HIRING THE BEST EMPLOYEES
AND FIRING THEM IF THEY AREN’T

Presented to
Michigan Family Business Center
University of Michigan - Flint

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Has This Ever Happened to You?

• You’re interviewing applicants for a job vacancy
• No one seems to be qualified
• Everyone looked decent on paper
• No one impresses you
Or This?

• One interviewee is phenomenal
  – She’s very nice, outgoing
  – Seems knowledgeable because she answers ‘yes’ to your list of job duties
  – In short, you really hit it off!

• But after she begins in the job you discover that she is horrible.
  – Little or no knowledge of the required job skills
  – Gets into arguments with coworkers
  – Doesn’t take direction well.
And Taking It One Step Further ...

- You fire the phenomenal/horrible new employee
- You tell her she “just isn’t working out”
- And she sues you for discrimination! — National origin, religion, age, etc.
And Taking It One Step Further ...

- Cost to defend typical employment lawsuit: $500,000 per Defendant
- Length of time (including appeals): 5-7 years
- Non-economic costs:
  - Stress, anger, distraction
  - Lost productivity
  - Low morale/employee turnover
And Taking It One Step Further ...

➢ What could you have done differently?
➢ How could you have gotten qualified candidates?
➢ How can you prevent litigation (or build great legal defenses) in the interviewing/selection, employment practices or termination?
Today’s Objectives

• Get qualified applicants for open positions
• Ask interview questions to determine experience & qualifications for all aspects of job
• Selecting a solid new hire
• Communicating with employees (including communicating negative information)
• Lawsuit-proofing your business from employee legal claims
Getting Qualified Applicants

**Write Job Descriptions**

- Few sentences describing job
- Detailed list of job duties
- List of required skills/experiences needed to be successful in job
  - Tangible (education, job experience)
  - Intangible (communication, problem solving, work independently)
- List of preferred skills/exps
Write a Job Description

• Think about the most recent people who performed that job?
  – What did you like and not like about their job performance?
  – Should the job description be changed to reflect those items as well?

• DO NOT include express/implied protected traits (race, sex, age, religion, national origin, marital status, height, weight, disability, veteran status)
Getting Qualified Applicants

• Select job posting method (window sign, newspaper, school, professional society) carefully
• Job postings summarize job description, including necessary skills/experiences and compensation
• Compare applications/resumes to job descriptions – qualified/not qualified
• Interview only qualified applicants
Effective Interview Questions

• Develop written questions based solely on job description
• Nothing personal – no questions or answers re: 10 protected traits
  – Ex: need to work late w/o notice
• No yes/no questions; Open-ended questions elicit more information
• “Tell me about ...” or “Give example ...”
• Never assume
Effective Interviewing

• Ask everyone same questions
  – Follow up only to clarify
• Listen to answers
  – The value of silence
  – What to do if protected trait info given
• Document responses, impressions
• Okay to end interview early if clearly not qualified
Verification

• Reference checking is helpful
  – *Give and ask for helpful information!*
  – Reason for separation
  – Documented performance/discipline issues in year before separation?

• Must verify required licenses, etc
  – Beware of “Negligent Hiring” legal claim

• Background/criminal history checks
  – written parameters & business necessity
Selected applicant will →

- Possess all required tangible skills/experiences
- Possess all required intangible skills/exps
- May possess some/all preferred skills/exps
- Licenses, etc verified true
- Pass documented background/criminal history check
- Accept pay within your available range
Completing The Interview Process

- Separate qualified from not qualified
- Notify not qualified – state reason
- Notify qualified but not selected – met minimum requirements, but someone else had better overall skills and experiences
- Form letters okay
- Communication negates “assuming”
Job Offer & Orientation

• Drug testing post-offer only
  – MI Marijuana Law impact
• Orientation – tax forms, etc
• Review employee handbook, work rules – i.e., written expectations
  – Explain at-will employment
• Explain introductory period
  – Purpose, length, impact
Employee Relations

• Professional respectful is required – by everyone
• Praise in public, discipline in private
• Nothing personal; based on expectations only
• Open communication – builds relationship
• Documentation
  – 2 requirements
  – Coaching (document for own records)
  – Discipline (document for employee’s file)
Communicating “Negative” Info

1. Re-state expectation
2. State performance problem
3. Ask Why
4. State coaching point, discipline, etc.
5. Warn of future consequences for failure to improve

Document everything!
Termination

- 2 types termination
  - 1-time major violation
  - Progressive discipline for minor problems
- Review termination situation for appearance of any kind of discrimination
- Meet with employee
  - Final due process
  - Today’s consequence: “You cannot work here anymore” – i.e., termination
Recognize the “red flags” for potential employment-related litigation →

- Discrimination
- Harassment
- ADA (15+ employees)
- FLSA (minimum wage, hourly/salaried/exempt, overtime, deductions from salary)
- FMLA (50+ employees)
- MI SSN Privacy Act
- Confidentiality & Information Security
Lawsuit Proofing Your Business

Recognize the “red flags”, cont’d →

- Leaves of Absence
- Bullard-Plawecki Employee-Right-To-Know Act
- Drug-Free Workplace
- Workplace Violence

- What constitutes Company’s “notice” of an employee complaint
- How to investigate an employee complaint & what to do with investigation results
• Develop job descriptions to ensure that only truly qualified candidates are interviewed.
• Develop interview questions based on JD’s that both ascertain true job knowledge and skills and screen for important interpersonal qualities.
• Objectively evaluate applicants and make your selection based on JD.
• Verify required licenses, etc
• Effectively utilize the introductory/probationary period to reduce pressure on you in the interview process. Update employee handbook accordingly
• Adequately document these processes (Defensive evidence).
Action Plan - Communication

• All communications re: job expectations only; Nothing personal

• All expectations in writing (i.e., job description, work rules, employee handbook)

• Communicate expectations upon hire, if changes, annually.

• Coach continuously; Discipline as needed

• Document everything
Action Plan - Communication

- Coaching/Discipline ➔
  - Re-state expectation
  - State performance problem
  - Ask Why
  - State coaching point, discipline, etc.
  - Warn of future consequences for failure to improve

- Document! Document! Document!
• Employee Handbook (and other written expectations)
• Employment posters
• Employment law training
  – Recognize the “red flags” for potential employment lawsuits
  – Address/diffuse “red flags” promptly
• Objective & consistent practices re: E’e’s
• Document!
Final Questions

and

Thank You!