



Employment Guide: Hiring and Retaining Top Performing Employees



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This guide contains information you can use to select and keep great employees. It is presented for informational purposes only. None of the information contained herein is intended to constitute, nor does it constitute, legal advice but merely conveys general information related to legal issues commonly encountered. The material contained herein is general in nature and may not apply to particular factual or legal circumstances. We do not undertake to update any material to reflect subsequent legal or other developments.

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Part One

Identifying and Hiring Top-Performing Employees



Section I – The First Interview

Objective

The objective of the first interview is to apply the criteria developed in the job description to the candidate, quickly, and then select the one who best matches the job description. This method enables you to move on to the next phase of the selection process. However, keep in mind that employment laws restrict the scope and purpose of interview questions. Because much of the information you studiously avoided asking about on the application, becomes apparent when you meet someone face-to-face (race, age, physical disability, national origin, etc.), you must take extra care in this phase of the process. This section will attempt to guide you in the interview process so that you may legally obtain the appropriate information needed to make a hiring decision.

General information about Interviews

Most hiring decisions are made in the first four minutes of an interview. Don't make this common mistake! Keep an open mind. Find out information about the applicant. Remember, you are looking for someone to fill a job with specific tasks. You are making a long term decision.

Employment interviews are an indispensable part of the hiring process, and when done properly, can be an excellent tool for screening applicants. The more methodical and systematic the interview process, the more likely it is to produce the kind of information needed to make good judgments about individuals' chances for success. This approach also helps you to withstand a discrimination charge.

All interviewers should be taught proper interviewing techniques and know what and what not to ask. Planning and preparation are the keys to effective interviewing. To guard against discriminatory hiring decisions and discrimination claims, the kinds of questions asked should be prepared carefully before the interviews are conducted. Stick to pre-planned questions throughout the interview. From a purely legal perspective, the best interviews are those where the interviewer asks every interviewee the same questions. Remember it is not always the question itself, but the way you ask it that is a violation of law.

The interviewer should make notes of responses and evaluations and later document the interview like any other major employment event.

The First Interview

As an interviewer conducts an interview, he/she should be able to have the opportunity to:

- Directly observe certain aspects of an applicant's behavior, such as communication skills, alertness, personal grooming standards, self-confidence, and understanding of necessary technical concepts.
- Obtain additional information on the applicant's education and work experience.
- Assess the applicant's knowledge, skills and other competencies by asking about previous past performance and achievements.
- Preview the job to the applicant so the applicant can determine whether he or she really is interested in the position open.
- Promote a good public image of the employer.

Following are some suggestions for a successful interview:

- Describe the interview process and let them know that you will be taking notes or using a tape recorder.
- Set the pace and direction of the conversation. Avoid asking questions that can be answered with "yes" and "no".
- Ask one question at a time; pause for a few seconds between questions. Give the applicant a chance to talk further.
- If the applicant "freezes" on a question, go to another question. Some applicants need to "warm up".
- Repeat parts of their answers in a questioning manner to indicate your desire for elaboration.
- Concentrate on listening.
- Adjust the level of your language to the applicant's ability. Don't talk down to the applicant.
- Always ask if the applicant has any questions.
- Know when to bring the interview to a close. Don't over-do it; get the information you need and then end it.

The First Interview

Interviewers can run into legal problems if they:

- Document such things as young, old, good-looking, gray hair, athletic, grandfather type, etc.
- Shorten an interview that is ordinarily scheduled for a certain amount of time. If the interview routine lasts an hour, do not shorten it. It could later be used in a discrimination suit.
- Imply long-term employment. The interviewer may defeat the At-will employment doctrine by statements made in an interview.
- Inquire about children.
- Solicit, directly or indirectly, information about social organizations or clubs to which the applicant belongs.
- Inquire about the applicants feelings toward working with co-workers of different races.
- Ask the applicant to specify where he/she or parents were born. You may ask if they are able to verify that he/she can legally work in the U.S.
- Ask for a maiden name.
- Question about marital status, number or age of children, pregnancy, or future childbearing plans.
- Rate a candidate on English-language proficiency when such a skill is not a job requirement.
- Ask the applicant to describe a particular physical condition or disability, or to state whether he or she has ever been treated for a specific diseases or medical conditions. It is also unlawful to ask applicants if they have been hospitalized and, if so, for what condition; if they have ever been treated by a psychiatrist or psychologist; if they have had a major illness in the last five years; how many days they were absent from work in the last year because of an illness; if they have physical defects that would preclude them from performing certain kinds of work; if they are taking any prescribed drugs; if they have ever been treated for a drug addiction or alcoholism; and if they have ever filed for workers' compensation insurance.
- Attempt to establish the amount of pay by asking the applicant what their salary requirements are. A major insurance company asked applicants what their requirements were. The result was that for the same position females gave salary requirements 20% lower than did males. The company hired on this basis, and the court ruled that this was illegal sex discrimination.
- Query the applicant on the type of discharge from military service.

The First Interview

- Inquire about arrest records. You can ask about convictions of a felony but don't automatically exclude people with convictions unless it is appropriate to the job.
- If the applicant has a visible disability (e.g. uses a wheelchair), or volunteers information about a disability, the interviewer **may not ask** questions about the nature of the disability, the severity, the condition causing the disability, any prognosis, or if the applicant might need any special leave because of the disability.
- The interviewer may describe or demonstrate the specific tasks or functions of the job and ask whether the applicant can perform these functions with or without a reasonable accommodation.

Interviewers can ask questions related to essential job functions. If an applicant asks about an accommodation, the interviewer can ask what the applicant thinks he/she needs to perform the job. Specific job-related examples of permissible questions are:

- Can you lift a ___ pound box?
- Can you work five days a week?
- Can you be at work at 8:00 A.M.?
- Do you have a driver's license?
- Can you perform the job as outlined in the job description either with or without accommodation?

When closing the interview, the applicant should merely be told that he or she will be contacted at a later date.

As soon as practical after the interview, fill out an Interview Evaluation Form (samples are at the end of this section) so that everything is documented while it is still fresh on your mind.

The First Interview

Interview Outline

- 1. Review the Job Description.**
 - A. Make a list of the success factors.
- 2. Develop a series of lead questions for each of the success factors.**
- 3. Build a file for each candidate.**
 - A. Lead questions for success factors.
 - B. Resume.
 - C. Application.
 - D. Release documents.
 1. Background checks.
 2. Permission to test.
- 4. Open.**
 - A. Brief statement about company.
 - B. Description of specification of the vacant position .
 - C. Discussion of completed application form, career goals, work experience, other qualifications.
 - D. Set the agenda and timetable.
- 5. Body.**
 - A. Ask lead questions.
 1. Can the person do the job?
 2. Will the person do the job?
 3. Does the person fit the corporate culture?
 - B. Listen and take notes.
 - C. Form opinions.
- 6. Close.**
 - A. Answer questions.
 - B. Discuss next step – Include any tests or investigations that will be conducted. Get releases if applicable.
- 7. Complete the Interview Evaluation Form**

The First Interview

Employment Interviewing

Do's and Don'ts

Do's

Age

Are you a minor?

Are you under 18?

If under 18, can you, after employment, submit a work permit?

Name and address of parent or guardian if applicant is a minor.

Statement that hire is subject to verification that applicant meets legal age requirement.

National Origin

Languages that an applicant speaks or reads only if necessary for the job, otherwise no questions.

Are you legally entitled to work in this country?

Birthplace

No Questions

Citizenship

Are you a U.S. citizen?

Are you legally employable within the U.S. at the present time?

Can you after employment submit verification of your legal right to work in the U.S.?

Don'ts

Age

When were you born?

How old are you?

Date graduated from high school (indicates age)

National Origin

What is your language ancestry or national origin?

How applicant acquired ability to read, write, or speak a foreign language.

Birthplace

Where were you born?

Where was your spouse born?

Where were your parents born?

Citizenship

Requirements that applicant produce naturalization or alien registration prior to employment.

Are your (parents, spouse) citizens?

When did they/you become citizens?

The First Interview

Employment Interviewing

Do's and Don'ts

Do's

Character

Are you honest?

Are you trustworthy?

Criminal Records

Have you been convicted of a felony?

Within the last 5 years have you been convicted of, or released from prison for a misdemeanor which was not a first offense, for drunkenness, simple assault, speeding, a minor traffic violation, or disturbing the peace?

Physical Description, Photograph

Statement of the essential functions of the job.

Statement that a photograph may be required **after** employment.

Dependents

No Questions

Don'ts

Character

Do you belong to a church?

Do you go to church regularly?

Criminal Records

Have you ever been arrested?

Have you ever been convicted of a misdemeanor?

Physical Description, Photograph

Questions about applicant's physical characteristics.

Requirement that applicant affix a photograph to application.

Statement that applicant, at his or her option, may submit a photograph.

Requiring a photograph after interview but before employment.

Dependents

Do you have any children?

Do you intend to have children?

What child care arrangements have you made?

The First Interview

Employment Interviewing

Do's and Don'ts

Do's

Education

What school, college, or vocational program did you attend or graduate?

Experience

What is your work experience?

