability by doing so as information routinely appearing on social media sites may expose you to an applicant's protected class statuses like religion or sexual orientation. This creates an opportunity down the road for an unsuccessful applicant to characterize to your social media search as fishing for protected class status in a discrimination complaint.

Medical examinations and inquiries

The rules for conducting medical exams differ depending on the stage of the employment process involved: (1) Pre-offer testing of job applicants; (2) Post-offer (but pre-employment) testing; or (3) Testing of current employees. All applicants and employees of covered employers are protected by these requirements, not only those considered persons with disabilities under the law.

1. Pre-employment Inquiries / Pre-offer Examinations
    a. An employer may not ask if a job applicant has a disability or inquire about the nature or severity of a disability.
    b. Applicants may be asked about their ability to perform job related functions.
    c. An employer may not require a medical examination until after a job offer has been made. A job offer may be conditioned on the results of the post-offer medical examination if all entering employees in the same job category are required to take the examination. Drug tests are not considered medical exams under the disability laws and may be administered to job applicants prior to an offer of employment.

2. Post-Offer Examinations: An employer may require a medical exam and make medical inquiries after an offer of employment and before job duties have begun if this is required of all entering employees in the same job category.

3. Examinations of Current Employees:
    a. An employer may not require medical exams of employees or ask about disabilities unless such exams or questions are job-related and consistent with business necessity;
    b. An employer may conduct voluntary medical examinations that are part of an employee health program.
    c. ORS 659A.306 (previously 659.330) requires the employer to pay the out-of-pocket cost of any medical exam required as a condition of continuing employment. For purposes of this statute, drug tests are considered medical exams.

Note: Employers may not require that an employee or applicant bear the cost of any employer-required medical exam. See ORS 659A.306.

Illegal drug use

The law does not protect to any job applicant or employee who is currently engaging in the illegal use of drugs if the employer takes action based on that conduct.

1. An employer may:
    a. Prohibit the transfer, offering for sale, purchase or illegal use of drugs at the workplace.
    b. Prohibit the possession of drugs except for drugs prescribed by a licensed health care professional.
    c. Prohibit the use of alcohol at the workplace.
    d. Require that employees not be under the influence of drugs or alcohol while on the job.
2. An employer may hold an employee who is an illegal drug user or an alcoholic to the same qualifications standards for employment, job performance and behavior to which the employer holds other employees.
3. In an employee is in recovery for an addiction, however, the employer may be required to make an accommodation for that disability unless it would be an undue hardship. Reasonable accommodations could include allowing the employee to work a schedule that permits attending a 12-step program or to take some unpaid time off to enter a drug or alcohol rehabilitation program.

Recordkeeping and medical information

Information obtained regarding the medical condition or history of an applicant or employee is to be collected and maintained on separate forms and in separate files and must be treated as a confidential medical record.

Job references

Even when an applicant appears to be well-qualified, employers should attempt to obtain references. Doing so will provide supplemental information about the applicant and also minimize the chances of success of a negligent hiring claim. It is also advisable to inquire whether there is reason to believe the applicant would be dangerous or violent.

Practice Tip: When requesting a job reference on an applicant, employers should limit inquiries to those that would be acceptable in a job interview.

Questions likely to elicit information about an applicant's protected class membership should be avoided. Following are some examples of good and bad reference questions:

Good job reference questions:

- Does this employee work well with others?
- Does he finish his assigned tasks on time?
- Is he polite to customers? To co-workers? To supervisors?

- How was this person's attendance record, not including absences that are legally protected?
- Did he have an excessive number of Monday and Friday absences that were unexcused?
- We're considering him for a computer programming position. How knowledgeable is he in the area of software development?
- Did you ever discipline her for any reason? Why? Did her performance improve? Did she respond well to discipline?
- Was this employee ever violent? Do you have any reason to believe this employee might cause harm to anyone in the workplace?
- Did she abuse or mistreat anyone in the workplace?
- What job responsibilities did she have?
- Did she supervise any employees? What feedback did you get from her subordinates? If none, what do you think they would say about her supervisory skills?
- What were the best and worst qualities of this employee?
- Does he have good organizational skills?
- This job requires a lot of telephone work. Is this person professional on the phone?
- Why is she no longer with your company?
- Is she eligible for rehire?

Inappropriate job reference questions:

- Does he have any personality problems?
- Was she sick a lot? Has she ever been hospitalized?
- How many days did she miss because of illness last year?
- Has she ever filed a workers' compensation claim?
- Is she a smoker?
- Is she physically fit? Is she overweight?
- Is he a U.S. citizen? If not, does he have a green card?
- Is he married?
- Does he own his own home?
- Has he ever had his wages garnished?
- Has she ever been on welfare?

