



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

Selecting a Solid Employee



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

Lawsuit-Proofing Your Business



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

Action Plan - Hiring



- 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.

Action Plan - Hiring



- 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!

Action Plan – Misc.



- 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’ees
- Document!

Final Questions

and

Thank You!