Why did you leave your last employer?

Disability

How will you perform the job?

Are you able to perform all the essential functions of the job? If not, is there a reasonable accommodation that can be made?

Statement can be made that an offer may be made contingent on an applicant passing a job-related physical examination.

Living Arrangements

No Questions

Don'ts

Education

When did you graduate? (could be used to determine the persons age)

Experience

Questions about when the work experience was should not be used to determine the applicant's age.

Disability

Questions regarding applicant's general medical condition, state of health, or illnesses.

Questions regarding receipt of worker's compensation.

Do you have a disability?

What kind of disability do you have?

How severe is your disability?

Living Arrangements

Do you own your own home?

How long have you lived at your current address?

The First Interview

Employment Interviewing

Do's and Don'ts

Do's

Marital Status

What is your marital status? (only if both sexes are asked)

Make a statement of company policy regarding work assignments of employees who are related, but no questions about family members.

Is any additional information relative to change of name, use of an assumed name, or nickname necessary to enable a check on your work and educational record? If yes, please explain.

Military Experience

Are you a U.S. veteran?

What is your military service history?

Questions regarding relevant skills acquired during applicant's U.S. military service.

Bonding

Statement that bonding is a condition of hire.

Don'ts

Marital Status

What is your maiden name?

Any question that applies to one sex.

Name of relative to contact in case of emergency? (You can ask a name of a person, but not the relationship.)

Military Experience

Are you receiving any service connected disability pension?

Did you serve in WW II?

General questions regarding military service such as dates, and type of discharge.

Questions regarding service in a foreign military.

Bonding

Questions regarding refusal or cancellation of bonding.

Employment Interviewing

Do's and Don'ts

Do's

References

By whom were you referred for a position here?

Names of persons willing to provide professional and/or character references for applicant.

Organizations

Are you a member of any organization which advocates overthrowing the U.S. government by violent means?

Please list any job-related organizations, clubs, professional societies, or other associations to which you belong. Please omit those which indicate your race, religion, color, national origin, ancestry, sex, or age.

Race

No Questions

Notice in case of emergency

Name and address of person to be notified in case of accident or emergency.

Don'ts

References

Questions of applicant's former employer or acquaintances which elicit information specifying the applicant's race, color, religion, national origin, ancestry, disability, physical or mental disability or condition, marital status, age, or sex.

Organizations

Do you belong to the NAACP, B'nai B'rith, or any other organization the nature character of which indicates the religion, race or national origin of its members?

Race

What is your race?

Color? Or that a photograph accompany the application.

Notice in case of emergency

Name and address of relative to be notified in case of accident or emergency.

The First Interview

Employment Interviewing

Do's and Don'ts

Do's

Relatives

No Questions

Religion

No Questions

A statement may be made by employer of regular days, hours, shifts to be worked.

Sex

No questions unless the commission has granted bona fide occupational qualification for the position.

Transportation

Do you have dependable transportation to get to work?

Don'ts

Relatives

Where do your parents, spouse work or conduct business?

Religion

What religious denomination, church or synagogue do you belong to?

What are your religious obligations?

What religious holidays do you observe?

Sex

No questions unless the commission has granted bona fide occupational qualification for the position.

Transportation

Do you own a car?

The First Interview

Interview Evaluation Form

(Fill Out Immediately After Each Interview)

Name: _____ College: _____

Degree: _____ Major _____ Position Applied For _____

Appraisal of Candidate					
	Excellent	Good	Average	Below Average	Poor
General First Impression (greeting, self expression, etc.)					
Personal Appearance					
Apparent Drive					
Initiative in Conversation					
Apparent Aggressiveness					
Apparent Ability to Get Along with People					
Attitude					
Speech					
Potential					
ASPIRATIONS - Extent to which the goals and aspirations of the applicant are consistent with available opportunity.					
TRAINING - Extent to which level of educational skills and relevant on-the-job training will enable applicant to cope with the demands of the job.					
WORK HISTORY - Extent to which the applicant's work experience applies to the performance of applicant's duties.					
MANNERS AND APPEARANCE - Extent to which the applicant is able to present and communicate his/her ideas to others.					
COOPERATION - Degree to which the applicant will be able to get along with others in the work environment. Is applicant a team player?					
RESPONSIBILITY - Extent to which applicant will exercise judgment in getting the job done, takes initiative when appropriate, and seeks assistance when required.					
OVERALL FINAL IMPRESSION					

ADDITIONAL COMMENTS

Recommended for Further Interview: YES NO

Recommended for Hire: YES NO

Date: _____ Interviewed By: _____

The First Interview

Checklist for Review of Interview

- The interviewer reviewed the "Don'ts" list and the first interview information.

- The interviewer made and reviewed an interview outline.

- The interviewer completed an *Interview Evaluation Form* and it was reviewed.

Section II – Pre-Employment Assessments

Many companies use pre-employment assessments (often referred to as "personality tests") to screen applicants. Assessments that measure ability, personality, and medical conditions can lower the incidence of theft and work-related accidents and reduce the likelihood of negligent hiring suits. They also may reveal certain job-related skills or abilities not revealed in an application.

It is the employer's responsibility to ensure that assessments they use are not discriminatory and that they do not violate a person's privacy. If applicants, who are rejected on the basis of assessment results, are disproportionately members of a protected group, employers must be able to show a business necessity for using the assessment. Because of discrimination in the assessment area in the distant past, most assessments are now subject to the federal government's *Uniform Guidelines on Employee Selection Procedures*.

The most litigated area of employment assessments has involved those that break state and federal laws regarding equal employment opportunities; most of those cases have been brought because of racial discrimination. Right to privacy, or improper employer intrusion into personal affairs, is a much smaller portion of the cases. The informed and careful employer is encouraged by the U.S. Department of Labor to use qualified assessments, such as those available from Profiles International, Inc., for selection and job matching. The attributes of employees may also be assessed using job-related aptitude tests; physical ability tests; medical exams (although the ADA restricts these); personality tests; psychological tests; graphology tests; and honesty tests. These instruments can offer a distinct advantage in predicting how job applicants will perform in the work environment.

Avoid using any type of pre-employment assessment as the sole selection criteria. Profiles International, Inc. recommends that its products should never account for more than a third of any hiring or other human resources decision.

Accessible Test Formats

An employer is only required to provide, upon request, an "accessible" test format for a person whose disability impairs sensory manual, or speaking skills needed to take the test, unless the test is designed to test such skills.

Some examples of what "accessible" formats are:

- Substitute a written test for an oral test for persons with impaired speaking or hearing skills.
- Administer a test in large print, in Braille, by a reader, or on a computer for individuals with visual or other reading disabilities.

Pre-Employment Assessments

- Allow persons with visual or learning disabilities or people who have limited use of their hands to record test answers by tape recorder, dictation, or computer.
- Provide extra time to complete a test for people with certain learning disabilities or impaired writing skills.
- Simplify test language for those whose language skills are limited because of disability.
- Schedule rest breaks for persons with mental or other disabilities who require such relief.
- Ensure that a test site is accessible to persons with mobility disabilities.

Where it is not possible to test a person with a disability in an alternative format, an employer may be required, as a reasonable accommodation, to evaluate the skill or ability being tested through some other means.

Discrimination Considerations

Test Validity

The EEOC requires that employers be able to prove the validity of any test having a “disproportionate adverse impact” on the hiring of members on a protected group.

Content validity: Which demonstrates that a selection procedure is valid because it directly tests or measures skills or knowledge that an applicant would have to perform the job.

Construct validity: Which shows that a test reveals that an applicant possesses a personal characteristic or psychological trait that has been shown to be related to successful performance in the job in question.

Criterion-related validity: Which is statistical demonstration of the relationship between applicants' test scores and successful (or unsuccessful) job performance.

Even though the outside company that provides the test may have already done many validity studies to validate the test, it is still up to the employer to validate all tests he/she may use, and when various locations are used with the same company, it is important to validate the test in the different local areas where the employer will recruit people.

When an employer does not use tests that are commercially available, it is highly advisable that the employer use outside professional help in developing the tests, or that the employer hire certified

Pre-Employment Assessments

professionals to develop and administer the tests.

Subjective selection criteria such as the impression that a supervisor gets after a 30 minute interview is many times harder to validate or defend, than a psychological test for example. If the procedure cannot be validated, under EEOC guidelines, the disparate impact of the procedure is enough to establish unlawful discrimination. Therefore, under employment discrimination laws, an employer can utilize intelligence or psychological testing with a high degree of legal immunity so long as the results are monitored on a continuing basis. The employer must still determine if the use of the tests has an adverse impact and, if so, make certain that the testing relates either directly to successful job performance or to psychological or behavior traits which can be shown to satisfactorily predict job performance.

Employee Privacy Considerations

There are no federal laws that protect the right to a person's privacy other than some courts have now recognized a common law right to privacy. Most states, however, have incorporated privacy laws into their constitutions or legislative enactments.

Almost all litigation under state and federal equal employment opportunity laws have been "disparate impact" claims.