- Is she planning a family? Is she pregnant?
- Were there any scheduling problems because of this employee's religion?
- Does he have children? How many? Did he have child care problems?
- How old is he? Does he have memory lapses?
- Does he have a disability? Does he have a mental disorder?
- Was he ever on prescription medication?
- Do you know if she's ever been arrested?
- This job requires a lot of telephone work. Does he have a foreign accent?
- Has he committed any crimes?

Authorization for release of information

Employers should request applicants to sign an authorization allowing them to obtain reference information from their past employers.

Sample Release and Waiver

To: _____

I request and authorize you to disclose to _____ any documents or information that it may request. I have authorized _____ to inquire concerning my background in connection with an application for employment. I agree to hold you and your agents and employees harmless from all liability which could relate in any way to the disclosure of information or an assessment or opinion of my suitability for employment which may be provided.

Dated this _____ day of _____, 20__

Signed _____

A word on *giving* references

What *not* to do….

"You say you want to know about Wendy? I wouldn't hire her if I were you. We had reason to believe she was a thief. We know someone was embezzling from us, and we figure she must have been the one. She makes a good first impression, because she dresses nicely, and she works hard ... but I heard rumors from my employees that she was leading a loose, immoral lifestyle outside of work. This is off the record, but I heard that she belongs to a church that encourages orgies and spouse-swapping! I also found out that she filed workers' compensation claims against her prior employers. When she told me she was pregnant, I knew she'd probably get hurt and file a claim against us, too."

The main risk associated with giving references is that the employer may end up defending a defamation claim. Statements that adversely reflect on an employee's abilities or character are defamatory. If those statements are also false, the employee could prevail in a defamation claim.

Elements of a Defamation Claim:

1. Unprivileged
2. False and defamatory statement
3. Made to a third party (publication)
4. About the employee
5. Which damages the employee's reputation.

Employers have a "qualified privilege" to communicate defamatory information if the statements:

1. Are made with a good-faith belief that they are true.
2. Serve a business interest or purpose.
3. Are limited to that specific purpose.
4. Are made on a proper occasion.
5. Are communicated only to proper parties.

If an employee files a defamation suit, he or she may be entitled to a jury trial to decide if the employer has abused the privilege and is in violation of the foregoing guidelines.

Tips:

1. Develop a consistent ***written*** policy for responding to all reference requests.

2. Route all requests for references to one or two key personnel who understand the legal issues raised by reference inquiries.
3. Obtain signed releases before giving responses to reference requests.
4. Give only specific, documented facts, not subjective opinions.
5. Provide only information that is job-related.
6. Provide information only to those who have a business need to know.

ORS 30.178 as amended by Ch. 754, L. 1997, effective Oct. 4, 1997:

Liability of employer for disclosing information about employee to new employer; no action based on compelled self-publication.

(1) An employer who discloses information about a former employee's job performance to a prospective employer of the former employee upon request of the prospective employer or of the former employee is presumed to be acting in good faith and, unless lack of good faith is shown by a preponderance of the evidence, is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith is rebutted upon a showing that the information disclosed by the employer was knowingly false or deliberately misleading, was rendered with malicious purpose or violated any civil right of the former employee protected under ORS chapter 659.

(2) An action for defamation may not be maintained against an employer by an employee who is terminated by the employer based on a claim that in seeking subsequent employment the former employee will be forced to reveal the reasons given by the employer for the termination.

NOTE: In addition to the risk of a defamation claim, employers should be aware that in certain circumstances, employers have a duty to warn prospective employers. Some courts have held that if any positive information is given about a candidate there is also an obligation to reveal that the individual may be dangerous. This may include warning a prospective employer if the candidate engaged in harassment, fighting, violence or other threatening behavior.

Security clearance checks

If the employer requires all applicants to undergo background checks it may do so. Of course employers may not subject only particular religious or ethnic group, such as Muslims or Arabs, to heightened security checks. Some employers, such as defense contractors, may require a security clearance for certain jobs pursuant to a federal statute or Executive Order. Clearance determinations must generally be processed and made

without regard to race, religion, or national origin. However, security clearance determinations for positions subject to national security requirements under a federal statute or an Executive Order are not generally subject to review under the equal employment opportunity statutes.

The Final Decision

With an "all clear" on any applicable background and drug screens, the time has come to make a decision between the (small, ideally) group of interview finalists.

Generally, the most qualified person is the best person for the position. However, there is no legal requirement that an employer hire the most qualified person – only that the selection decision cannot be based on protected class status. Employers may even find that an overqualified applicant will only stay in the job until a better one comes along, or will struggle to find career satisfaction in a position for which he or she is overqualified.

