

A stylized black and white lighthouse with a yellow light emanating from the top. The lighthouse has a spiral design on its side and a small window near the top.

AMBROSE EMPLOYER GROUP, LLC
A Professional Employer Organization

Best Practices Seminar: Hiring and Terminations

Elizabeth Perlak
Ambrose Counsel

Integrity • Trust • Assurance

ESAC

Employer Services
Assurance Corporation

www.ambrosegroup.com



- Hiring
 - Picking a Candidate
 - Making an Offer
- Terminations
 - Making a Termination Decision
 - Preparing for the Termination Meeting
 - Post Termination Issues



Lasting Effects of a Bad Hire

- Higher Training Costs
- Higher Recruitment Costs
- Higher Severance Costs
- Lower Employee Morale
- Decreased Employee Productivity
- Lost Customers and Market Share
- Reduced Profitability



Job Descriptions

A Job Description is a *written* description of a job which including the general nature of the work to be performed; the specific responsibilities and duties; and the employee characteristics required to perform the job.

Why create job descriptions?

- Serves as a tool for recruitment.
- Establishes responsibilities and performance guidelines.
- Limits legal exposure to issues relating to discrimination laws.
- Aids in classification under the Fair Labor Standards Act (FLSA).
- Assists in determinations of American with Disabilities Act (ADA) reasonable accommodations determinations.



Tips for Writing Job Descriptions

Things to Include:

- Title, Location, Employment Status, and FLSA classification
- Specific Job Duties
 - Essential functions of the job as well as minor tasks
 - Decision-making or managerial requirements
 - Knowledge, skills and abilities necessary to perform the job
- Qualifications
 - Work experience or years in the field requirements
 - Education requirements
 - Certifications or Licenses necessary
- Special Considerations
 - Travel
 - Special Work Hours (*i.e.*, Must be available during Asian market hours)



Types of Interviews

- Telephone
 - Usually an initial screening
 - Cost and time effective
- Structured
 - Uses a prepared list of topics
 - All candidates and interviewers cover the same list
- Unstructured
 - No set topics, could be controlled by interviewee
- Stress
 - Used to reveal personality characteristics
 - Requires experienced and skilled interviewers
 - May leave candidate with negative impression



Preparing for the Interview

Designing Questions

- Start with the job descriptions.
- Ask and explain about unique aspects of the job or company culture.
- Resume – Education, Work Experience
- Use open ended questions.

Documenting Interviews

- Improves selection decisions
- Creates a record that can be used to defend against discriminatory hiring challenge
- Use Notes, questionnaires and/or rating scales.



Interview Landmines

- Title VII of the Civil Rights Act of 1964
- Age Discrimination
- Americans with Disabilities Act
- Immigration Reform and Control Act
- Uniformed Services Employment and Re-employment Rights Act
- Bankruptcy Act
- Child Support Enforcement Amendments
- National Labor Relations Act



Why Do Background Checks?

- 34% of all application forms contain outright lies about experience, education and ability to perform.
- 30% of all business failures are caused by employee theft.
- One in six workers has a drug problem.



AMBROSE EMPLOYER GROUP, LLC
A Professional Employer Organization

Why Do Background Checks?

THE REGENTS OF THE
University of California

ON THE NOMINATION OF THE FACULTY OF
THE COLLEGE OF BUSINESS
HAVE CONFERRED UPON

THE DEGREE OF BACHELOR OF BUSINESS ADMINISTRATION
WITH ALL THE RIGHTS AND PRIVILEGES THERETO PERTAINING
GIVEN AT BERKELEY

THIS EIGHTEENTH DAY OF JUNE IN THE YEAR
NINETEEN HUNDRED AND NINETY-ONE

Edmund G. Brown, Jr.
UNIVERSITY OF CALIFORNIA AND
REGENTS OF THE SYSTEM



Albert H. Bowker
CHANCELLOR

David S. Saper
PRESIDENT OF THE REGENTS

Ernest Alford
DEAN OF THE COLLEGE

WITH HONORS



Background Checks

- Background Checks are regulated by the FTC under the Fair Credit Reporting (FCRA).
- Background checks should be performed for every new hire *before* they begin work and should be reflective of one's job duties.
- Types of Background Checks available:
 - Criminal
 - Credit
 - Education
 - Motor Vehicle
 - Drug Testing
 - Employment History



What can I do with the Information?

- Credit Check Restrictions
 - Bankruptcy
 - Child Support
 - Medical Information
- Criminal History Check Restrictions
 - Arrests v. Convictions
 - Relevance to the job
 - State and local laws
- FCRA requires that employers follow specific procedures if an adverse action is to be taken because of information in a background check report.



Steps for Adverse Actions

- Pre-Adverse Action Notice
 1. Provide a copy of the report.
 2. Notify the employee in writing of the intent to take an adverse action.
 3. Provide a Summary of Consumer Rights under FCRA.

- Adverse Action Notice
 1. Includes the name, address and phone number of the CRA who supplied the report.
 2. Includes a statement that the CRA only supplied the information and did not make the decision.
 3. Gives notice of the Right to Dispute the accuracy of the background check.



Making the Offer

An Offer Letter Should Include:

- Title of the position and to whom they will report
- Start date and where to report
- Salary – listed in terms of pay-cycle
- Working hours
- An “At-Will Employment” statement
- Background Check or other contingent requirements



AMBROSE EMPLOYER GROUP, LLC
A Professional Employer Organization

Why do we care about terminations?