It is important to know that the EEOC's "testing guidelines" apply to any employee selection procedure, this includes performance tests, physical requirement tests, medical tests, and psychological tests. In short, **every time** a decision is made to include or exclude an applicant from employment or promotional consideration, a selection procedure has been used, even if it were only subjective judgment, that decision is covered by the "testing guidelines". The more subjective the procedure, the harder it is to validate.

The 80 Percent Rule

The selection rate for a protected group must be more than 80% of the selection rate of the group with the greatest selection rate. For example, if the employer uses a test that has a cutoff that is met by 60% of the Caucasians; and using the same cutoff, only 50% of African Americans meet the requirement, it meets the requirement ($50/60 = 83.3\%$). However if only 40% of Hispanics meet the requirements, then that would not meet the requirement ($40/60 = 66.6\%$). Section 421 of the Fair Employment Practices Act says that an employer cannot use a sliding scale ("race norming") for different groups. The test itself must be designed in such a way that it does not discriminate against any protected group.

Pre-Employment Assessments

Before the federal Polygraph Protection Act, passed in 1988, effectively outlawed the use of polygraph examination in making employment decisions, the use was wide spread as employers wanted to screen out possible poor employment risks. There are now paper-and-pencil honesty tests (multiple choice integrity tests) that are designed to indicate whether a person is apt to lie, cheat, or steal. These paper-and-pencil tests are not illegal by the Act because under the Act it outlaws only electronic and mechanical honesty measurement.

Very few psychological or behavioral tests have been challenged in court to a final conclusion. In the cases that have been concluded, the plaintiffs have alleged that the tests violated their rights by probing into their inner thoughts, and that the tests were not job related. So far the plaintiffs have been unsuccessful, except where the tests ask unnecessarily intrusive questions concerning sexual behavior or political attitudes.

Tests that probe more intrusively than normal can be defended if the employer can show that the employee will have access to customer belongings. This might be when the job permits the employee to enter a person's home, a hotel, etc. and when an employee may have unsupervised access to a customer's personal belongings.

Procedures should be in place to safeguard test materials and protect confidentiality. Lack of such procedures can compromise the integrity of test results and raise serious legal and ethical questions.

Negligent Hiring

The basic theories of this area of litigation are: (1) the doctrine of "Respondeat Superior" holds employers to be liable for certain acts of employees when such acts cause harm to others; and (2) if the employer had been more careful in hiring the employee, then the employee would not have been in the position to commit the harm. The importance of conducting a check prior to hiring is best illustrated by considering the possible consequences of failing to conduct an inquiry. Unlike other areas of testing, this will provide a defense to performing psychological and behavioral testing, and failure to do so will arguably expose an employer to liability.

If an employer can show that an employee went through some validated tests, then the employer will be able to show that he/she went through reasonable steps when hiring the employee. This will go a long way to prove that the employer took reasonable precautions. Currently at least 39 states recognize some form of common law right of action for negligent hiring.

Alcohol and Drug Abuse Tests

Pre-employment drug testing has become a generally acceptable practice. As an initial step, before any testing measures are considered, an employer must first implement a substance abuse policy. You should also be sure to check any state or local laws regulating drug testing. Some states have

Pre-Employment Assessments

regulated such testing by specifying rules that cover who may be tested, when testing may occur, and what procedures are to be utilized. A substance abuse policy should address the following issues:

1. What is prohibited?
2. When and where do the prohibitions apply?
3. How will the policy be enforced?
4. What discipline is appropriate?
5. What rehabilitation will be provided?

Adequate notice should be provided of the provisions of the policy and any enforcement provisions and discipline that will result from any implementation of a new policy, or change in an older policy. Notice may generally be provided by:

1. Publication in the Employee Handbook;
2. Posting on the bulletin board;
3. Sending employees a personal letter outlining the policy or including a copy of the policy with employee paychecks;
4. Conducting employee meetings.

For purposes of the ADA, a test to determine whether or not an employee is illegally using drugs is not considered to be a medical examination. If an employer wishes to conduct drug tests even before a conditional offer is made to an applicant, he or she may do so, but the test must be designed to accurately identify illegal drugs. Any information obtained from a drug test must be treated as a confidential record.

Selecting Employee Evaluation Instruments

The assessments you employ for evaluating job candidates and employees must be selected with care. Be cautious about using those created before 1991 as they may contain items in violation of current law. Always ask to see a study (technical manual) that supports the test's validity. It will contain statistics and charts illustrating the processes used to validate the assessment's accuracy and reliability.

The following pre-employment assessments are recommended:

Step One Survey II[™] is an "honesty" test that measures attitudes toward integrity, reliability, drug use, and work ethic. For pre-employment use only. Not for use in Massachusetts, nor can it be used as the sole reason for rejecting a job candidate in Rhode Island.

Pre-Employment Assessments

Profile XT™ is an all-purpose assessment that measures thinking style, behavioral traits, and occupational interests – factors that help assure “Job Fit.” It complies with EEOC, ADA, civil rights, and all other federal and state regulations. The *Profile XT*, which can be used for both pre- and post-employment, has been validated following the standards for test development provided by the American Psychological Association.

Customer Service Perspective™ is used to assess the customer service knowledge, skills, and attitudes of employees and job applicants. Enhances training and management results.

Profiles Sales Indicator™ is a tool for selecting, managing, and training salespeople. It measures five key qualities of successful salespeople and predicts performance in seven critical sales behaviors.

These assessments are available with Internet administration or paper-pencil, and are available through authorized Strategic Partners of Profiles International, Inc. To speak with a Profiles representative, phone 888.744.9226 or Email profiles@profilesmail.com. Visit the Profiles International, Inc. website at www.profilesinternational.com.

Section III – The Second Interview

Objective

The objective of the second interview is to get information not already received and to make a final decision. Many companies use several people in the company and perform multiple second interviews. All of the same suggestions and legal considerations of the first interview are still valid.

Each person who is to perform the second interview should follow the second interview procedure:

1. Review the Job Description.
2. Review the answers given by candidate to lead questions in first interview.
3. Review all other information in file.
4. Review the results of *The Profile XT*TM report and the interview questions.
5. Open.
 - A. Build rapport.
 - B. Set the agenda and timetable.
6. Body.
 - A. Ask the questions suggested by *The Profile XT*.
 - B. Listen and take notes.
 - C. Opinions formed.
7. Close.
 - A. Answer any questions.
 - B. Discuss next step.
 - C. Ask for permission to do background check.
 - D. Fill out summary evaluation scale.
8. Decision.

If one person is to make the decision, then he/she must narrow the pool of candidates down and do background checks.

If several people are involved in the decision, then a meeting should be held within one or two days of the interview to discuss the candidates so the pool of candidates can be narrowed down and background checks performed.

The Second Interview

Summary Evaluation Scale

This following Summary Evaluation Scale is designed for use in summarizing the information gained from the various steps used in personnel selection. It is not uncommon for a hiring decision to be based on data from the employment application form, interviews, reference checks, personality evaluations, and other sources. Unless this information is brought together in such a way that it can all be seen as a whole, there is a possibility of giving too much weight to certain elements and of neglecting others that may be critical in job success.

DIRECTIONS

1. After you have gathered all the information about the position to be filled, glance down the list of "Evaluation Factors" on this scale and place a check mark X in the first column beside all those factors which have no bearing on success in the job for which the applicant is being considered. Completely disregard these factors in evaluating the applicant and in making your employment decision for each applicant.
2. Write other factors that you have found to be related to success on the particular job in question in the spaces provided at the bottom of the chart.
3. Take each factor in turn and place a check mark in the column to the right under the evaluation category that best describes the qualification level of the applicant. Watch for tendencies that are too harsh or too lenient in your ratings and recognize that fact that very few applicants deserve high ratings in every area.
4. If you find you lack enough evidence of rating the applicant on a particular factor, place a check mark in the second column (unknown). It is always better to withhold judgment than to rate without evidence. It may be obvious that an employment decision is premature without further information.
5. After you have completed the detailed ratings, study the complete scale and give a summary rating in the space provided.
6. Make your employment decision on the basis of the standing of the applicant in relation to others who are available.

Study the following form and use it. Either use it as is, or change it to fit your special needs.

The Second Interview

Summary Evaluation Scale

APPLICANT: _____ DATE: _____ JOB: _____

EVALUATION FACTORS	Not Applicable	Unknown	QUALIFICATIONS						OVER QUALIFIED
			UNDER QUALIFIED	POOR	FAIR	AVERAGE	GOOD	OUTSTANDING	
			Low Enough To Disqualify The Applicant	Extremely Low But Other Factors Could Compensate	Low But Acceptable For The Job	The Typical Applicant On This Factor	Definitely A Cut Above The Average	Compares Favorably With Top Applicants	
GENERAL EDUCATION									
SPECIALIZED KNOWLEDGE									
EDGE									
WORK EXPERIENCE									
JOB STABILITY									
GROWTH & DEVELOPMENT									
GENERAL INTELLIGENCE									
PRACTICAL JUDGMENT									
SPECIAL ABILITIES									
MANUAL DEXTERITY									
LEADERSHIP SKILLS									
COMMUNICATION SKILLS									
MOTIVATION									
MANAGEMENT OF TIME									
CHARACTER									
EMOTIONAL MATURITY									
INITIATIVE AND DRIVE									
DEPENDABILITY									
COOPERATIVENESS									
HUMAN RELATIONS									
INTERESTS									
APPEARANCE									
OVERALL QUALIFICATION FOR THE JOB									
JOB SUITABILITY %									

RECOMMENDATIONS:

EVALUATOR

Section IV – Background Checks

With the growing number of new lawsuits that are resulting from “negligent hiring,” and with the courts awarding large dollar amounts to victims, an employer must do pre-employment testing and background checks.

