

Recruiting & Hiring Audit

1) Job Descriptions

The ADA does not require employers to develop or maintain job descriptions. However, a written job description that is prepared before advertising or interviewing applicants for a job will be considered as evidence along with other relevant factors. If an employer uses job descriptions, they should be reviewed to make sure they accurately reflect the actual functions of a job. A job description will be most helpful if it focuses on the results or outcome of a job function; not solely on the way a job is customarily performed. A reasonable accommodation may enable a person with a disability to accomplish a job function in a manner that is different from the way an employee who is not disabled may accomplish the same function. (See Writing the Job Description SB)

2) Job Advertisements

Advertisement

It is acceptable to be creative in advertisements in order to attract more candidates; however, it is extremely important to stick with the specific details that relate to the job and the company without using language that appears to indicate a preference towards a certain “type” of person. Specifically, employers should stay away from statements or words that imply they are targeting a specific group based on a class that is protected under federal, state, and local antidiscrimination laws. Equal employment opportunity (EEO) is the law. Applicants and employees of most private employers, state and local governments, educational institutions, employment agencies, and labor organizations are protected under federal law from discrimination. Employers are required to have workplace postings and often include an EEO statement in recruiting and hiring documents. Federal contractors and subcontractors must follow Executive Order 11246, ensuring hiring practices are nondiscriminatory and compliant with the executive order.

2) Employment Application

Applications

The application must be in compliance with federal, state, and local laws prohibiting employment discrimination, as well as laws regarding background checks, employment and educational verification, criminal records, driving records, credit checks, and job-related testing. The employment application should be designed in a way to elicit required job-related information only. An employer may not base hiring decisions on stereotypes and assumptions about a person’s race, color, religion, sex (including pregnancy and related medical conditions), national origin, age (40 or older), disability or genetic information. As a general rule, the information obtained and requested through the pre-employment process should be limited to that essential for determining if a person is qualified for the job; whereas information regarding race, sex, national origin, age, and religion is irrelevant in such determinations.

3) Are assessments/tests validated

Tests

Employers often use tests and other selection procedures to screen applicants for hire and employees for promotion. There are many different types of tests and selection procedures, including cognitive tests, personality tests, medical examinations, credit checks, and criminal background checks. When testing applicants with disabilities, employers are required to provide reasonable accommodation to applicants unless doing so would cause an undue hardship on the employer. A reasonable accommodation regarding testing of a disabled applicant might include things like making testing materials available in alternative formats or providing additional testing time.

Whirks 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), 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. While a test vendor's documentation supporting the validity of a test may be helpful, the employer is still responsible for ensuring that its tests are valid under UGESP.
- 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.

4) Interview Checklist (Humble, Hungry, and Smart)

Interview

The purpose of the job interview is to elicit as much information about a person to determine if he or she is the right person for the job. However, by doing thorough interviewing and selective reference checking, a manager can hire people with a high degree of confidence that they'll be ideal team players. Hiring the right person for the job will directly relate to the success of the business. The employer must prepare ahead of time to have a successful interview. Clearly defining the job, and the skills, abilities, and knowledge a person must have in order to be successful before the interview will ensure a smooth process.

Consider the following preparation tips:

- Don't Be Generic
 - Debrief Each Interview as a Team
 - Consider Group Interviews
 - Make interviews non-traditional
 - Ask What Others Would Say
 - Scare People With Sincerity
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- Review job requirements with the interview team prior to meeting any candidates.
 - Prepare a list of questions that will be asked of all candidates, which will ensure candidates are being evaluated on the same criteria.
 - Vary the types of questions asked, including behavioral questions, situational questions, open-ended questions, and closed-ended questions.
 - Use a checklist to ensure standard company process is followed.
 - Document notes in a professional manner.

This will ensure candidates are being evaluated on the same criteria. It is okay to ask unique questions based on the candidate's experience.

Sample Questions

Humble-

"Tell me about your most important accomplishments of your career."

"What was your most embarrassing moment in your career? Or the biggest failure?"

Hungry-

"What is the hardest you've ever worked on something in your life?"

"What do you like to do when you're not working?"

Smart-

How would you describe your personality?"

What kind of people annoy you the most, and how do you deal with them?"

5) Background Checks

Pre-employment investigations and background checks are important to verify accuracy of information provided by an applicant for employment and to ensure that an applicant is the best-qualified individual for a position. A thorough pre-employment investigation is also a preventive measure that enables employers to determine if a candidate's background indicates a possible safety threat or injury to other employees.

Any time you use an applicant's or employee's background information to make an employment decision, regardless of how you got the information, you must comply with federal laws that protect applicants and employees from discrimination. Additionally, when you run background checks through a company in the business of compiling such information, you must comply with the Fair Credit Reporting Act (FCRA). It is always recommended to review the laws of your state and municipality because some states regulate the use of that information for employment purposes differently.

General Guidelines

If conducted with inappropriate planning and training, a pre-employment investigation can be a potential source of liability. Pre-employment investigations should not be used as a reason to dig into an applicant's background. Therefore, when conducting pre-employment investigations, employers must consider the following:

- Use pre-employment tools that are reasonable and relevant to the position
- Consistently implemented with all candidates
- Conducted by persons with special training
- All information must be evaluated in compliance with all federal and state laws.

Whether or not you or a third-party agency does the background checks all parties must comply with the FCRA. The first thing you are going to do is get the applicant's or employee's permission to do the check. In addition, you need to let the applicant/employee know that you are going to be searching for information in their background. This can be part of the document you use to notify the person that you will get the report. If you want the authorization to allow you to get background reports throughout the person's employment, make sure you say so clearly and conspicuously.

Consumer Reports

The FCRA defines a background check as a consumer report. Consumer reports may be obtained from an agency typically used to verify the following information:

- Criminal history
- Credit checks
- Driving records
- Employment history
- Education history
- Social Security Numbers
- Professional licenses

Helpful Tips

The EEOC has established three factors are key to assessing whether an exclusion is job related for the position in question and consistent with business necessity.

1. The nature and gravity of the offense or conduct
2. The time passed since the offense or conduct and/or completion of sentence
3. The nature of the job held or sought

Whirks Best Practices

Employers who are considering criminal record information when making employment decisions:

- Eliminate practices that exclude people from employment based on any criminal record
- Train managers on employment discrimination
- Develop policies and procedures that (1) identify essential job requirements; (2) determine the specific offenses that do not fit; (3) record the justification of the policy, and (4) note and keep a record of consultations/research considered in crafting the policy
- Train managers on how to implement the new policy

Penalties

The range of available damages varies from negligent and willful violations. An employer that negligently fails to comply with any requirement of the FCRA with respect to an applicant or employee is liable for:

- Actual damages sustained by that individual
 - Reasonable attorneys' fees and costs
- Or willful
- Actual damages between \$100-\$1,000.
 - Punitive damages
 - Attorneys' fees and costs
 - Civil penalties of up to \$2,500 per violation

6) Next Step

Next Step

Ensure your Company has a procedure in place to inform applicants of their acceptance or rejection. Having a formal process to close the application process is a good practice for several reasons. Not only is it a business courtesy, informing applicants of their status creates less additional work in the long run and allows applicants to move forward as opposed to continuing to follow up with an employer following an interview. Having good documentation of recruiting and hiring actions will help an employer defend itself against claims of discrimination in the recruiting or hiring process as well. EEOC regulations require that employers keep all personnel or employment records for one year. If an employee is involuntarily terminated, his or her personnel records must be retained for one year from the date of termination or until the disposition of any wrongful termination action is completed.