

Hiring and Pre-Employment Screening

Lines of Business: General Liability, Public Official Liability, Law Enforcement Liability, and Educators Legal Liability

Risk Control Strategy/Key Issues: Screen employees during the hiring process to establish that they have no background of harassment or molestation.

Suggested Program Elements:

Policy Statement: A general statement from the head of the organization noting that the policy establishes guidelines and procedures for hiring employees. The statement should also mandate zero tolerance for misstatements on employment applications.

Program Responsibility: Written guidelines should assign responsibilities and accountability for policy enforcement. It is recommended that one individual within the organization be chosen. This individual should have the authority to implement all written procedures and controls of the program.

Hiring Procedure: This should cover all aspects of the hiring process and should be regularly reviewed to assure that it meets state and federal laws and acceptable hiring practices. The hiring process should be explained to all applicants.

- All federal, state, and organization guidelines should be followed when advertising for a position. The organization should pay particular attention to the verbiage used in the advertisement. Nuances in an ad can be used as evidence of discrimination against applicants of a particular gender, age, or marital status.
- The employment application should comply with ADA, ADEA, Title VII, and applicable state laws.
- Every applicant should fill out a complete application and sign the application. Federal and state laws prohibit discrimination against an applicant because of race, color, gender, religious beliefs, national origin, physical disability, or age if the person is at least 40 years old. Still, an employer has a wide range of prudence based on business considerations; i.e., set their duties and salaries based on their skills, experience, performance, and reliability.

Important: All applications should be reviewed to assure that further processing of the application may violate the organization's nepotism policy.

- All applicants should sign a release that allows for the employer to process a pre-employment background profile, which includes criminal background checks, motor vehicle records checks, previous employer checks, reference checks, credit check, and others important to the position. It should be noted that all information is confidential and will be used only for the selection process.
- Once the background profile is completed, an interview process should be in place for those that meet the criteria for the position. A minimum of two interviews is recommended. This should increase if the position is a safety-sensitive one; i.e., law enforcement officer. One interview should be conducted by personnel, and the other by the department head of the open position. A set of questions should be developed and used with all applicants. This will reduce the risk that a rejected applicant will later complain about unequal treatment. During these interviews, the job description should be discussed.

- If drug testing is a requirement of the position, a written policy and documented testing process should be in place. It is strongly recommend that an accredited outside firm be contracted to provide the testing service. The policy should be reviewed often to assure that testing procedures meet state and DOT requirements.
- Some positions may require that medical exams or knowledge exams be conducted. A process should be in place to conduct both. Both exams have to relate to activities of the position being applied for.
- Once an employee is hired, an explanation of the “introductory” period should be discussed. It is important that all problems with the employee during this period of time be documented, discussed with the employee, and signed-off by both parties. After the period is completed, the supervisor or manager files a written evaluation of the new employee with personnel. This document should be the basis of whether the employee will be “off probation” or released.

Training: All employees (management, line, elected and non-elected) should be given a copy of the manual or handbook (shorter version) upon initial employment and any time a change in a policy is made. Each policy should be thoroughly reviewed with all new employees, at routine intervals for existing employees, and any time a policy change takes place. This training should be documented with a sign-off sheet, sign-in roster, or similar; and filed in the employees personnel file. Relying exclusively on employees to educate themselves on the organizations operation policies and procedures can leave it open to increased liability exposure.

Americans with Disabilities Act (ADA): The ADA should be reviewed and incorporated into the development of job descriptions and hiring practices. The act does not mandate that employers have to hire any disabled person for any job. It requires that a qualified individual (experience, education, skills, licenses, etc.) be considered for the job. The main thing to consider, once qualifications are met, can the individual do the job with reasonable accommodations (RA); and does RA place an undue burden or generate a safety hazard to others within or outside of the organization. A good practice to evaluate a potential disabled hire is to have them evaluated by a doctor to determine if they can do the job. The Doctor should be provided with a written job description and all essential functions. Let the expert determine whether an accommodation is necessary or what should be considered. Then the employer can decide if the accommodation is reasonable.

Law Enforcement Hiring Process: Review the attached Selection and Placement Generic Policy for Law Enforcement Personnel.

The organization should assure:

- The organization’s hiring procedure should be consistently and objectively applied to avoid claims of discrimination.
- Written criteria should be in place for the rejection of an application.
- Before policies are incorporated into the organization’s operations they should be reviewed and approved by the organization’s legal representative.
- All employees should be given a copy of their job description upon hiring and anytime it is revised. Also, the contents should be reviewed with them, signed off on by both parties and kept in the employee’s personnel file. Relying exclusively on employees to educate themselves on what is expected of them can leave the organization open to increased liability exposure.

Program Activities Calendar:

- Review of each hire package for compliance
- Annual review of policy for compliance/changes
- Annual review training on hiring process
- Annual documented program audit to insure compliance with federal and state laws

Web Site Links:

- United States Department of Labor
<http://www.dol.gov/>
- U.S. Equal Employment Opportunity Commission
<http://www.eeoc.gov/>

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EMPLOYMENT PRACTICES CHECKLIST: HIRING

Employers that have a good handle on employment practices risk control should be able to answer “yes” to all of the following questions. **Source: John Capron, Esq., Fisher & Phillips, 1500 Resurgens Plaza, 945 East Paces Ferry Road, Atlanta, GA 30326 (404) 231-1400.**

HIRING

Yes No

1. Are you using an employment application that complies with the ADA, ADEA, Title VII and state law?
2. Does every new employee fill out and sign an application?
3. Does your employment application make it clear that employees are hired on an at-will basis?
4. Does your employment application state that it will be active for a fixed period of time and that at the end of the period the applicant must file a new application if he or she desires further consideration?
5. Have you instructed your managers to personally call the applicant’s previous supervisors for a reference and are they actually doing this?
6. Do you have an I-9 form for every employee hired since 1986— and do you have copies of supporting documents? Also: are you using the proper I-9 form and are the forms being filled out completely and properly certified?
7. Do you make a MVR check on applicants who will be driving vehicles on company business?
8. Do you make a criminal records check on applicants for sensitive positions or where required by state law?
9. Do you run a credit check on applicants? If so, do you give them proper notice of it?
10. Do you use a 90-day introductory (rather than probationary) period?
11. Are you drug-testing all applicants? If so, is your testing in accordance with state and DOT requirements?
12. Do you require your managers to make a written evaluation of new employees prior to the end of their introductory period?
13. Do you have an employee handbook that spells out your benefits and policies but explicitly states it is not a contract and may be revised at any time? If so, have you reviewed it within the last two years?