Negligent Hiring

The basic theories of this area of litigation are: (1) the doctrine of “Respondeat Superior” holds employers to be liable for certain acts of employees when such acts cause harm to others; and (2) if the employer had been more careful in hiring the employee, then the employee would not have been in the position to commit the harm. The importance of conducting a check prior to hiring is best illustrated by considering the possible consequences of failing to conduct an inquiry. In Doe v. Martina (Okla. Dist. Ct. 1991), an employee of a pizza restaurant raped a co-worker after he had asked her to stay late and help him close the store. The victim sued the employer, alleging negligent hiring, on the grounds that the perpetrator had been convicted of sexual abuse prior to his being hired. After being hired, the perpetrator also had been reprimanded several times for sexual harassment and for making sexual advances toward other employees. The victim obtained a jury verdict of \$1,500,000 against her employer, including \$750,000 in punitive damages. (She also won a \$5,000,000 verdict against the perpetrator individually.) See also, Daum v. Lorick Enterprises, Inc., 413 S.E.2d 559 (N.C. App., 1992)

If an employer can show that an employee went through a test and background check, then the employer will be able to show that he/she went through reasonable steps when hiring the employee. This action will go a long way to prove that the employer took reasonable precautions. On the other hand, if an employer neglects to contact the applicant’s former employers, to check references or to verify necessary licenses or certificates when such an investigation would have shown that the applicant had a questionable or even violent, or criminal background, the employer may be found negligent.

Currently at least 39 states recognize some form of common law right-of-action for negligent hiring.

Background Checks

Employee Privacy Considerations

There are no federal laws, other than the U.S. Fair Credit Reporting Act, that protect the right to a person's privacy, other than in some cases courts have now recognized a common law right-to-privacy. Most states, however, have incorporated privacy laws into their constitutions or legislative enactments.

Procedures should be in place to safeguard background check materials and protect confidentiality. Lack of such procedures can compromise the integrity of any background check results and raise serious legal and ethical questions.

What Background Checks Include

The normal background checks that employers will complete are:

- Reference Checks
- Credit Reports
- Criminal History Reports
- Driving Record
- Workers Compensation Report

Before performing any of these, check the legality of the considered background check to make sure that it conforms to state regulations. The following is an outline of the federal guidelines.

Credit Reports

Although there are legal pitfalls in the application and interview procedures associated with questions delving into credit background, if you are hiring employees to handle your own or other people's money or property, you may run a credit check. The U. S. Fair Credit Reporting Act requires you to notify applicants of the request for the report. A consumer credit report may only be furnished to employers in accordance with the written instructions of the job applicant to whom it relates and to an individual who intends to use the information for employment purposes. The employer must certify both the purpose for which the information will be used and the fact that the information will not be used for any other purpose. If the applicant is not hired due to the credit report, the applicant must be informed of the fact and given the name of the reporting entity that provided the unfavorable report.

Employees who are found liable for willful violations of the Fair Credit Reporting Act may be liable for actual damages, attorneys' fees, and punitive damages. In addition, many states have statutes regulating employers ability to access and use credit reports.

Finally, a provision of the Federal Bankruptcy Act provides that a job applicant may not be discriminated against in employment solely because the individual had filed for bankruptcy. This provision codifies the general public policy of providing bankruptcy individuals with a "fresh start."

Background Checks

Criminal History Reports

Since it has been determined that some minority groups are arrested more often than whites, it has been found that making personnel decisions on the basis of arrest records (not convictions) has a disproportionate effect on the employment opportunities of minorities. Therefore, do not inquire into arrests. Generally, you can refuse to hire people convicted of felonies or misdemeanors, but there are some exceptions under state law. For example, in California you may not ask about misdemeanors for minor marijuana convictions. Finally, an employer must be careful to avoid any rule that automatically denies employment to an applicant who has a record of criminal conviction. Such policy may violate state or federal law if the conviction is not job-related and has a disparate impact on a protected class.

Despite the many limitations that state and federal laws place upon employees during the job applicant's interview and background investigation process, many states do recognize that employers may be liable for negligent hiring if the employer does not check out its employees. Negligent hiring suits are generally brought by third parties such as customers, clients, etc. who are injured by the employee. The courts may recognize a duty on the part of the employer to check out prospective employees when the employee is being hired for a job that places the employee in a position of power, trust or confidence with respect to third parties. Examples include jobs with children; police; security guards; employees who handle other peoples' money; hotel employees; apartment managers; delivery persons; real estate agents; night janitors; etc.

In a 1987 Texas case, the jury awarded \$5 million in damages when a Fort Worth cab company hired a driver with no background check. The driver had a record including convictions for forgery, robbery, and theft and was under indictment for attempted murder.

Driving Record

Poor driving records cannot be used to exclude applicants who are not required to drive as part of their employment. However, a driving record is relevant for any person whose position requires driving. Keep in mind, however, that a past record of driving while intoxicated may not be used to exclude a recovered alcoholic because under the ADA, a rehabilitated alcoholic is protected.

Workers Compensation Reports

Under no circumstances can these reports be run prior to the conditional job offer. (See "Disability Discrimination" in Part II.)

Background Checks

Checklist for Review of Background Investigation

- Have you followed correct procedures for a credit report, if one has been ordered?
- Have you requested the applicant's driving record; and if so, have you reviewed that section of the manual?
- Have you requested a criminal history report; and if so, have you reviewed that section of the manual?
- Have you run a Workers Compensation Report; and if so, has a conditional job offer been made prior to so doing or has the person been employed?
- Have you carefully reviewed all information on the application and resume, particularly gaps in employment?
- Have you obtained a release that protects both the employer and those persons you contact regarding references from invasion of privacy and defamation claims in full compliance with the Fair Credit Reporting Act as amended in 1997?
- Have you checked state laws relating to background checks?

Section V – Making a Conditional Job Offer

After you have followed the procedure and have decided you want to hire a job candidate, you are ready to make a conditional job offer. The offer should be in writing, remembering offer letters have been held to be written contracts and, like all legal documents, should be written carefully. The letter should not imply long term employment. The conditional job offer letter should include the following:

- The job title
- The starting date
- The compensation dollar amount
- On what conditions the offer is contingent

Following is a form for a conditional job offer and a medical form that can be used if a medical examination is a requirement of the job offer.

Making a Conditional Job Offer

OFFER LETTER

Mr. John Doe
123 Main St.
Anytown, U.S.A. 00000

Dear Mr. Doe:

We are delighted (to confirm our offer of employment or extend an offer of employment) to you as (job title), effective (starting date). Your salary will be \$0,000 (*weekly, bi-weekly, monthly - enter the amount and the frequency to be paid*). This offer is contingent on satisfactory results from a medical examination. I trust that you will call us if we can be of any assistance to you in advance of your employment, or if you should require any additional information.

Very truly yours,

Manager, (hiring department)

cc: Human Resources Department

Making a Conditional Job Offer

Do you have or have you had other injuries or illnesses not on the job (home, auto, sports, hunting, etc.) that have resulted in hospitalization, surgery or lost work time? Yes No

If Yes, for each injury please indicate: date, body part affected, cause, days in hospital, days of lost work time, have you recovered?

Are you taking any long term (more than 30 days) prescribed medication? Yes No

If yes, please describe: type of medication, purpose, any side effects.

Do you have or have you been diagnosed as having any illness or injury for which you are now seeking treatment? Yes No

If yes, please describe: _____

Comments:

Affirmation and Authorization

I hereby affirm that the information on this form is true and correct and that there are no omissions. I authorize any physician, medical facility, law enforcement agency, administrator, state agency, institution, information service bureau, insurance company or employer contacted by this company or an agent of this company to furnish or verify workers compensation information and medical records.

Signature

Date

Making a Conditional Job Offer

For Employer Use Only

Verification (Personnel Administrator)

Medical Review (Medical Professional)

Making a Conditional Job Offer

Education Verification

Employer's Request for Information

The Employer will fill in the appropriate areas and send this form to the college together with a stamped self-addressed return envelope.

Date _____

To be returned by the school to:

Employer _____

Emp. Rep. _____

Name and address of school _____

ATTN: OFFICE OF THE DEAN

The individual named below is being considered for employment as _____ (type of position).

Applicant's Name and Address _____

Applicant's Date of Birth _____ Applicant indicates attendance from _____ to _____

Applicant indicates attendance at above school. Your cooperation in furnishing the following information will expedite consideration of the applicant.

