

Hiring, Discipline and Firing Without Headaches

Presented By:

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Agenda

I. Introduction

II. Best Hiring Practices

III. Proper Discipline and Termination Measures

I. INTRODUCTION

At-Will Employment

- Most workers are at-will employees
 - Can be fired (or quit) at any time, for any reason
- Exceptions:
 - Contract employees
 - Public policy
 - Discrimination

What is Discrimination?

Subjecting an employee to different terms and conditions of employment because of the employee's protected status.

Employment Actions

Failure to
Hire

Discipline

Suspension

Demotion

Failure to
Promote

Termination

Constructive
Discharge

II. BEST HIRING PRACTICES

The Employment Application

How do applicants look on paper?

Employment Application is Key

MAKE SURE THAT EVERY APPLICANT SIGNS AN APPLICATION –
RESUME ALONE INSUFFICIENT

TRUTH IN ALL WRITING AND SPOKEN WORDS

NO RESTRICTIONS ON EMPLOYMENT

CONSENT TO ALL REFERENCES, TESTING AND PHYSICALS

AT-WILL ACKNOWLEDGMENT

Reviewing an Applicant

Carefully Review the Application

Look for Gaps and Inconsistencies

Challenge Vague, Incomplete Answers

Don't Make Any Commitments

Follow up With Prior Employers – “Eligible for Rehire?”

Basic Interview Principles

- Use employment applications.
- Consider in advance the questions you plan to ask and the nature of the information you are seeking to elicit.

APPLICATION FOR EMPLOYMENT
(PRE-EMPLOYMENT QUESTIONNAIRE) (AN EQUAL OPPORTUNITY EMPLOYER)

PERSONAL INFORMATION

NAME _____ DATE _____
LAST FIRST MIDDLE SOCIAL SECURITY NUMBER _____

PRESENT ADDRESS _____ STREET _____ CITY _____ STATE _____ ZIP _____

PERMANENT ADDRESS _____ STREET _____ CITY _____ STATE _____ ZIP _____

PHONE NO. _____ ARE YOU 18 YEARS OR OLDER? Yes No

ARE YOU PREVENTED FROM LAWFULLY BECOMING EMPLOYED IN THIS COUNTRY BECAUSE OF VISA OR IMMIGRATION STATUS? Yes No

EMPLOYMENT DESIRED

POSITION _____ DATE YOU CAN START _____ SALARY DESIRED _____

ARE YOU EMPLOYED NOW? _____ IF SO MAY WE INQUIRE OF YOUR PRESENT EMPLOYER? _____

EVER APPLIED TO THIS COMPANY BEFORE? _____ WHERE? _____ WHEN? _____

REFERRED BY _____

EDUCATION	NAME AND LOCATION OF SCHOOL	*NO OF YEARS ATTENDED	*DID YOU GRADUATE?	SUBJECTS STUDIED
GRAMMAR SCHOOL				
HIGH SCHOOL				
COLLEGE				
TRADE, BUSINESS OR CORRESPONDENCE SCHOOL				

GENERAL
SUBJECTS OF SPECIAL STUDY OR RESEARCH WORK _____

SPECIAL SKILLS _____

ACTIVITIES: (CIVIC, ATHLETIC, ETC.) _____
EXCLUDE ORGANIZATIONS THE NAME OF WHICH INDICATES THE RACE, CREED, SEX, AGE, MARITAL STATUS, COLOR OR NATION OF ORIGIN OF ITS MEMBERS.

U.S. MILITARY OR NAVAL SERVICE _____ RANK _____ PRESENT MEMBERSHIP IN NATIONAL GUARD OR RESERVES _____

*This form has been revised to comply with the provisions of the Americans with Disabilities Act and the final regulations and interpretive guidance promulgated by the EEOC on July 26, 1991.

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Basic Interview Principles

- Be consistent – ask the same questions of all applicants for the same position. Asking special questions of women or minorities that are not asked of white males could trigger allegations of discrimination.

