

By: Jack Garson, Esq.

One of the first critical steps in building your business is hiring employees. Yet interviewing job candidates is often ineffective and, worse, presents abundant potential for costly mistakes and missed opportunities. Interviewing itself is far from foolproof. I work with numerous businesses on their employment matters, have led executive searches and conducted literally hundreds of interviews for many companies. Interviewing is not enough. Just like some people test well, others give great interviews and then fail miserably at their jobs. You need to do more than interview.

Weeding Do's and Don'ts

Think of interviewing as one part of the hiring process. A good process increases successful hiring and weeds out candidates who are not suitable for the position. This process might start earlier than you think.

For example, if your job posting includes a request for both a resume and a cover letter and someone only sends in a resume, then that person failed the first test. If providing a cover letter was too hard, imagine what you're facing once he or she is sitting behind one of your desks. Simply put, the failure to follow reasonable instructions is a disqualifier. Bottom line: don't even start the interview process with someone who is obviously inappropriate for the job.

Next, weed out bad candidates in the interview itself. As a case in point, one client had gone through many seemingly successful interviews only to end up with employees who didn't work out. This company required, above all else, extremely detail-oriented employees, the kinds of people who would follow instructions exactly. We revamped the hiring process so that each job candidate was given a list of instructions with very basic, but specific, requests. For example, we asked that interviewees show up at the company office within a narrow band of time on the interview day, because the reception area was small and we didn't want it too crowded. Also, we requested that each candidate bring three copies of his or her resume. Candidates were given

several other similar, specific instructions. Based on whether the candidate followed these instructions, by the time each candidate sat down in front of us for the interview, we knew whether he or she was a good candidate for the job. We gave the good candidates a thorough interview. The ones who didn't follow instructions got a polite, but short, meeting. With this new process, employee quality and retention soared.

Legal Do's and Don'ts

The hiring, and especially interview, process also presents many potential pitfalls. You wouldn't believe the inappropriate questions some employers ask during interviews. When it comes to employers without special training, you might as well lock up half of them and sue the other half. Some interviewers ask whether the job candidate plans to have children. Others

inquire what holidays the interviewee celebrates. Still, others ask if the potential employee has any disability that will affect his or her job performance. All of these questions potentially break the law.

Technically speaking, there are a "bazillion" laws out there that regulate what you can do as an employer. Federal laws, which apply to virtually all businesses, prohibit discrimination based on pregnancy, disability, race, religion, national origin, age and dozens of other characteristics. State and local laws add to the list and reach even further, often prohibiting discrimination based on other criteria, including things you might not expect, like sexual orientation, transgender status and whether an employee is a cigarette smoker. When these requirements apply, you can't ask questions that are likely to reveal these characteristics. So, for example, if you ask a female candidate if she plans on having a family, you might as well dare her to sue you for violating the federal Pregnancy Discrimination Act.

Similarly, there are other traps for the unwary employer. For example, certain employers impose tests as a condition of hiring that have been found to produce discriminatory results.



These tests are illegal and can expose your company to liability.

The potential for exposure in vetting job candidates is only growing. Special rules apply to how credit scores of candidates can be used. Even searching the Internet for background information can expose you to liability if it reveals information that you are not supposed to consider in the hiring process. On the bleeding edge, new laws regulate your consideration of new types of information, such as genetic test results. So get the advice of a good employment lawyer to create your hiring process and to determine the information you may gather from job candidates.

Practical Do's and Don'ts

Aside from the legalities of the hiring process, there are practical considerations:

It Never Gets Better: Whatever flaws you see in a prospective employee during an interview will only be worse once that person is hired. Candidates are on their best behavior and rein in their flaws during the hiring process. I had one interviewee who was late for two consecutive interviews but she had the best, most believable excuses I've ever heard and was otherwise supremely qualified. I hired her, and guess what happened next. She was late for work every day for six

months. It only stopped when I fired her. To her credit, the excuses continued to be excellent until the bitter end.

Background Checks: Do carefully check the background of your prospective employees. But make sure to comply with applicable law. Also, be wary of references. Most former employers are so afraid of lawsuits that they won't give a bad reference.

Verify Credibility: Ask job candidates the same question in different ways at different times. If you get the same answer, you are likely getting an honest answer.

Conduct Multiple Interviews: There is a strange phenomenon where some people excel in their first interview and then fall apart in their second interview. No matter how good that first interview goes, always conduct at least one more.

Trial Periods: When feasible, employ people on a trial basis. That is, hire someone for a fixed time period with the understanding that if all goes well, there may be a permanent position available. The best way to see if someone can do the job is to actually see if someone can do the job. Hiring a great employee is difficult but produces tremendous rewards for all involved. Hiring quick and sloppy is easy, but hurts your business and often leads to nasty and disruptive departures. If you hire with care, you'll build a talented team.

ABOUT JACK GARSON



Jack.garson@offitkurman.com | 240.507.1744

Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

ABOUT OFFIT KURMAN

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

Wherever your industry, Offit Kurman is the better way to protect your business, preserve your family's wealth and resolve your most challenging legal conflicts. At Offit Kurman, we distinguish ourselves by our quality and breadth of legal services—as well as our unique operational structure, which encourages a culture of collaboration and entrepreneurialism. The same approach that makes our firm attractive to legal practitioners also gives clients access to experienced counsel in every area of the law.

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