Graduation date _____ Type of Diploma _____

Total number in graduating class _____ Numerical standing _____ Quartile _____

Cumulative Average _____ Attendance during last 2 semesters _____ days absent

On Register of this school from _____ to _____.

Remarks: (awards, honors, class offices held, activities, general attitude, outstanding qualifications or traits such as dependability, cooperation and courtesy)

Signed _____ Title _____ Date _____

Making a Conditional Job Offer

Employee Processing Form

(For Human Resources use only)

To be filled out only after employment offer and acceptance.

Employee Name _____

Social Security No. _____ Date of Birth _____ Marital Status _____

Sex _____ Employee No. _____ Date of Hire _____ Pay Grade _____

Dept. Name _____ Dept. No. _____ Job Code _____

Job Title _____

Base Annual Salary _____ Other Sal _____

Review Date _____ Replace _____ New _____ Req No. _____

Status _____ (Part, Full, Summer, etc.) Referral Source _____

Identification Card No. _____ Date Issued _____

Parking Card No. _____ Date Issued _____

Emergency Notification Data (name, address, phone, relationship) _____

Check List Information

Processed by: _____ Date _____

- | | | | | | |
|------------------------------|-----------------------------|----------------------|------------------------------|-----------------------------|----------------------------------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | I-9 Form | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Employment Benefits Package |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | Social Security Card | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Hospitalization Card |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | Proof of Birth Date | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Surgical/Major Medical card |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | Working Papers | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Life Insurance Card |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | Diploma/Degree | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Supplemental Life Insurance Card |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | Transcript | <input type="checkbox"/> Yes | <input type="checkbox"/> No | Long-term Disability Card |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | State/City Tax Form | <input type="checkbox"/> Yes | <input type="checkbox"/> No | W4 Tax Form |

Section VI – The Medical Examination

While generally prohibiting pre-employment medical inquiries or examinations, the *Americans with Disabilities Act* does permit employers to require a medical examination, after an offer of employment has been made to an applicant who has satisfied all other prerequisites, and prior to starting employment. Further, it says that the employer may make the offer, contingent on satisfactory results of the examination, provided the following conditions are met:

- The examination must be required of all entering employees in the same job class. You can not just require medical examinations of people whom you suspect of having health problems.
- Information about the medical history or condition that is obtained must be collected and maintained on separate forms and in separate medical files, kept apart from general personnel files.
- Medical information obtained during the examination must be treated as **confidential**. The only exceptions are that supervisors and managers may be informed about any necessary restrictions on the work duties and necessary accommodations; first-aid and safety personnel may be informed, when appropriate, if there is a possibility of the applicant needing emergency treatment; and government officials investigating compliance with the ADA must be provided with relevant information upon request.
- Results of a post-offer pre-employment medical examination cannot be used to screen out persons with disabilities. Furthermore, employment opportunities may not be denied to an otherwise qualified applicant with a disability where denial is based on the need to make a reasonable accommodation. Reasonable accommodation is discriminatory unless the employer can show that the accommodation would impose an "undue hardship" on the operation of the business.

Some of the reasons that an employer might need a pre-employment medical exam are:

- To determine that an individual currently has the physical or mental qualifications needed to perform the job.
- To determine if a person can perform a job without posing a 'direct threat' to health or safety, either their own or to others.

If a conditional job offer is withdrawn because of the results of the examination or inquiry, the employer should be prepared to show that the reasons for the rejection are job-related and consistent with business necessity, or that the person is rejected to avoid a direct threat to health or safety, and that no reasonable accommodation was available that would enable the applicant to perform the essential job functions.

Part Two

Motivating and Retaining Top-Performing Employees



Section I – Employee Orientation

After the Candidate is Hired

Employee orientation is an important part of the hiring process. It is also the most neglected part of the process. It is designed to reduce first-day-jitters and to bring the employee into the work process as quickly as possible by familiarizing them with their jobs and specific and general company operations, policies, procedures, and products.

When done properly, orientation sessions can instill positive attitude about the organization; ensure quicker productivity; reduce the likelihood of problems from misunderstandings and misconceptions about company policies; and improve communication between employees. The more effort made to get employees started right, the better your chances they will stay and become great employees.

The main objectives of an orientation program are:

- Make a good impression from the first day.
- Make new employees feel welcome and at ease.
- Explain what the company is about and explain the policies, procedures, benefits, and programs.
- Show the new employee the products and what the company does even if it is not in his/her direct department or job description.

Studies show that the first few days and weeks on the job set the whole tone for how the employee will react with his/her new environment, and subsequently perform. In designing a program some key points to keep in mind are:

- An effective program requires time. New employees should not be given tons of information at once. Information given over a period of a few days will be remembered a lot longer. Follow-up sessions after a couple of weeks will reinforce the important items.
- Listen to the new employee; answer questions when asked. Make the new employee feel comfortable when he/she asks a question – not a bother.
- The supervisor should be given specific orientation responsibilities; such as, provide a tour of the immediate work area, introduce them to co-workers, and generally explain nitty-gritty procedures.
- Having a co-worker assigned as a ‘buddy’ to a new employee sometimes helps to ease the new employee's concerns.

Employee Orientation

The main thing that sets orientation programs apart is advance planning. A program that lacks well-thought-out objectives will only make the new employee more nervous and make the transition more difficult.

The time involved in the orientation of an employee could be one or two days or several weeks depending on several factors:

- The size and complexity of the organization.
- The objectives of the orientation program.
- The number of employees participating in the program.
- The complexity of the new employee's job – what the employee needs to know to perform at the employer's standards.

Orientation checklists can be very useful in assuring that the new employee receives the information that he/she needs. A checklist is basically a guide for implementing the orientation program. Included for your use is a sample checklist you may adapt as your own.

Introductory Period

Most employee handbooks state, and most new hires are told, that the first 90 days (or 120 days, etc.) are a probationary period and that the company reserves the right to terminate the employee at any time within this period. Basically, the at-will statement above is as it should be, to make sure there is no misunderstanding. The employer needs flexibility in terminating all employees, especially new hires. But once you state "probationary period," the implication can be found by a court that once this period has passed, the employment becomes permanent. In addition, if you go to great lengths to say probationary employees are at-will, someone may decide that, that must mean that after the probation period, employees must be no longer at-will and thus they can only be terminated for cause.

To reserve the most protection, employees should always be told that the company reserves its right to terminate all employees at-will. For example, the handbook might say:

Your first 90 days of employment at the Company is an Introductory Period. This Introductory Period will be a time for getting to know your fellow employees, your supervisor, and the tasks involved in your job position, as well as becoming familiar with Company's products and services. During this Introductory Period, you have your first opportunity to evaluate the Company as a place to work and the Company has its first opportunity to evaluate your work as an employee. Being on introductory status does not affect the at-will, voluntary nature of your employment; either you or the Company may terminate your employment at any time.

Employee Orientation

The above paragraph conveys the correct impression. For instance, if this statement is made:

If during this Introductory Period the Company determines you are not a good fit, the Company may terminate your employment.

There is an implication that some kind of cause is necessary to terminate employment. The reason being that termination is phrased in terms of the employer's ability to do the job. In order to preserve the at-will employee status, the company must always reserve the right to terminate arbitrarily for no reason at all.

Finally, avoid phrases such as "*after the introductory period, you will become a permanent employee.*" Courts have held that, if you imply long-term employment, including calling employees "permanent," they are permanent. You cannot then terminate them unless you have legally sufficient "good cause."

Employee Orientation

Employee Orientation Checklist

Employee Name _____

Job Title _____

Supervisor _____ Department _____

Please initial the items as they are accomplished.

- _____ Delivery of an Employee Handbook.
- _____ Explanation of work assignment.
- _____ Hours of job, explanation of time cards.
- _____ Parking, rest rooms.
- _____ Introduction to other workers.
- _____ Discussion of department/company functions and services.
- _____ Importance of customer relations.
- _____ Explanation of the company's organization.
- _____ Pay check information, when, where, who to contact if there is ever a problem.
- _____ Safety requirements.
- _____ Eligibility of benefits, (insurance, pension, etc.)
- _____ Sick leave policy, call in requirements, tardiness.
- _____ Vacation, holiday schedule, and policies affecting each.
- _____ Any introductory period.
- _____ Outside work policy.
- _____ Promotions, transfers, performance review system.
- _____ Acknowledgment of Employee Handbook.
- _____ Confirm that employee understands the at-will nature of the job.
- _____ Confirm that no one has made any statements that: "if he/she does a good job, he/she has a job until he/she retires" or "that after the Introductory Period, he/she is considered permanent," or that no one has stated that "he/she can be terminated only for good cause."

Section II – Performance Evaluation

In the past, programs or procedures for evaluating the individual performance of employees were referred to as “merit rating” programs, because they were equally instituted for purposes of determining whether an employee should receive a merit increase under a wage progression plan. The programs now in effect are more likely to be called “performance evaluations,” “performance review,” or “employee appraisal” programs.