State and federal law does not preclude employers from using subjective criteria in hiring; however, employers should not rely exclusively on subjective standards. Such standards will be scrutinized more closely by the courts and will be more difficult to defend if legally challenged.

Practice Tips:

- Make sure the hiring decision is based on a fair assessment of the applicant's background and qualifications.
- Do not base the decision on stereotypes or impressions. Select the person who best matches the job requirements.
- Use job specific pre-employment screening tools to aid you in making your decision.

Rejection of applicants

During the interview process, applicants may request time frames for a final decision. Employers should not commit to specific time frames unless there is no doubt the employer can meet them.

Employers should notify applicants of any rejection decision in writing. It is also acceptable to notify the applicant verbally, followed up with written confirmation within a few days.

Employers should resist the inclination to provide more information than necessary. It is fine to tell the individual that there were many competent candidates and that another person was selected. Wish the applicant luck, and sign off.

The point to keep in mind is that an employer may be called upon to defend or support any statements about the decision not to hire at a later time, so it is best to keep such disclosures or discussions brief.

Practice Tips:

- Standardize your rejection procedure and strictly adhere to it.
- Avoid giving specific reasons for the rejection.

Sample Rejection Letter (Post-interview)

[Date]

Dear _____:

Thank you for your interest in the _____ position as well as the time you invested interviewing with us. We were very pleased with the depth of qualifications presented by many of our applicants.

At this time, *ABC Company* has selected another candidate for the position.

While you were not selected for the position at this time, please feel free to submit an application in the future regarding any open position with ABC Company for which you feel qualified.

Sincerely,

_____
HR Director

Extending an offer

For obvious reasons it is best to contact the successful candidate a quickly as possible, typically by telephone. Depending on the level of formality, it may be necessary to finalize discussions around items like the applicant's start date and rate of pay.

When contacting the successful candidate, the employers should thoroughly explain other terms and conditions of employment. Any statements made by the employer may create a contract of employment, so employers should choose this language carefully. If the employment is at will, this is an appropriate time to reiterate that standard. Confirm the terms and conditions of employment in writing and keep a record of it. Agree upon a tentative start date. The candidate should be informed of the expected standards of performance, trial service period, etc.

Employers should follow up the conversation with a written document memorializing the terms of your agreement and offer of employment.

Sample Offer Letter

[Date]

Dear ___:

I am pleased to offer you the position of [position title] within the [operational unit]. This offer is contingent upon the outcome of a criminal records check which may require fingerprinting. Any history of criminal activity will be reviewed and could result in the withdrawal of this offer of employment.

Your effective date of hire is [date certain]. Your salary will be paid monthly in the amount of $_____. Normal work hours are [start time] to [end time], Monday through Friday.

You will be scheduled to complete new hire paperwork at [address]. Your employment is contingent upon verified eligibility for employment in the United States. The federal Form I-9 is used for this purpose. Federal law requires that the I-9 be completed within three days of your hire date. It is critical that you bring appropriate documentation when you come to complete new hire paperwork. I have enclosed a list of documents required.

You will serve a six-month trial service period. During this trial service period, your work and workplace behavior will be evaluated to determine whether continued employment is warranted. Following successful completion of your trial service, you will be places in regular service and become eligible for benefits outlined in the company's Employee Handbook.

While your employment with [Company Name] is "at will" (meaning [Company Name] reserves the right to terminate employment at any time for any reason) we look forward to a productive working relationship with you. If these terms are acceptable, please respond to me by signing the bottom of this letter and returning it to my attention.

Congratulations on being selected for the [position title].

Sincerely,

_____

Cc: Employee Services/Personnel File
Enc.: Form I-9 List of Acceptable Documents

I accept this offer of employment:

_____ _____
Signature Date

Contractual considerations

Employers should be aware that under Oregon law, there are some limitations placed on certain specific items governing the employment relationship. These include non-competition agreements, bonus restriction agreements, and arbitration agreements. Some of these items must be noticed and agreed upon *prior* to the commencement of an employment relationship.

Non-competition agreements

There are specific requirements for creating an enforceable non-competition agreement in Oregon, some of which need to be considered *prior* to bringing aboard the successful candidate.

A *non-competition agreement* is an express or implied, oral or written agreement between the employer and employee in which the employee agrees not to compete with the employer in providing products, processes or services that are similar to the employer's for a specific period of time within a specific geographic region.

The employer may not require an employee to be party to a non-competition agreement unless the employee receives written notice that the agreement is a condition of employment at least two weeks before employment starts or the agreement is entered into upon advancement of the employee by the employer.

