

MAKING THE GRADE: ENSURE YOUR SCHOOL IS FOLLOWING BEST HIRING PRACTICES

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The holiday break is over. Classes are back in full swing. For most schools across the nation, this is the time to evaluate current staffing needs and begin the recruitment and hiring process for the upcoming school year. The ultimate goal when embarking on a mission to hire is always to find the best teacher or individual for the job.

But from a legal and practical standpoint, the *process* used to hire a new employee can be just as important as the employee who is ultimately hired. In order to minimize the legal exposure which may arise as a result of the hiring process, every school should look closely at the three main areas of the hiring process – job application, interview process, and criminal background checks – to ensure that it is following best practices.

THE JOB APPLICATION

It's not uncommon for employers, especially schools, to forgo the formal application in exchange for a resume or curriculum vitae. While a resume should certainly be required, it should be used in conjunction with, and not instead of, a comprehensive job application. The completion of a job application forces applicants to provide all the information that you deem relevant to the position being filled, rather than allowing applicants to cherry pick what information they want to highlight in the form of a resume.

A comprehensive job application is only worth the time you take to review it. Avoid becoming an employer who in the midst of litigation concludes "if I had only reviewed the application more carefully." Carefully reviewing the employment application will alert you to various red flags, including, significant gaps in employment history, the use of P.O. Boxes and 1-800 phone numbers as contact information, and victim-like responses to questions about why the employee left prior jobs.

Remember that questions left blank may be just as important as those answered. In addition, it's essential to include a statement in the job application that the information provided by the applicant is absolutely true, and that the applicant understands that disqualification for hire, or subsequent termination after hire, will be the result should information be found to be untrue or inaccurate.

Your job application should ask whether the individual has ever been terminated, asked to resign, or not offered a contract for the following year. Finally, ensure that applicants sign their applications, and if they refuse to do so, you should refuse to consider the application any further. If you have any areas of concern after carefully reviewing the job application, those concerns should be addressed during the interview process.

The Interview Process

The interview allows both the employer and prospective employee to gather the information necessary to determine whether or not they are a good fit for each other. It is absolutely essential to ensure that every person engaged in the interviewing process is properly trained to do so.

A good interviewer will know how to digest the application and obtain essential information needed to make a hiring decision without soliciting unnecessary and potentially dangerous information from the applicant. The goal of the interview should not be to sell the applicant on the job, but instead to gather details about the applicant's employment history and qualifications. To accomplish that goal, interviewers should stick to the 80/20 rule – the applicant should be doing 80% of the talking during the interview.

Interviewers should ask applicants to respond to questions on the job application which were not answered, explain gaps in employment, describe education and training experiences as they relate to the position applied for, and solicit the exact reasons for leaving prior employment. Of course, there are questions you should avoid. Most employers know not to inquire about information related to categories protected by federal, state, and local discrimination laws, including questions about age, ancestry, racial or ethnic background, military status, plans for a family, religious beliefs, and health conditions.

But it's equally important to stay away from questions that, while not directly soliciting such information, could inadvertently lead to the discovery of that information. Examples include asking applicants when they graduated from high school because it could reveal information regarding age, or asking applicants where their accent comes from because it could reveal national origin or ancestry.

And be wary of asking questions regarding an applicant's social media account information. Obtaining access to an applicant's social media sites often leads to the discovery of knowledge related to many protected categories and may violate privacy rights.

The bottom line is that interviewers should stick to questions that will reveal whether or not the applicant is the right fit for the job and refrain from soliciting information that has no bearing on it.

CRIMINAL BACKGROUND CHECKS

The Equal Employment Opportunity Commission recently adopted new guidelines regarding the solicitation of criminal background information and the completion of criminal background checks on prospective employees. According to the EEOC, a blanket policy against hiring anyone with a criminal background violates discrimination laws. To defend your criminal background check practice, you must be able to articulate the reasons why the information uncovered in a background check is job related and consistent with business necessity.

The EEOC recommends that employers completely avoid asking questions about criminal convictions on job applications. For some employers, schools in particular, that is neither possible nor prudent. But to limit the risk of liability, you should inquire only about convictions that are job related and consistent with business necessity. Make this inquiry on a document separate from the job application; review it only after an initial hiring decision has been made. When soliciting criminal background information, it is important to include language that states that a conviction will not necessarily preclude employment.

The EEOC also recommends that employers eliminate criminal background checks. Again, that is not usually practical for school employers. One approach to impact the least number of applicants, and therefore limit the risk of liability, is to make an offer of employment to the final candidate contingent on successful completion of a criminal background check.

Once you have obtained information relating to an applicant's criminal history, make an employment decision after you make an individualized assessment of the job and the results obtained. The factors to be considered include the nature and gravity of the offense, the facts surrounding the offense, the time that has passed since the

offense, the nature of the job, rehabilitation efforts, character references, the length and consistency of the employment history before and after the offense, and evidence that the person performed the same type of work, post conviction, with a different employer with no criminal conduct.

TO SUM IT UP

An effective hiring process can result in quality employees who enhance the school's reputation. Following the practices outlined above will allow you to improve your hiring practices, minimize risk and maximize productivity just in time for the new school year.

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