There are no laws that require you to have a performance evaluation policy or procedure. However, lack of a procedure may be a critical weakness if you are faced with a lawsuit. The systematic, objective, and documented performance appraisal procedure can minimize the creation of conditions that lead to employment-related litigation and where litigation does arise, it increases the employer’s chances of success. The job description is the basis of the appraisal process, since it provides the objective standards against which to measure performance. Measuring an employee performance against performance standards which are part of the job description, you should prevent conclusory, subjective comments which may be more harmful than helpful if litigation ensues.

In addition, frequent communication with employees concerning performance is essential to the employees morale and performance. Positive communications can motivate and reinforce outstanding performance. Prompt discussions of problem areas will help prevent those areas from becoming a major problem later.

Employee evaluation data is primarily used for determining wage increases and promotion decisions, but this data is also used for the determination of training needs, skill inventories or other employee information systems, for validating selection procedures, and for documentation for terminated employees.

A good evaluation will:

- Provide a direct link between the job’s requirements and the standards used to measure performance.
- Give each supervisor a means of determining the type of management guidance and development the employee needs.
- Provide direction to the employee to assure that the employee’s efforts are channeled in the best direction for the company.
- Give each supervisor the means for analyzing an employee’s performance.

Performance Evaluation

Definitions

The following definitions should be used for individual accountability and for over-all rating basis. The need for consistent rating is sometimes forgotten, supervisors and employees should be made aware of these definitions:

Marginal — Performance of a fully trained employee does not meet the specifications of the job to an acceptable level; requires improvement. An overall rating of marginal that does not prompt improved performance could result in termination or demotion and should never result in a salary increase.

Provisional — Performance does not meet acceptable levels in all areas, but the employee is steadily improving and exhibits the potential to become proficient with continued training. A provisional rating is often given to inexperienced newcomers.

Proficient / Effective — Performance fully meets standards set for the position on a consistent basis. This description should be the expected level of performance for the job. An employee operating at this level of performance is doing a good job.

Superior — Performance consistently exceeds standards set for the position. Such a performer is normally a seasoned employee.

Outstanding — Performance so exceeds standards for the position that the excellence of the individual's work is clearly recognized by all. This level of performance is far above the proficient / effective level and is normally achieved by only a small percentage of employees.

When a Performance Review Should be Done

Performance reviews should be made more frequently during the introductory period of the first year on a new job than after the employee has been on the job for five years. For example, if employees are put on a introductory status for the first six months, they are reviewed at the following intervals: one month, three months and six months. After the introductory period they are usually put on an annual basis. In addition to the annual review, a supervisor may initiate an evaluation when he/she thinks a significant deterioration or improvement in performance has taken place.

Evaluations are usually performed by their immediate supervisor and then reviewed by the next higher level supervisor. The procedure should include a method for shoring up the validity of the appraisal. If the immediate supervisor works closely with the next higher level supervisor when evaluating the employee's performance, there should be an added element to prevent personal bias from affecting the report. It also helps to provide the employee with an opportunity to balance the report by inserting his/her comments as a permanent part of the file. It should be more difficult to make a charge of discrimination or wrongful discharge stick if the employee is given this chance to answer complaints and does not do so.

Performance Evaluation

Procedure

About a month before the annual anniversary of the last review, the process should be initiated. This will allow enough time to avoid putting a burden on the employee. The employee's job description is the basic document for the evaluation. Both the supervisor and the employee should read any significant changes in the job description needed to make it current.

In completing the performance evaluation, the supervisor should review performance of employees against actual accomplishments of duties or accountabilities as set forth in the job description. Don't emphasize areas that are not legitimate job requirements. For example, leadership skills should be recognized no matter who has them. However, non-managers should not be penalized for lack of these skills. Consideration should be given to employee growth and development and performance improvements that have occurred since the last performance review. This observation can be easily be done by comparing actual results with plans made at the last review.

Whenever possible, use objective, quantifiable measures to evaluate performance and note specific examples of behavior which illustrate performance ratings on the evaluation. Give specific legitimate reasons for every criticism.

Once the performance review is completed, the review should then be given to the next higher supervisor and have it approved. After approval has been given, a appointment with the employee should be made to discuss the review. The interview should be made without interruptions and without rushing.

During the interview the supervisor should explain each aspect of the review, using examples to illustrate what is being meant. After completing the review of past performance, the supervisor and the employee should jointly determine development plans and performance goals for the next rating period.

Develop plans and identify specific ways the employee will try to improve deficient areas or gain additional skills. Performance goals are objective, work-related targets. The supervisor and employee should agree that the goals are reasonable and realistic, given the employee's current performance level, expected improvement, and external factors that may affect accomplishment. The supervisor should guide, not dominate, this phase of the review process. Achievement of these plans and goals requires the full acceptance and support of both individuals.

Once the interview is completed, the employee must sign a written acknowledgment of the review and his/her written approval of the plans and performance goals. The employee should be given the opportunity to rebut any complaints made by the supervisor and have this rebuttal made part of the record. The supervisor should then give the employee a copy of the plans and goal section, and place the rest in the personnel file of the employee.

Performance Evaluation

Performance Evaluation Worksheet

Name _____ Date _____

Position _____

Hire Date: _____ Date of last evaluation: _____

Definitions

The following definitions should be used for individual accountability and for overall rating basis. The need for consistent rating is sometimes forgotten, and everybody should be made aware of these definitions.

Marginal (1) — Performance of a fully trained employee does not meet the specifications of the job to an acceptable level; requires improvement. The overall rating of marginal that does not prompt improved performance could result in termination or demotion. A marginal rating should never result in a salary increase.

Provisional (2) — Performance does not meet acceptable levels in all areas, but the employee is steadily improving and exhibits the potential to become proficient with continued training. A provisional rating is often given to inexperienced newcomers.

Proficient/Effective (3) — Performance fully meets standards set for the position on a consistent basis. This should be the expected level of performance for the job. An employee operating at this level of performance is doing a good job.

Superior (4) — Performance consistently exceeds standards set for the position. Such a performer is normally a seasoned employee.

Outstanding (5) — Performance so exceeds standards for the position that the excellence of the individual's work is clearly recognized by all. This level of performance is far above the proficient/effective level and is normally achieved by only a small percentage of employees.

Performance Evaluation

Part I

Job Knowledge - level of skill, practical knowledge, and general understanding of procedures and policies, as well as how his/her knowledge is applied to his/her job description.

Score _____

Productivity - quantity (with quality) of work produced. If measurable standards exist, use these. If not, consider the extent to which he/she has mastered the particular skill, routine, and/or duties of the job.

Score _____

Initiative - amount of initiative and self-reliance shown. This is the manner he/she applies himself/herself to the task at hand. Attendance and punctuality is a factor. It reflects the amount of supervision required and willingness to accept job responsibility.

Score _____

Analytical Ability - Ability to undertake and carry out required studies and then apply what is learned in a logical, planned manner.

Score _____

Performance Evaluation

Accuracy and Judgment - the care and discretion which is taken in carrying out the responsibilities of the job.

Score _____

Interpersonal Relations - the acceptance he/she earns in his relationship with co-workers, including supervisors. Consider his/her acceptance of constructive criticism, response to requests and suggestions, and general helpfulness, courtesy and attitude. Effectiveness in accomplishing tasks by working with others.

Score _____

Ability to Handle Public - his/her ability to establish rapport with customers and/or public to promote the interests of the company.

Score _____

Dependability - the extent to which the employee can be relied upon to be available for work and do it properly. The degree to which the employee is reliable, trustworthy and persistent.

Score _____

Leadership Ability - the ability of the individual to instruct, train, motivate and control the activities of others.

Score _____

Performance Evaluation

Effort - the degree to which he/she does the best to be a top employee (without regard to how effective the employee may be). Conscientiousness and motivation.

Score _____

Conclusion - average the scores omitting the non-applicable categories, and summarize the overall effectiveness of the employee.

Average Score _____

Employee's Comments

Performance Evaluation

Part II

Discuss last year's goals - if they were exceeded, how? If not met, how and why?

Mutually set goals for the next year - include each goal or plan, any follow-up required and whose responsibility it is to complete each goal or plan.

Employee

Appraisal Made By

Date

Reviewed By

Approved By

Using Occupational Assessments

Occupational assessments have become an essential tool in managing a successful business. They provide the information executives and managers use to make better human capital decisions. It's not enough to just have a hiring process that selects good people. Where people are positioned within a company is even more important. "Putting the right person in the right job" is more than a slogan, it is the key to operating a successful business.

Imagine that a world champion baseball team's executives decided to scramble its lineup without regard to the individual specialties of the players. After all, they're dealing with great athletes with exceptional abilities. So, they put their pitcher in the outfield, bring in the shortstop to pitch, have the catcher play shortstop, and move the other players to different positions. Undoubtedly, you would still have a very good baseball team, but it is extremely doubtful they would perform at a championship level.

So what does the baseball team in this hypothetical situation have to do with businesses? Companies hire the best people they can find, but where they position these employees is done somewhat haphazardly. Certainly, the newly promoted sales manager was a top salesperson for fifteen years, but unless his or her personal attributes were assessed to see if they match the qualities of a great manager, performance results may be disappointing. Another factor that deserves consideration when positioning employees is the degree to which they, as individuals, are "team players." It is a mistake to assume that everyone functions best as a member of a team. Many people operate best independently, which can be a plus or a minus, depending upon the requirements of a particular job. The more leaders know about their people, the better they can do at maximizing their human resources and getting the greatest return for the company.