Basic Interview Principles

- Ask job-related questions. Ask yourself in advance: Is this information really needed in order to judge an applicant's competence or qualifications for the job?
- Use open-ended questions to allow the applicant to talk, enabling you to make better informed decisions about the individual (80/20 Rule).

Basic Interview Principles

- Listen carefully to the applicant's answers and use silence effectively.
- Explore any gaps in employment and/or education – seek further evidence of periods allegedly spent “consulting” or in “self-employment.”

Basic Interview Principles

- If applicant volunteers info about protected class (e.g., # of children), don't follow up and don't write it on interview notes.
- Take notes during the interview, but do not include “doodles” on the written materials that may be construed as discriminatory (such as the applicant's age).



Basic Interview Principles

- Ask the applicant about his/her qualifications and ability to perform the required job duties, rather than asking about impairments. Consider giving them job description and asking whether they can perform the duties.

Basic Interview Principles

- Consider closing the interview by asking whether there is anything else the applicant would like to have considered as part of the hiring decision.
- Positively promote image of the company.
(But still try and comply with 80/20 Rule.)



Interview Checklist

- Observe verbal and non-verbal behavior for clues into the applicant's character.
- Note other personal references mentioned during the interview for later follow up.



Sample Interview Questions

Questions to reveal personality and ability to work with others:

- If you had to describe yourself in three words, what would they be?
- How would you describe your personality?
- What is your greatest strength/weakness?
- What motivates you most?

Sample Interview Questions

- If I call your references, what will they say about you?
- What kind of environment would you like to work in?
- Why did you leave your former employer?
- What did you like/dislike about past jobs?

***Only ask business-related questions

Problem Inquiries



- Age? Date of birth? Year graduated from high school?
- Arrests?
- Credit? (Illinois Credit Privacy Act)
- Children under 18? Number of children? Age of children? What arrangements will you make for care of minor children?



Problem Inquiries

- Citizen of what country? Ancestors from where?
- Credit record? Charge accounts? Own your own home?
- Disabilities?
- Family illnesses?
- Union involvement?
- Prior workers' compensation/discrimination claims?

Problem Inquiries

- Maiden name?
- Marital status?
- Pregnant? Planning on having children?
- Sexual orientation?
- Religious or charitable organizations?



Testing of Employees

- Many different types of employment testing.
 - Physical tests
 - Drug tests
 - Personality tests
 - Cognitive tests



Testing of Employees

- Care must be given when administering tests to avoid violations of employment laws (ADA, ADEA, Title VII, etc.).
- Bottom line: Must be job related and consistent with business necessity.

Physical Tests & Medical Exams

- Avoid unless job requires elevated degree of physical ability.
- Medical exams must be done after offer of employment.
- Medical exams should be given to all employees offered in job category.
- Don't forget to keep medical information confidential and segregated.



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BACKGROUND CHECKS

Background Checks

Why Use Background Checks?

- To ensure that applicants have the qualifications and credentials they claim.
- To minimize legal and financial exposure (e.g., concerns over workplace violence, negligent hiring, etc.).

Background Checks

What Laws Are Implicated?

1. Fair Credit Reporting Act
2. Illinois Credit Privacy Act
3. EEOC laws – disparate impact
4. Ban the Box Legislation



Background Checks

Best Practices in Conducting Background Checks

- Get authorization.
- Use broadest language possible to ask for background check.
- Evaluate what type of background check you need.

Background Checks

- Evaluate whether the information substantially relates to a job requirement.
- Consider when to conduct the background check.

III. PROPER DISCIPLINE AND TERMINATION MEASURES

Due Process in Discipline

The concept of “Workplace Due Process,” while not required in private employment, serves a useful purpose to the extent that it encourages us to be consistent in the application and enforcement of rules and standards, and to provide notice to employees of what is expected of them. Below are some guidelines:

Provide the employee with notice of workplace conduct and performance standards and any breach of standards

Provide the employee with an opportunity to be heard before action is taken

Conduct timely investigation and follow-up regarding violations of standards

Consider the use of a graduated or progressive system of discipline to address violations of standards, if appropriate under the circumstances

Goals to Be Achieved by Disciplinary Procedures

- To eliminate disciplinary problems in advance by letting employees know what offenses will be punished and what steps will be taken.
- To assure all employees that basic disciplinary procedures will be applied uniformly and fairly.



