

Tips for an Effective Hiring Process

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An effective hiring process is critical to a successful, profitable enterprise. Effective hiring procedures will assist your clinic in employing good people and, just as importantly, will help you screen out that disruptive, uncooperative or “problem” employee prior to employment. The hiring process can also give rise to employment-related claims. These claims often are based upon allegations of discrimination or violations of statutory prohibitions concerning pre-employment inquiries. Further, statements made during the hiring process can have a direct bearing on an employee’s expectation of continued employment and may give rise to wrongful discharge claims upon an employee’s termination. We therefore offer the following tips for evaluating your clinic’s hiring process:

The Employment Application

Applications are one of the most useful tools in the recruiting process. They can help you screen out the problem employee prior to employment and may reveal helpful hiring

information that may not otherwise be available from a resume. Accordingly, all prospective employees should be required to complete an application prior to employment and a resume should not be accepted in lieu of an application

If you have not reviewed your clinic’s job application recently, you might do so to make it more useful and legally compliant. The following concepts should be considered:

- **Preservation of the At-Will Employment Relationship**

To the extent allowed by law, most employers attempt to preserve the at-will employment relationship, pursuant to which the employee has the right to quit at any time and the employer has the right to terminate employment at any time with or without cause or notice. Some employers choose not to include an at-will statement in their applications because they fear applicants will be intimidated or offended by such a statement. However, including at-will information in the application makes the employer’s position clear to applicants from the beginning

and, thus, may provide important protection against contract claims. The at-will statement should be legible and in a place on the application where the applicant is likely to notice it. For example, the end of the application directly above the signature line is an appropriate and effective place for inclusion of an at-will statement.

▪ **Confirmation of Past Employment**

Applications should include enough space for the applicant to provide complete information about past employment history. Employers are well advised to ask about reasons why the applicant left his or her prior employment.

▪ **Protection Against False Information**

The application should include a statement requiring the applicant to certify that the information provided is truthful and thorough as subsequent discoveries of misrepresentations on the application can be a viable defense to wrongful discharge claims. In addition, the application can provide you an opportunity to obtain authorization from the applicant to verify education and experience and to contact references.

▪ **Legal Compliance**

Your application form should be reviewed to ensure that it is in compliance with applicable statutory prohibitions concerning pre-employment inquiries. For example, it is no longer proper to ask applicants whether they have filed workers' compensation claims or whether they have a disability which might affect their ability to perform the essential functions of the job. Applications also historically have asked applicants to identify the year in which they graduated from high school. Because such a question implicitly asks applicants to disclose their age, such a question should be avoided.

Reference Checks

You should ask for and at least attempt to check references for applicants under consideration for employment. While former employers are often hesitant to provide reference information on behalf of ex-employees, we recommend that you make an effort to obtain such information.

Criminal Background Checks

Criminal background checks often are important for the purpose of verifying information provided in an application form and providing information relevant to an employee's character. If you use a third party to provide a criminal background checks, you should ensure that you have complied with the federal Fair Credit Reporting Act.

Drug Testing

Many employers require applicants to whom an offer of employment has been made to submit to a drug test. If you require drug testing prior to the commencement of employment, applicants should be advised that their offer of employment is conditioned on successfully completing the drug test and, if possible, individuals should not be allowed to commence employment until the drug test has been completed. Different states impose different restrictions on drug testing. Accordingly, you should make sure that your drug testing policy is in compliance with applicable law in the state in which you are located.

Training

Questions asked in employment interviews and statements made by interviewers during the hiring process may also support employment-related claims. In obvious cases, an applicant may be asked about his or her race, religion or disabilities. These questions can give rise to discrimination claims, particularly when the applicant is not chosen for the job. However, many seemingly innocent questions can also give rise to discrimination claims. Thus, the types of questions to avoid include not only obvious questions about an applicant's membership in a particular classification, but also questions which could indirectly require the disclosure of such information. We therefore offer the following tips for reducing the risk of claims arising from your interview process:

- Individuals involved in interviewing should be trained as to the types of questions which can or cannot be asked under applicable anti-discrimination laws. Further, interviewers should be instructed to avoid oral or written references to "permanent" employment or "complete job security"

or making promises of promotion or job advancement. Statements of this nature can lead to contract claims by employees after termination or claims based on fraud or misrepresentation.

- Consider developing guidelines for employment interviews. Interviewers should use standard questions that are job related, perhaps scripted before the interview. This process could provide evidence that no unlawful inquiries were included in the interview process.

In summary, the hiring process can be a very effective tool in the management of your workforce. Not only does such a process result in the employment of good people, but also serves to screen out problem employees prior to employment. Thus, an effective hiring process conducted in compliance with applicable law will assist your clinic in maintaining an efficient and productive workforce and will reduce the risk of employment-related claims.



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