

Guidelines for the Hiring Process

HIRING PROCESS GUIDELINES

Using proper hiring techniques ensures that the Company screens out undesirable employees and protects the Company against hiring practices that illegally screen out applicants or disproportionately affect applicants based on age, race, religion, gender, national origin or other similarly protected attributes.

I. GOALS AND OBJECTIVES OF A PROPER HIRING PROCESS

The Company's hiring process should screen out individuals who will be a detriment to the organization. Applicants who will be detrimental are those individuals who will offend guests, distract other employees, generate litigation, and so forth. These individuals may be identified by the following characteristics:

1. Persons who have a history of unsuccessful employment;
2. Persons who blame their prior failures on others (especially their employers);
3. Persons who appear to be "whiners, gripers, and complainers" as opposed to people who are flexible;
4. Persons who are less than fully honest about themselves and others;
5. Persons who have likes and dislikes which do not match your work environment;
6. Persons who present a risk of injury to guests, co-workers or others;
7. Persons who will not take pride in their job no matter where they work in the organization;
8. Persons who will not present a positive image to your guests; and
9. Persons who are insubordinate to their superiors.

These characteristics are readily identifiable in the hiring process. The procedures described below are designed to help you identify these characteristics so that you are hiring defensively.

II. EMPLOYMENT APPLICATION AND RELATED FORMS

A. Getting the Forms Filled Out

A sample employment application form is included in this guide. The employment application (and Fair Credit Reporting Act forms discussed below) should be completed prior to any interview taking place. Be sure that the applicant completes each section of the application. Do not allow the applicant to refer to a resume or some other document rather than supplying detailed information. Also, be sure that the applicant signs the application.

B. Employee Data Reporting

Employers with 15 or more employees are required by federal law to keep records and information concerning their employees. In addition, if your Company: (1) employs 100 or more employees, (2) has fewer than 100 employees but is owned or affiliated with another company, or there is centralized ownership, control or management so that the group legally constitutes a single enterprise and the entire enterprise employs a total of 100 or more employees, or (3) employs 50 or more employees and has federal contracts totaling more than \$50,000, then you are required to

complete and file a Federal EEO-1 Report with the Joint Reporting Committee by no later than September 30 of each year.

The attached Collection of Data for Federal EEO-1 Report Form (Tab 7) is provided to assist you with the collection of employee data and preparation of the Federal EEO-1 Report Form. The Collection of Data for Federal EEO-1 Report Form should be completed by the Employer at the time of completion of an employment application. The employee completes the top portion by providing his or her social security number, date of birth, sex and race. The Employer must then complete the bottom portion of the form by placing an “X” in the proper box. **This document should not be kept as part of any personnel records, but instead should be sent directly to Human Resources and/or others responsible for the completion of the EEO-1 Report Form.**

Further information regarding the filing of EEO-1 reports for single and multiple establishment employers, including reporting instructions and report forms in various formats, can be obtained by visiting <http://www.eeoc.gov/employers/eeo1survey/index.cfm> or contacting:

**EEO-1 Joint Reporting Committee
P. O. Box 78040
Washington, DC 20013-8040
Phone: 1-877-392-4647
Fax: 202-663-7185.**

III. REFERENCE CHECKS

Both personal and professional references should be checked on every applicant. Even though many former employers whom you call may refuse to provide substantive information regarding their former employees, the reference check attempt should be made for at least three prior employers on every applicant you wish to hire. The reference information obtained, or lack thereof, should be recorded on the form included in this guide.

IV. DRUG TESTING

If your Company has a drug testing policy, then all applicants hired and/or put to work must first receive a clean drug test result from the clinic. All medical information regarding an employee, including drug test results, should be kept in a separate confidential medical file which is either stored with the personnel file (if the files are “secure”) or in a separate location.

V. BACKGROUND INVESTIGATIONS AND REJECTION OF APPLICANT

A criminal, driving, and background investigation of an applicant can be a vital tool for employers, especially in the hiring process. They provide useful information that can allow a Company to screen and filter-out problematic applicants before they are hired.

Employers are required to comply with the federal Fair Credit Reporting Act (“FCRA”) in conducting background checks on applicants and employees. Included in this guide is an Employer’s Compliance Guide to the FCRA to assist you in your efforts to comply with the laws in this area.

VI. EMPLOYMENT FORMS AND PROCESS

After completing all of the steps referenced in the Section above, if the employee is approved for hire, the Company may then extend an offer of employment to the applicant.

A. I-9 Compliance

1. The I-9 form is deceptively easy to complete. The prospective employee completes Section 1 of the form when the employee shows up for the first day of work, which elicits name, address, date of birth, and Social Security number. In addition, the prospective employee must attest to immigration status and the validity of documents presented to establish identity and employment eligibility. The employee then signs and dates the form. **The Company is ultimately liable for proper completion of the I-9 form and must ensure that Section 1 of the form is properly completed by the employee.**

2. Prospective employees are required to present documents proving identity and employment eligibility within three days of starting employment. Note that some documents prove only identity; some prove only employment eligibility; and some prove both.

3. The Employer completes Section 2 of the I-9 form by examining the documents presented by the employee and recording the document numbers and expiration dates in the appropriate column(s) in Section 2.

4. The Employer may choose to copy the documents presented by the prospective employee for purposes of proving compliance with verification requirements. Mere copying of documents, however, does not constitute compliance and will result in penalties if the I-9 form is not also properly completed.

5. The Employer should complete the date of hire information in the certification after review of the I-9 form and supporting documents have been successfully and acceptably completed.

6. The Employer must then sign and date a certification stating that the documents: (1) reasonably appear to be genuine; (2) relate to the individual; and (3) authorize the individual to work.

B. Colorado Affirmation of Legal Status

Colorado employers must also complete an affirmation form (Tab 10) for each employee within twenty (20) days after hiring.

C. Employee Withholding Forms

Form W-4: Employee Withholding: This form must be given to all employees for purposes of federal income tax withholding.

D. Notice of Cobra Rights

An Initial Notice of COBRA Rights form must be given to your employees at the time they are hired. In addition, a copy of this Initial Notice of COBRA Rights should be sent to the spouse of a married employee, preferably by registered mail. Most insurance carriers have a Notice of COBRA Rights form tailored to their plan. We recommend that you contact your carrier to obtain the appropriate notice.

E. Health Insurance and Benefits Information

At the time of hire, you should also provide your employees information concerning the Company's health insurance and benefits. This information is often provided to employers by their health insurance companies.

F. Employee Emergency Form

At the time of hire, the Company should provide to the employee an Emergency Information Form for the employee to complete containing the employee's name, address, and preferably the names, addresses, and contact information for two individuals that may be contacted in case of emergency. This Employee Emergency Form should be placed in the employee's personnel file after it is completed, and should be updated periodically.

G. Employee Handbook With Acknowledgment and Receipt Form

If you do not already have one in place, we strongly recommend that you implement an employee handbook. A handbook is critical because it provides guidelines to your employees about what they can expect from the company, and can in certain circumstances, protect you against liabilities that may arise from the employment relationship. An Acknowledgment Form should also be executed by the employee at the time the Company provides the employee his or her employee handbook. It provides verification that the employee has received a copy of the employee handbook and agrees to be bound by the policies contained therein. Fisher & Phillips would be happy to assist you in customizing a handbook.