Keep in mind that non-competition agreements are only permissible for employees who meet the criteria for salaried exempt employees. The employer must also have an interest to protect, such as trade secrets; sensitive, confidential business or professional information; product development plans' launch plans; marketing strategy or sales plans, and the agreement may not extend beyond two years following the end of employment with the employer. For the full text of these requirements, see ORS 653.295.

Bonus restriction agreements

Bonus restriction agreements are enforceable in Oregon courts if the following conditions are met:

- Competition by the employee with the employer, after termination of employment, is limited to a period of time, a geographic area, and specified activities related to the employee's former job responsibilities; and
- The employee performed services for the employer that included substantial involvement in the management of the employer's business, personal contact with customers, knowledge of customer requirements related to the employer's business, or knowledge of trade secrets or other proprietary information of the employer.

The penalty provided in the bonus restriction agreement is limited to forfeiture of profit sharing or bonuses that have not yet been paid to the employee. ORS 653.295.

Arbitration agreements

Although not regulated by BOLI, recent legislation made changes to the current requirements for employers to notify employees of arbitration agreements. House Bill 3450 (2011) amends ORS 36.620 and reduces the timeframe for notifying an employee about an arbitration agreement from two weeks to 72 hours before their first day on the job. Additionally, the employer is now required to provide the employee with the arbitration agreement containing an acknowledgement including the following, printed in **boldfaced type**, and signed by the employee:

> **I acknowledge that I have received and read or have had the opportunity to read this arbitration agreement. I understand that this arbitration agreement requires that disputes that involve the matters subject to the agreement be submitted to mediation or arbitration pursuant to the arbitration agreement rather than to a judge and jury in court.**

Please consult your company's attorney if you plan on using an arbitration agreement. The agreement must clearly indicate what is subject to arbitration and what is not. Furthermore, the National Labor Relations Board, on January 3, 2012, in its decision, *D.R. Horton and Michael Cuda*, Case 12-CA-025764, finds that employment arbitration clauses that waive class actions unlawfully restrict the unionized and non-unionized employees' to engage in "concerted activity" for mutual aid or protection under Section 7 of the NLRA. The NLRB also points out that "…an agreement requiring arbitration of any individual employment-related claims, but not precluding a judicial forum for class or collective claims, would not violate the NLRA, because it would not bar concerted activity."

Recordkeeping

The hiring process will likely generate a substantial number of documents. While these records provide useful guidance for establishing recruitment and performance criteria, they are also important documents to retain from a legal point of view. Some hiring records are required to be kept and maintained by law; these and other records are also useful in demonstrating that your selection process was fair, consistent and non-discriminatory.

Employers should consider how to manage and maintain the following records:

1. A copy of the hiring requisition from the hiring manager (or a summary of the discussion about the need of hiring a new employee).
2. Documentation of the job analysis.
3. A copy of the job description.
4. A copy of the job announcement (internal and/or external) – highlight the closing date.
5. A list of the applicants and the dates of receipts of their submitted applications and materials. Clearly indicate the dispositions of any late submissions.
6. Identify the evaluator(s) and a description of the selection criteria used in determining who will be invited to the next step, e.g., first interview.
7. A list of the invited candidates and a separate list of the rejected candidates.
8. Document the contacts with the invited candidates for their appointments for the next step and the notification of the rejected candidates.
9. A list of the evaluators/decision makers of the next step – assessment, interview, testing, etc.
10. If interviews are involved, keep a list of the interviewing questions. Keep the notes of the interviews.
11. Repeat #5 to #9 for each round of the selection, assessment or testing process.
12. If paper tests are utilized, keep a copy of the test. If a computerized test is used, archive a copy of the test.
13. If demonstrations or physical activities are involved, keep a complete description of the testing activities.
14. Keep a record of the results of the tests.
15. When the list of candidates who are eligible for hire is established, keep notes of the deliberation process, and identify the decision-makers and the selection criteria for the final candidates.
16. Keep a copy of the offer letter and the applicant's response to the offer. (If an offer is rejected, keep a record of the decision-makers, processes and criteria used in selecting the next candidate on the eligibility list to be offered the job.)
17. Identify the rejected candidates and document the contacts and notifications of their non-selections.
18. The documents related to the hired candidate will then be transferred to the employee's personnel records.

Affirmative action requirements

Some employers are required to obtain or to maintain applicant records for affirmative action purposes or to comply with state or federal mandates. Such information should be kept separately and not used during the hiring process. Applicants should be advised as to why this information is being requested and whether or not participation is voluntary.

Civil rights laws

Under Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA) employers must maintain relevant records, if they are made in the first place, to document compliance with rules that prohibit unlawful employment practices.