Goals to Be Achieved by Disciplinary Procedures

- To give employees who violate rules the opportunity to improve by letting them know what specific actions they should take to meet performance standards.
- To maximize chances that any eventual termination will be supported if ever questioned.



Interplay With “At-Will” Relationship



- Illinois is an “at-will” employment state.
- You can terminate anybody at any time for any reason.
- Exceptions to “at-will” doctrine:
 - Written employment contract or union CBA.
 - Termination violates state or federal law (e.g., Title VII, IHRA, WC Retaliation, etc.).

Importance of Proper Documentation

- Lack of documentation can pose problems.
- Important to document reasons for discipline.
- Important to preserve contemporaneous record of delinquency.
- Without documentation, it is basically a “he said/she said” situation.

IDES Example

- Misconduct is a willful act done against employers best interests where there is potential harm, and/or where it is done in violation of a known or reasonable rule despite warning.

Bottom Line: Need written policies, repeated warnings and notice to employee to prevail in an IDES claim.

What to Include in Documentation?

1. Date of event and name of subject employee.
2. Printed name and signature of employee preparing write-up.
3. Subject of conduct and corrective action.
4. ID all witnesses.

What to Include in Documentation?

5. State that write-up will be saved in personnel file.
6. Place for employee's signature.
7. Statement of consequence of employee's failure to improve.
8. Opportunity for employee to respond.

Practical Reminder

- Coordinators should work closely with managers on any discipline.
- Managers should consult with their direct report if they are undertaking formal discipline process.
- Treat similar situations in a similar fashion.

Checklist Prior to Making Termination Decision

	YES	NO
• Are reasons for termination established?		
• Did I gather enough facts?		
• Did I perform a full investigation?		
• Did I have performance appraisals to back my decision?		
• Has the employee been given a chance to explain his/her conduct?		
• Is the file documented?		
• Did I give the employee prior warning of disciplinary problems?		

Checklist Prior to Making Termination Decision

	YES	NO
• Have other employees been disciplined similarly in the past?		
• Is there a business reason if others have not been treated the same in the past?		
• Have other employees with similar problems been treated less severely?		
• Have I followed company procedures for terminations?		
• Have I followed company handbook?		
• Have I discussed with HR?		

Checklist Prior to Making Termination Decision

	YES	NO
• Have I made the decision to terminate?		
• Can I communicate the decision tactfully?		
• Do I have all the facts?		
• Have I kept the incident confidential?		
• Have I prepared the final paycheck?		
• Has outstanding vacation been paid?		
• Have I prepared a COBRA notice?		
• Do supervisors know to direct reference requests to HR?		
• Has employee returned all company property?		
• Has employee's electronic account rights been disabled?		
• Does employee have any restrictive covenants?		

Termination Interview

Involve
HR/manager and
develop a strategy

Stick to the script

Don't encourage
employee with
thoughts that you
might change
decision

Don't admit fault

Be prepared for
employee's reaction

Don't drag the
meeting out

Document what was
said

Report everything to
HR/manager

Top Ten Hiring and Firing Rules

1. Document everything fairly, thoroughly, and clearly (someone else may have to read/use it).
2. Be consistent.
3. Be conscious of risk areas.
4. Do not ask questions you do not need to know for business reasons.
5. Evaluate need for drug testing and/or medical exams.

Top Ten Hiring and Firing Rules

6. Only pursue background checks as a condition of employment.
7. Balance the need to be objective in evaluating performance, with need to encourage improvement.
8. Be transparent about hiring (and appraisal) process.
9. Follow changes in the law.
10. If you have a question, ask.

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