Sometimes the performance of employees can be improved through training. Often, training takes the "one size fits all" approach. But experience shows that people learn in different ways and at different rates. Some people are like sponges that absorb new information rapidly, but other people require more repetition in order to acquire new knowledge and skills. There are "tell me" people and there are "show me" people. When everyone receives the same training, it's almost a certainty that more than half of them will not "get it." The results of occupational assessments can provide the answers to many of the questions leaders have about how best to coach, train and motivate the people under their charge.

"Use assessments" says the Department of Labor

The U.S. Department of Labor (DOL) endorses the use of occupational assessments in the workplace, when they are applied appropriately. The following is provided as a summary of the Department of Labor's principles for using them. Always remember that you, the employer, are responsible for seeing that these principles are properly applied in your business.

Using Occupational Assessments

Principle 1: Use assessment tools in a *purposeful* manner

Occupational assessments are to be used for the purpose for which they were intended. There are thousands of personality tests, but few of them were designed to be used in a business setting. As an employer, it is your responsibility to select assessments that serve a business purpose.

Principle 2: Use the *whole-person approach* to assessment

The DOL says, "...a single assessment instrument only provides you with a limited view of a person's qualifications. Using a variety of tools to measure skills, abilities, and other job-relevant characteristics provides you with a solid basis upon which to make important career and employment-related decisions and minimizes adverse impact."

Principle 3: Use only assessment instruments that are *unbiased* and *fair* to all groups

The assessments you use must treat all groups in an unbiased and fair manner. Those that meet this requirement are always backed by psychological studies that demonstrate that they have been tested to assure they do not illegally discriminate.

Principle 4: Use only *reliable* assessment instruments and procedures

"Reliable" in psychometric terms asks, "If a person takes the same assessment a second time, will they get the same result?" The reliability of results is indicated by a "reliability coefficient" statistic that the assessment publisher can provide to you.

Principle 5: Use only assessment procedures and instruments that have been demonstrated to be *valid for the specific purpose* for which they are being used

"Validity," asks two questions: "Does the assessment measure the factors it says it measures?" and "Is the assessment being used for a valid purpose?"

Assessment publishers have technical manuals containing the statistical results of extensive studies that can confirm that an assessment is accurately measuring the appropriate job-related qualities and characteristics as specified.

Principle 6: Use assessment tools that are appropriate for the *target population*

Occupational assessments are designed to be used with a specific target population. Do not attempt to use an assessment with people for whom the instrument was never intended to be used.

Using Occupational Assessments

Principle 7: Use assessment instruments for which *understandable and comprehensive documentation* is available

Well written technical manuals are often comprehensive. The degree to which they are “understandable” to a layman may depend on your familiarity with psychometrics and the terms used by psychologists.

The assessment reports you receive should be understandable to the layman. You should not require special training to use them. If you have questions about any aspect of an assessment, a responsible assessment publisher will provide a prompt response and satisfactory answers.

Principle 8: Ensure that administration staff are *properly trained*

The people administering assessments must have received the training necessary to administer them properly and in compliance with these thirteen principles.

Principle 9: Ensure that testing *conditions are suitable* for all test takers

The environment where assessments are taken may affect the results, so employers must be sure to provide an environment that is quiet, well lit, and comfortable. Consistency of administration is very important.

Principle 10: Provide *reasonable accommodation* in the assessment process for people with disabilities

Should a situation occur where persons with disabilities need special assistance, reasonable accommodation must be provided.

Principle 11: Maintain assessment instrument *security*

The security and confidentiality of the assessments themselves and of data obtained from them must be guaranteed by the employer.

Principle 12: Maintain *confidentiality* of assessment results

Information contained in the reports that are produced from assessments must only be seen by those with a legitimate reason to see it. .

Principle 13: Ensure that scores are *interpreted properly*

The reports produced by assessments should not be so ambiguous so as to be misinterpreted. Proper use of assessments requires that employers understand the results obtained and apply them properly in the workplace.

Using Occupational Assessments

Why Employers Choose Profiles Assessments

When selecting occupational assessments, Profiles is your single source provider. Profiles suite of occupational assessments and related products make it easy for your people to learn and use a system that meets your needs and provides multiple benefits. All Profiles products are specifically designed to help you comply with the Department of Labor's 13 Principles of Assessment.

Profiles keeps things easy and convenient. Because of the similarity in the way Profiles assessments are administered and processed, when your people learn to use one assessment, they know how to use all of them. They don't have to learn multiple systems. This standardization helps assure consistency of administration, too, another reason Profiles should be your assessment partner.

Success in a business depends upon identifying a problem and devising a strategy for fixing it. This has been Profiles objective since the company's beginning. Profiles is conscientious about keeping abreast of business trends and seeking the counsel of futurists who alert us to "the next big thing in business." Although Profiles is responsive to the needs of client, its aim is to be proactive and anticipate those needs.

About Profiles Products

Profile XT™

Profiles XT is a very accurate assessment that measures "The Total Person." It is used for:

- Determining the prerequisites for success in your company's jobs
- Making training and coaching more effective
- Succession planning
- Measuring job candidates for success potential
- Asking meaningful interview questions in the selection process
- Promoting the right people
- Improving communication

Step One Survey II™

The Step One Survey II is a tool for hiring people you can trust. It helps employers prevent problems such as:

- Theft and fraud
- Substance abuse
- Tardiness and lack of responsibility
- Lack of work ethic

Using Occupational Assessments

CheckPoint 360° Feedback System™ and SkillBuilder™

The CheckPoint 360° Feedback System is part of a management development tool that gets results by helping every manager become more effective. It's a system for:

- Showing managers how their performance is evaluated by key people in the organization
- Giving managers ideas for developing professionally
- Increasing positive communication within the organization
- Giving managers specific steps and actions for building their effectiveness

The SkillBuilder Series is the perfect follow-up to the CheckPoint 360°. It consists of eighteen training modules to help managers employ the "KSS System." "KSS" makes managers aware of the high-payoff activities they should **Keep** doing, the unproductive time wasters they should **Stop** doing, and the productive behaviors they should **Start** doing to increase their effectiveness.

Profiles Sales Indicator™

Our clients call Profiles Sales Indicator the most effective tool for selecting salespeople and addressing their training needs. It's purpose is to significantly increase sales and eliminate common sales problems such as:

- Too much turnover in personnel
- "80/20 rule" syndrome
- Lack of motivation
- Failure to consistently reach sales goals

Profiles Performance Indicator™

If you have ever wished employees came with operating instructions, Profiles Performance Indicator is just what you're looking for. Using it helps you:

- Get new employees to full productivity quicker
- Encourage employees to engage in personal growth activities that enhance their job performance
- Help your managers increase their effectiveness as leaders and motivators
- Develop employee initiative and problem solving ability

Using Occupational Assessments

Profiles Team Analysis™

Great teams seldom happen by accident. Profiles Team Analysis provides a method for analyzing a team's strengths and weaknesses and suggests strategies for effectiveness. A comprehensive report provides team leaders with instructions for communicating with each team member and utilizing their individual skills and abilities most effectively in order to achieve the team's goals. The benefits of using this assessment are:

- Departments, committees, and teams that meet their objectives
- Employee attitudes, teamwork, and cooperation are improved
- Managers and executives who become better leaders
- Projects that meet deadlines and achieve (and even exceed) their objectives

Customer Service Perspective™

Customer Service Perspective helps you evaluate every employee's knowledge and skill in the art of keeping your customers happy and buying from you. It's a tool to enhance your company's future by:

- Building stronger relationships with your customers
- Keeping clients longer, even for life
- Increasing the volume of products and services your clients buy from you
- Getting your customers to refer you to other prospective clients
- Assisting customers with problem solving
- Communicating more effectively with your customers
- Avoiding conflicts with customers

Profiles' suite of assessments is a comprehensive set of management tools for successfully dealing with a full spectrum of management's people-related challenges and concerns.

More Information about Profiles Products

- An extremely important feature found in several products is the ability to measure the total person. Three of the most important job-related dimensions of human beings are thinking and reasoning – which is essential to knowing how to train people effectively, behavioral traits – because top performers in any position will have behavioral traits in common, and occupational interests – because people perform much better when they are interested in the work they are assigned.
- Most Profiles assessments generate more than one type of report, making them multi-use management tools. There is no additional cost to obtain additional reports.

Using Occupational Assessments

- All Profiles products are scientifically driven. They have all been developed specifically for business use. They are validated and revalidated using people in the workplace. While many assessment companies consider an assessment validation study using 1,000 subjects as a huge study, Profiles , in a recent validation study used over 200,000 subjects.
- Profiles assessments are validated periodically for a good reason – assessments cannot be allowed to get old. Old is not good in the assessment business because the language is not static and assessments are made up of words. The meanings of words change, sometimes quite rapidly, and when meanings change, it can affect how people respond to a questions in an assessment, invalidating the question. If enough questions change, the entire assessment may become invalid. That's why Profiles regularly and consistently revalidates all of our products, question by question. Whenever necessary, revisions are promptly made.
- Some Profiles assessments create job match patterns that are customized to fit your company and its corporate culture. Job match patterns are used to assure the new people you hire will have many of the same job-related attributes as the people you have who are productive and doing an all-around good job for you. While Profiles does not design job descriptions, data contained in assessment reports can be used to give your job descriptions greater utility and purpose. You can also use the information as a starting point for creating new job descriptions.