No particular categories of records are specified, but typical examples of applicable records include:

- All documents and forms used in the recruiting and hiring process such as recruitment ads and application forms;
- Offer letters or documentation of verbal offers;
- Interview notes;
- Job descriptions;
- Rates of pay or other terms of compensation;
- Requests for reasonable accommodation; and
- Records related to promotion, demotion, transfer, lay-off or termination.

Employment records must be retained for a period of one year from the date the record was made or the date the personnel action was taken, whichever is later. Personnel records of discharged employees must be kept for a period of one year from the date of termination.

Under the Age Discrimination in Employment Act (ADEA) employers have more specific records retention requirements:

- Job applications;
- Résumés;
- Any other form of employment inquiry submitted to the employer in response to employer’s advertisement, job announcement, job posting, or notice of existing or anticipated job openings;
- Records pertaining to the failure or refusal to hire any individual;
- Promotion, demotion, transfer;
- Selection for training, layoff, recall, or discharge of employee;

- Job orders submitted by the employer to an employment agency or union for recruitment of personnel for job openings;
- Test papers completed by applicants or candidates for any position considered by the employer in connection with any personnel action;
- The results of any physical examination used by the employer in connection with any personnel action;
- Any advertisements or notices to the public or to the employees relating to job openings, promotions, training programs, or opportunities for overtime work.

Retain the above records for a *minimum* of one year from the date of the personnel action. 29 CFR §1627.3(b)(1).

Social Security Number

ORS 646A.620 Prohibition on printing, displaying or posting Social Security numbers; exemptions. (1) Except as otherwise specifically provided by law a person shall not:

(a) Print a consumer's Social Security number on any materials not requested by the consumer or part of the documentation of a transaction or service requested by the consumer that are mailed to the consumer unless redacted;

(b) Print a consumer's Social Security number on any card required for the consumer to access products or services provided by the person; or

(c) Publicly post or publicly display a consumer's Social Security number unless redacted. As used in this paragraph, "publicly post or publicly display" means to communicate or otherwise make available to the public.

The take away for employers engaged in the hiring process is to assign employees (and applicants if necessary) a control number which is NOT the social security number. Use of an employee or applicant social security number should be limited to those functions which specifically require it (e.g., new hire reporting, tax withholding).

Other recordkeeping requirements

As indicated earlier, employers are required to obtain a completed Form I-9. U.S. Citizenship and Immigration Services has published an essential guide for completing the Form I-9, which is available online at: www.uscis.gov/files/form/m-274.pdf.

In addition to the Form I-9, employers will need to secure a completed Form W-4 documenting withholdings information. Information from the Form W-4 may also be used to meet the Oregon Department of Justice Support Enforcement Division new hire reporting requirement. For more information, contact:

Oregon Dept. of Justice, Div. of Child Support
New Hire Reporting Program
3200 Lancaster Dr. NE
Salem, OR 97305
503-378-2868
http://oregonchildsupport.gov/employers/reporting.shtml

FAQ

NEW HIRE REPORTING

OREGON'S REQUIREMENTS FOR NEW HIRE REPORTING APPLY TO SMALL BUSINESSES, TOO!

QUESTION: A friend of mine manages a large restaurant, and he told me that every time he hires a new employee, he reports it to a government agency that traces "deadbeat" parents. I have just four employees, and I've never heard of this requirement. Does it apply to my small business too?

ANSWER: Yes. All Oregon employers – and, in fact, all employers in the country – are mandated to report new-hires for tracking and enforcement of child support orders.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) requires employers in each state to report new-hires to a specific agency. In Oregon, employers report to the Support Enforcement Division at the Department of Justice.

Originally, only employers in eight industrial classifications were required to report new-hire information, but effective October 1, 1998, the law became applicable to all Oregon employers.

The primary purpose of the law is to locate obligated parents to establish and enforce child support orders. The law also serves to detect and prevent erroneous benefit payments by state agencies operating employment security and workers' compensation programs.

A "new hire" is defined as any employee that is required to fill out a W-4 form. Any returning employee who has been absent for more than 45 days is also considered a "new hire" for purposes of employer reporting. But if a "returning employee" had not been formally terminated or removed from payroll records, there is no need to report that individual as a new hire.

The data you're required to report are the six pieces of information found on the W-4 form: the employer's name, address, and federal tax identification number, and the employee's name, address, and social security number.

There are several methods you can use to file your new-hire report. Employers can submit a copy of the actual W-4 form, or you can use an optional form provided by the Department of Justice. You can submit the required information by mail, fax, disk, magnetic tape or electronically.

Employers are generally required to report the required data within 20 days of hiring or rehiring a worker. However, if you report the information electronically or by magnetic tape, you can instead transmit the information twice a month, on a regular schedule.