\$279,235

(average monetary benefit paid to resolve EEOC enforcement suits in 2008)



Avoiding Claims of Discrimination

From 2000-2008, the Equal Employment Opportunity Commission received **973,008** charges.

Charges were up 15% in 2008 over 2007.

- Race: 349,252
- National Origin: 98,631
- Retaliation: 273,260
- Disability: 99,627
- Sex: 298,099
- Religion: 27,956
- Age: 212,230
- Equal Pay Act: 12,807

EEOC charges are often filed when an employee feels that he or she has not been treated with respect. The importance of treating employees with dignity and respect cannot be overstated.



Avoiding Claims of Discrimination

- *Frequently-Implicated Anti-Discrimination Laws*
 - Title VII – prohibits discrimination based on race, color, religion, gender and national origin
 - Pregnancy Discrimination Act (PDA) – prohibits discrimination based on pregnancy and childbirth
 - Americans with Disabilities Act (ADA) – prohibits discrimination based on disability
 - Age Discrimination in Employment Act (ADEA) – prohibits discrimination based on age (40 and over)
 - Family and Medical Leave Act (FMLA) – prohibits discrimination based on leave taken due to serious medical condition of employee, spouse, child, parent or for birth or adoption of child
 - State Laws – states often add additional protections to employees



Types of Employment

- *At-Will Employment*
 - This is the norm in the United States
 - Employment can be terminated ***at any time, for any non-discriminatory reason or for no reason at all***
- *Contracted-For Employment*
 - Employment bound by a written contract, normally for a set period of time and set salary
 - Employment may still be terminated for misconduct



Types of Terminations

- *Voluntary*
 - Employee resigns his or her position in order to accept a new position, for personal reasons or to retire
 - Obtain written notice of resignation from employee
- *Involuntary (not for cause)*
 - Employer initiates termination of employee's employment due to:
 - Organizational change (layoffs, reductions in force)
 - Unsatisfactory performance
- *Involuntary (for cause)*
 - Violation of employer's code of ethics or conduct, policies, practices, procedures or rules



Setting Expectations Early

- *Job Descriptions*
 - Make sure employees are clear about expectations for the position and any other details that would enable them to perform effectively
- *Company Codes of Conduct*
 - Establish work rules that list conduct that could result in discipline, up to and including termination
- *Training in Company Policies & Procedures*
 - Publish an employee handbook containing your organization's policies and procedures and ensure that all employees receive a copy of the handbook and sign and return an acknowledgement



Documenting Performance Issues

- *Performance Management*
 - Written documentation of substandard performance is critical to explaining reasons for termination and reducing the risk of surprise
- *Coaching and Counseling*
 - Regular feedback, both formal and informal, can help employees improve performance and avoid discipline
- *Verbal & Written Warnings*
 - Document discussions and maintain in employee's file. Include the date, time and policy or performance issue identified
- *Performance Improvement Plans (PIPs)*
 - PIPs are typically detailed and clearly identify the performance problem, the expected change and the time frame for improvement

BOTTOM LINE – a termination should never be a surprise.



Potential Conflicts Upon Termination

- 61% Have Exited on Bad Terms With Employer, Leading to a Domino Effect Among Co-Workers (52% Left Due to Co-Worker's Exit)
- 42% Involved Screaming Matches
- 24% Sent Negative Mass E-Mails on Their Way Out
- 18% Gave Negative Speeches at Company Meetings
- 4% Were Involved in Physical Scuffles



Preparing for the Termination Meeting

- Prepare written notes summing up what you wish to communicate
- Schedule the termination meeting carefully
- Secure a private location for the meeting to protect the employee's privacy and dignity
- Consider having a human resources representative or another manager present for the termination meeting
- Arrange to have the employee's e-mail and internet access disconnected while the termination meeting takes place
- Determine when the employee's final pay is due and whether and when vacation pay must also be paid out



During the Termination Meeting

- *Avoid Small Talk*
 - Be straightforward when you explain that the individual's employment is being terminated
- *Clearly and Honestly State the Reason for Termination*
 - Do not "sugarcoat" the termination reason to avoid hurting the individual's feelings
- *Respect the Employee's Feelings*
 - Allow the individual to speak and ask questions, but do not allow the individual to think that you might be "talked out of" the termination decision



During the Termination Meeting - cont. -

- Avoid personal references and accusations
- Remain calm, even if the individual does not
- Collect all company property or determine its location
- Discuss all outstanding issues such as benefits and final paycheck
- If severance will be offered explain the terms, including the condition that severance will only be paid in exchange for a release
 - In 2008, 93% of U.S. companies required employees to sign a release in exchange for severance, up from 76% in 2001



Post-Termination Issues

- *Obtain a Valid Release*
 - Be aware that a release of age claims under the ADEA requires inclusion of a separate paragraph releasing only age claims
 - Determine the correct tax withholding and benefits handling
 - Provide a Neutral Reference
- Communicate Termination Information to Remaining Employees (if appropriate)



Exit Interviews

- Appropriate for Both Voluntary and Involuntary Terminations
- Helpful to Recruitment Process
- Exit Interview Template Should be Consistently Used
- Exit Interview Should Be Conducted By Neutral Party
- *Helpful to Improve Performance of Remaining Employees/Managers*
 - 57% of senior executives at nation's largest companies use exit interview feedback frequently
 - 19% report that they always use exit interview responses to shape their decisions



AMBROSE EMPLOYER GROUP, LLC
A Professional Employer Organization

Questions?

Thank You!