Profiles' Internet Delivery System

Profiles pioneered the assessment industry in the use of the Internet as a delivery system. Clients are provided with their own Virtual Assessment Centers that are individually branded with the client's name. It's like having a recruiting office, employment office, and HR department operating 24 hours a day, seven days a week, all around the world. Cutting-edge technology makes Virtual Assessment Centers convenient to use and user-friendly.

Internet security issues have been addressed by Profiles. A leading Internet firm provides the most reliable and confidential system protection available. In addition to Profiles' home-based system, duplicate systems are located in San Antonio, Texas and London, England. Multiple locations enhance security and provide worldwide load balancing, so Virtual Assessment Centers are always online and available for use.

Profiles is pleased to provide you with additional information, and answers to your questions about its products, methods, technical data, and service.

Section IV – Terminating an Employee

Termination is usually a very touchy subject. Wrongful discharge is one of the leading causes of EEO audits and lawsuits. The termination of an employee may result from a number of circumstances. The reasons may be misconduct, unacceptable performance, or economic or other conditions (e.g. production cutbacks, plant closing, reorganizations or mergers, the elimination of positions). If termination is for cause, the actual termination should be the culmination of a reasonable process of discipline with ample and documented groundwork laid along the way.

Laid off Employees

Providing advance notice to the employee is required by law in some cases, such as planned layoffs or plant closing. Generally when economic conditions cause the reduction, advance notice is required. When this occurs, discuss the eligibility of severance pay with the employee and the policies of continued benefits coverage.

The majority of companies do pay some severance pay. Of the companies that pay severance pay, about half use a formula to set the amount. The most popular way to set that amount is to give one week's pay for every year of service.

Do not use any methods that might be considered discriminatory in deciding which employees to be laid off. The same guidelines used to hire employees should be used when laying off employees. Most companies use seniority as a tool when mass layoffs are implemented.

Discharge for Cause

The decision to discharge an employee, for any reason - theft, misconduct, unacceptable job performance, excessive absenteeism, intoxication, etc. – should not be made hastily and without deliberation. Indefensible terminations can leave an employer vulnerable to wrongful discharge law suits and can have an adverse effect on morale throughout the workplace. One way to avoid making unjustified discharges is to build safeguards into the disciplinary process. Some measures you may take are:

- Properly inform employees of, and take steps to resolve, problems that can lead to termination.
- Use the Warning Form found at the end of this section.
- Make sure any Performance Evaluation makes note of incidences.
- Require middle managers to obtain top management's approval before initiating action.
- Require complete documentation of the reason(s) for discharge.
- Thoroughly investigate **all** the facts before you discharge the employee.
- Give the employee a chance to respond to any reasons for discharge. Either by an appeal process or by some other means.

Terminating an Employee

- Remove wording in handbooks or other publications that would appear to limit the employer's right to discharge the worker for any reason. If you promise that certain procedures will be followed before an employee is discharged, the policy may be held to be a unilateral contract. If so, a dismissal that is not accompanied by the company following the procedures in the handbook may constitute a breach of contract.
- Sometimes it is desirable to give the employee the option to resign. When an employee isn't working out and is given the choice between resigning or being fired, the termination is still considered "involuntary" or "forced". However, by using this alternative method, the results are often less severe than discharge.

In general the more documentation you keep in the employee personnel file, the less likely wrongful discharge litigation will result. If you wait until termination is necessary, it is generally too late to take protective steps. If the termination for cause is challenged, the burden is on the employer to show cause. It is best to be incident specific, to have supporting documentation, and to be able to provide first-hand testimony about the reason for the termination. At the end of this chapter is a useful checklist that should be referred to before an employee is discharged for cause.

The exit interview

The exit interview is a standard separation procedure in most organizations. Many employers are hesitant to conduct an exit interview, because, they say, the separating employee either will refuse to discuss any critical issues for fear of jeopardizing chances of a reference or the employee will exaggerate the circumstances to justify his/her actions which led to the termination. Nonetheless, an experienced interviewer can elicit information that will be helpful in a future defense of a potential wrongful termination lawsuit. The following procedure is suggested:

- Conduct the interview in a private area.
- Schedule the interview in advance.
- Ask open-ended questions to elicit as much information as possible.
- Encourage candor.
- Interview the supervisor subsequent to the exit interview in order to balance the interview report.
- Record the details.

Examples of the courts decisions:

Collins v. Shell Oil., 56 Fair Empl.Prac.Cas. 440 (1991)

The court held that a company cannot violate its own procedures for disciplinary action. Collins won \$7.8 million for his termination after the company discovered a memorandum outlining "safe sex" rules for a homosexual party at his home. Finding of the memorandum was only a violation of having sexually explicit materials on the job, and company policy did not include termination without giving the employee an opportunity to correct the inappropriate behavior.

Terminating an Employee

Discipline/Termination Checklist

Notice

- Yes No Did the employee have notice or knowledge of the applicable procedure, policy or work rule?
- Yes No Did the employee have notice or knowledge of the work-related expectations?
- Yes No Did the employee have notice or knowledge of the consequences including disciplinary action?
- Yes No Had the employee received a warning notice?
- Yes No Is there anything beyond the employee's control preventing his/her performance of the job?
- Yes No If no notice of dissatisfaction was given to the employee, then was the offense so bad that no notice needed to be given?
- Yes No Has an appropriate written notice of the disciplinary action been prepared and discussed with the employee, and has the employee been asked to sign the notice? Then has the notice been put in the employee's personnel file?

Investigation

Did you:

- Yes No Investigate the facts before taking action?
- Yes No Check what, when, why and where the alleged violation(s) occurred?
- Yes No Check who was involved?
- Yes No Interview the witnesses?
- Yes No Remind all individuals interviewed to keep the matter confidential?
- Yes No Review all documentation?
- Yes No Review the employee's prior record?
- Yes No Check whether the violation was habitual in nature or an isolated incident?
- Yes No Check whether the violation was malicious, negligence, or accidental?
- Yes No Investigate how serious the violation is?
- Yes No Check the attitude of the employee?
- Yes No Speak to the employee?

Terminating an Employee

Consistency

- Yes No Which company policy was involved?
- Yes No Have the company's policies, procedures, and requirements been enforced consistently?
- Yes No Has disciplinary action for similar infractions been enforced consistently?
- Yes No When enforcement has not been consistent, has the possibility of deferring disciplinary action been considered in order to inform all employees that the policy will be enforced in the future?
- Yes No Is the penalty appropriate to the offense?
- Yes No Was the emphasis placed on correcting the problem rather than punishing the individual?

Procedure

- Yes No Has the handbook been reviewed?
- Yes No Have all procedural steps been followed?

Discrimination

- Yes No Has there been consideration of possible discrimination in this action, such as race, sex, age, national origin, relation, handicap, veteran's status, sexual preference?

Employment Contracts

- Yes No Has there been consideration of possible employment contracts, either expressed or implied, in employee handbooks, management personnel manuals, policies, oral representations, promissory estoppel/detrimental reliance?

Common Law/Non-Statutory

Has there been consideration for possible claims of:

- Yes No Invasion of privacy, defamation, false imprisonment, intentional infliction of emotional distress, negligent maintenance or disclosure of employee records, fraudulent misrepresentations, intentional interference with contractual relations, or public policy?

Terminating an Employee

After the Termination Decision has been made:

- Yes No The employer explains the reasons to the employee. The explanation needs to be candid and consistent with the evidence.
- Yes No The employee needs to be told what will be told to prospective employers. To avoid possible invasion of privacy, defamation, or intentional infliction of emotional distress claims, the employer should not disclose the reasons for the termination or discipline to other employees or to third parties.

Exit Interview Checklist

- Yes No Security clearance. Employers possessing security clearances from other companies or the government should be debriefed before leaving.
- Yes No Keys and key cards should be collected.
- Yes No Computer access codes should be changed.
- Yes No Telephone ID codes or long-distance credit card numbers should be changed.
- Yes No Employee savings plan and/or ESOP should be discussed and withdrawn if necessary.
- Yes No Insurance conversion and benefits continuation rights should be discussed.
- Yes No Forwarding address should be obtained.
- Yes No Badges need to be surrendered.
- Yes No Company credit cards should be collected.
- Yes No Company parking access documentation surrendered.
- Yes No Complete the employee file.

Terminating an Employee

Warning Notice

Employee Name _____ ID# _____

Date _____ Supervisor's Name _____

1. Reason for the warning: _____

2. What corrective action must be taken? _____

3. Other: _____

Employee's Signature Supervisor's Signature

Date: _____

Reviewed by: _____ Date: _____

cc: Supervisor
Employee
Personnel file