For more information, contact the New-Hire Reporting Program in Salem at 503-378-2868.

FAQ

CASUAL EMPLOYMENT

EVEN HIRING SOMEONE ON FOR A BRIEF STINT WILL TRIGGER NEW-HIRE REPORTING REQUIREMENTS!

QUESTION: Our office is moving across town and we could use a couple of people just for a day or two. Our receptionist's husband is currently out of work and I know they could use the extra money – would it create any problems with his unemployment benefits if I gave him say $50 for his help?

ANSWER: Employment is employment – even if it is of the briefest duration. That means that under wage and hour law you would need to pay this individual at least minimum wage. Currently, minimum wage is $8.80 per hour (and will be going up to $8.95 on January 1, 2013) so $50 may not cover all hours worked.

Although BOLI does not administer Oregon's unemployment benefits program, it is likely that your receptionist's husband would need to report the income as an offset to his benefits entitlement, and you should contact the Oregon Employment Department directly regarding any reporting responsibilities you have on that front. The number there is 800-237-3710.

Though you may not have to do any withholdings on a payment of that size, you will still likely need to report the payment to taxing authorities. For further guidance on that point be sure to contact Oregon's Department of Revenue at 800-356-4222.

Finally, you should remember that if you hire anyone for fewer than three business days, Sections 1 and 2 of Form I-9 must be fully completed by the employee's first day of work for pay. (Ordinarily you would have three business days to complete Section 2.)

Orientation

There is a unique window of opportunity when a new employee comes aboard. Orientation should be viewed less as a block of time and more as a process by which an employer can lay the groundwork for a successful employment relationship. This is the time to:

- Provide basic information about the company from the org chart to the physical plant,
- Review policy manual or handbook,
- Get signed acknowledgement forms,
- Obtain the employee's emergency contact information,
- Let the employee know where to go with questions, and potentially,
- Assign the employee a mentor.

Review Policy Manual or Personnel Handbook

Although not legally required, an acknowledgement form can be very helpful in demonstrating that an employee received the personnel policy and had a chance to review it. Keep in mind that this is compensable time.

Obtain a signed acknowledgment of receipt of the personnel manual or policies:
For example, employers may choose to have new hires sign an acknowledgement.

For additional guidance regarding creating and implementing an employee handbook or other employment policies, see BOLI's 2012 edition of *Policy Writing Guidelines, A Handbook for Employers*.

Sample Handbook Acknowledgment

- I have received a copy of the *ABC Company* Employee Handbook dated _____. I understand it contains important information on the Company's policies, rules and benefits and my responsibilities as an employee.
- I understand that this Handbook supersedes all prior handbooks, policies, verbal statements and understandings on these subjects, and that it is not a contract of employment or a guarantee of specific treatment in specific situations.
- I agree to follow all existing and future Company policies and rules.
- I understand that the Company has the right to change (modify, substitute or eliminate), interpret and apply, in its sole judgment, the policies, rules and benefits described in this Handbook.
- Prior to signing this acknowledgment, I was given an adequate opportunity to review the Handbook and ask questions about its contents.

Dated: _____ Employee Signature:_____

Special considerations for orientation

Some expectations for the employment relationship need to be established as soon as possible to prevent false expectations from taking root.

Consider addressing the following topics sooner rather than later:

- Dress codes
- Uniforms
- Training time
- Setting goals

Dress codes

If a company has a dress code, orientation is a good time to explain it – before alternate habits or false expectations take hold.

In addition to that, however, employers should keep in mind that while dress codes that apply to all employees or all employees with certain job categories are usually fine, there are a few exceptions.

An employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices, however, a dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.

Moreover, if the dress code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship.

In addition to the protection under Title VII, the Oregon Workplace Religious Freedom Act (ORS 659A.033) specifically states, "An employer violates ORS 659A.030 if:

> (a) The employer imposes an occupational requirement that restricts the ability of an employee **to wear religious clothing** in accordance with the employee's sincerely held religious beliefs, to take time off for a holy day or to take time off to participate in a religious observance or practice;
>
> (b) Reasonably accommodating those activities does not impose an undue hardship on the operation of the business of the employer as described in subsections (4) and (5) of this section; and
>
> (c) The activities have only a temporary or tangential impact on the employee's ability to perform the essential functions of the employee's job."

See also *Cloutier v. Costco Wholesale Corp.*, 390 F. 3d 126 (2004) regarding an employee who is a member of the Church of Body Modification.

Similarly, if an employee requests an accommodation to the dress code because of his disability, the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.

Required uniforms

Employers should keep in mind that deductions may NOT be made from wages of employees for uniforms that are required by the employer. An employee may be required to pay for a uniform if the amount paid by the employee does not have the effect

of reducing the employee's earnings below the applicable wage rate (i.e., state minimum wage, federal minimum wage, Service Contract Act, or Migrant and Seasonal Agricultural Worker Protection Act wage rate) for all hours worked and the requirement to pay for such items is disclosed in advance to the employee.

Payroll deductions may be made for items such as raingear, gloves and hats only if they are not required, are for the private benefit of the employee, and are authorized in writing by the employee and recorded in the employer's books.

Training time

In most situations, training time, including orientation, is considered as "hours worked" and is compensable as a cost of doing business. OAR 839-020-0044, 29 CFR §§785.27 – 785.32.

FAQ

TRAINING TIME AND COMPENSATION

TRAINING TIME IS TYPICALLY A COST OF DOING BUSINESS, BUT THERE ARE EXCEPTIONS.

When an employee needs on-the-job training, can the employer establish a "training period" during which it would not be necessary to pay the minimum wage and overtime?

No. The law does not recognize unpaid on-the-job training time, so "training time" is considered a cost of doing business for an employer.

If I require my employees to attend monthly staff meetings outside regular work hours, do I have to pay them for the time spent in the meeting?

Yes. Anytime an employer requires an employee's attendance, that time must be considered as hours worked, even though the employee may not be engaged in a productive work activity.

If my employee is required by law to obtain a certification, do I have to pay for that training time?

No. When specialized or follow-up training is required for certification of employees by any law or ordinance, and the training takes place outside of the employee's regular working hours, the time is not compensable. OAR 839-020-0044(7).

> **If my employee chooses, on his own initiative, to attend a trade school after hours, do I have to pay for that training time?**
>
> No. Training at the employee's own initiative at an independent college or trade school after hours is not considered hours worked, even if the courses are related to the employee's job. OAR 839-020-0044(4).

An employer would *not* have to pay for time spent in lectures, meetings or training programs if ***all four*** of the following criteria are met:

1. Attendance is on employee's own initiative (voluntary in nature);
2. Attendance takes place outside an employee's regular work hours;
3. The training provided is not directly related to an employee's current job; and
4. An employee does not perform any productive work during the course of the training.

Setting goals

Orientation is also the prime opportunity to sit down with a new hire and set out expectations for the employee's development within the organization.

Solid employee development goals should be SMART:

- Specific – Focused on precise tasks or capacities
- Measurable – Include objective means to measure success
- Achievable – Goals must be realistic given the time frame and baseline
- Relevant – Relates to the job's duties and skills needed
- Time Sensitive – Include deadlines

Above all they should be *in writing*!

Orientation Checklist

After so much work, the first few days of a new hire's employment is often an exciting, but often hectic and stressful time. A checklist of items to prepare in advance of the new hire's first day and a checklist of items to cover together with the employee can be a very helpful way of ensuring important details do not fall through the cracks.

Sample Checklist: Preparing for a New Employee

The following is a list of tasks to accomplish **before the employee's first day** of employment:

- ☐ Schedule a time and place for an orientation with the new employee.
- ☐ Assemble all necessary paperwork.
- ☐ Make a clean copy of the NEW HIRE CHECKLIST – FIRST WEEK.
- ☐ Assign and prepare a work space.
- ☐ Establish computer access.
- ☐ Establish an e-mail address and access.
- ☐ Establish telephone access.
- ☐ Obtain and assign any electronic devices (occurs rarely).
- ☐ Arrange for keys or key cards for building access.
- ☐ Arrange for an appointment to obtain an identification card.
- ☐ Schedule time for union to meet with employee.
- ☐ Schedule time for new employee to meet with Employee Services.
- ☐ Schedule time for new employee to meet with Payroll.
- ☐ Schedule time for new employee to meet with Information Services.

Necessary Forms: **Return to Employee Services ++ Return to Payroll

- ☐ New Hire Checklist – First Week**
- ☐ Employee Monthly Timesheet
- ☐ Form W-4++
- ☐ I-9, Employment Eligibility Verification**
- ☐ Electronic Authorization Form (Direct Deposit)++
- ☐ Code of Conduct**
- ☐ Confidentiality Agreement**
- ☐ Acceptable Use of Company Information Systems
- ☐ Affirmative Action Statement
- ☐ Key Card Access Form (if applicable)
- ☐ Driving Record Authorization**
- ☐ Request for Work Schedule Form**
- ☐ Business Card Order Form – Complete and return to Office Coordinator in Fiscal Services Unit
- ☐ Emergency Contact Form**
- ☐ Furlough Form (if applicable)**

Sample Checklist: New Hire Orientation

NEW HIRE CHECKLIST - FIRST WEEK

Introductions:

[ ] The employee's supervisor or manager personally welcomes the employee upon arrival. Employee receives Employee Handbook (when available), New Employee Packet, and policies. (Demonstrate use of intranet resources)

[ ] Introduce the employee to the area management and co-workers.

[ ] Give the employee a division overview, a telephone list; briefly go over the organization/division chart.

Orientation Overview:

[ ] Go over the employee's orientation plan and training schedule with the employee and give a copy of the plan to the employee, if available.

[ ] Give the employee a copy of his/her Job Description and review the position goals, specific tasks and expectations**.**

Work Space:

[ ] Show the employee the office.

[ ] Schedule an ergonomic assessment of the work space.

[ ] Explain how the internal mail is routed; where he/she can pick it up if it is not delivered to the work space.

[ ] Order business cards; get employee picture for telephone directory.

[ ] Briefly explain other divisions, their locations and mission

Division Tour/Overview:

[ ] Show the employee the location of the restrooms.

[ ] Show the employee where the office supplies are located.

[ ] Show the employee where her/his lunch can be stored.

[ ] Show the employee where lunch can be purchased.

[ ] Show the employee the location of the office equipment (copier, fax, and printer) and how to use them, and give them codes, if necessary.

[ ] Recycling bins, shredding bins, garbage, rules for **reuse** of supplies

Telephone Usage:

[ ] Give the employee his/her telephone number or extension.

[ ] Tell the employee how to find the telephone listing on the intranet.

[ ] Explain the procedures for out-going calls.

[ ] Explain how the internal messaging system works (voicemail).

[ ] Explain the specifics of the phone system; how to transfer calls, put someone on hold, conference call.

[ ] Give the employee the number to call in case of emergency.

[ ] Give the employee the managers' cell/business numbers.

Security:

[ ] Discuss the security procedures.

[ ] Give the employee the access code, badge, keys to get into the building.

[ ] Explain which entrances the employee should use of entrance and egress.

[ ] Cover the "visitor" policy.

Work Schedule:

[ ] Discuss expected work hours (times, days, week-ends, flex, alternate schedules).

[ ] Discuss when rest breaks and lunch periods are normally taken.

Dress Code:

[ ] Discuss expectations of business attire at meetings, presentations, outside activities, if applicable.

[ ] Review casual dress expectations and what is not acceptable, if applicable.

[ ] Review "no scent" policy: (Hint: If you can smell it yourself, it's too much.)

Parking:

[ ] Explain where the employee could/should park.

[ ] Discuss mass-transit options and discounts available.

[ ] Discuss where/how to enter/exit the parking garage.

[ ] Discuss how to reserve a fleet vehicle, how to record mileage, refill gas tank.

[ ] Bicycle parking options

Payroll:

[ ] Explain how to fill out the payroll time sheet and who/when to turn it in.

[ ] Review the functions of the Payroll Specialist (payroll, retirement funding, voluntary withholdings, direct deposit). Introduce new employee to Payroll Specialist.

Time Off:

[ ] Discuss the procedure for calling in sick or late.

[ ] Discuss the procedure for submitting a request for vacation or personal time off.

[ ] Explain vacation time may not be used the first six months of employment, unless the employee has transferred from state employment.

[ ] Explain the use of Leave without Pay (highly discouraged).

Performance Evaluation:

[ ] Explain the performance evaluation process.

[ ] Discuss when the first performance review is to be held.

Emergency: Fire and Other:

[ ] Discuss what the fire alarm sounds like.

[ ] Show the exit route from the work area.

[ ] Explain where the meeting place (head count) area is.

[ ] Explain any other types of emergencies the employee may be exposed to.

[ ] Show the employee the location of the nearest first aid cabinet or station.

[ ] Explain that the employee must report all work-related injuries to his/her supervisor or manager immediately. Show employee where to obtain the necessary forms.

Close Orientation:

[ ] Ask the employee to schedule a brief meeting with HR, when convenient.

[ ] Reinforce the Agency's commitment to diversity and an inclusive environment, respectful workplace policy.

[ ] Refer represented employees to Local Union president. Give new management employee list of Union officers and stewards.

[ ] Ensure necessary forms have been completed, including

- Emergency Notification
- Code of Ethics
- Confidentiality Agreement
- I-9 (must be completed within 3 days of hire.)
- Supplemental Training Acknowledgement Forms

Complete this checklist, ask employee sign and date and return to Employee Services for employee file.

_____ _____

Employee Name Date

Conclusion

Finding the right employees for the job is one of the most critical things a manager or owner can do for the long-term health of a business.

Consistently applied, well documented hiring practices will go a long way toward the ultimate goal of identifying highly qualified employees with a commitment to a productive working relationship.

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