



HR BEST PRACTICES

HIRING, PERFORMANCE MANAGEMENT AND TERMINATION

Jeff Jones

jjones@safety-benefits.com



HIRING PRACTICES

- Recruiting & Selection
- Applications
- Interview Process



RECRUITING

- Are job opportunities made equally available to individuals without regard to race or sex?
- If job fairs are used to recruit applicants, are they equally accessible to all individuals without regard to race, sex, color, national origin, religion, age or disability?
- If schools are used to recruit applicants, do the schools have a representative student body in terms of minorities and women?

RECRUITING

- Recruiting Tools: Are you selling this job to applicants?
- Why this job over another employer?
- Do you consider Employee Referrals?
- What is the cost of a recruiting program and what are the benefits?
- Not only a wage/salary
 - Medical, Dental, advancement opportunities, Gift matching, 401K
- Mutually finding the right fit



RECRUITING

- Do you use State Employment Agencies as recruitment sources for entry level positions?
- And have you provided them with a copy of your policy on Equal Employment Opportunities?
- Does the Agency have a copy of Job Descriptions? Essential Functions?
- Has the Agency made an on-site visit?



PRE-EMPLOYMENT

- Have you adopted a standard application for ALL employees?
- Have you required all applicants to complete the standard application?



APPLICATION PROCESS

- Applicant tracking is crucial.
- How do you define an “applicant”?
- Do you accept unsolicited applications?
- How long do you keep applications?
- When a position becomes available, do you review previously received applications?
- Are applicants only/predominantly members of one sex or race?
- Are minorities and females who apply for jobs disproportionately negatively rejected?



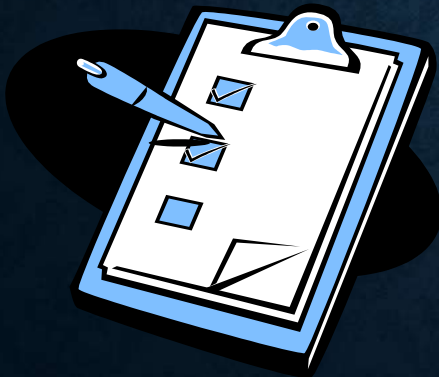
HIRING

- Is the application and hiring process centralized?
- If not, have managers been trained on proper procedures and policies for interviewing and hiring employees?



HIRING

- Have you conducted a reference check?
- Criminal background check?
- Drug testing?
- Pre-employment physical?
- Applied consistently for all employees?



HIRING

- Has each employee received an employee handbook?
- Has each employee signed an employee certification acknowledging receipt of an employee handbook and knowledge of At-Will Employment Disclaimer?
- Has each employee signed a Confidentiality Agreement?
- Non-compete?



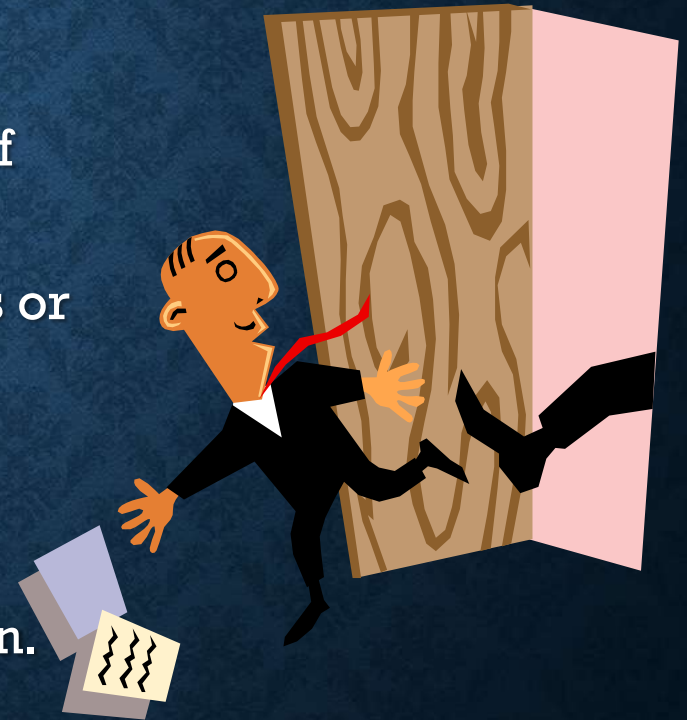
HIRING

- Have you properly classified the employee as exempt or non-exempt under the FLSA?
- Have you properly classified the worker as an employee or an independent contractor?
- Do you have completed I-9s on file for each employee employed within 72 hrs of employment?
- Is E-Verify used?



(REASONS FOR NOT) HIRING

- Have you documented the reasons for not hiring an applicant?
- Have you reviewed those reasons to see if any of them are applied to minorities or women more often than to non-minorities or men (adverse impact analysis)?
- Best Practice: the EEOC and OFCCP strongly encourage the use of internal audits to measure systemic discrimination.



JOB DESCRIPTIONS

- Are your job descriptions outdated and inaccurate?
- Do they accurately describe the essential functions of the jobs as they are being performed today?
- Do they specify the minimum job-related qualifications for the job (educational requirements; licenses; experience)?



INTERVIEWS

- Is your interview process standardized and job-related?
 - Standard evaluation form for interview notes
 - Notes should not contain inappropriate comments, subjective, non-job related comments.
 - Standard evaluation form should be filled out, signed and submitted by the interviewer.



INTERVIEWS

- Have you provided training and guidance to individuals conducting interviews as to the types of questions which can and cannot be asked?
- Do you provide interviewers with copies of the relevant job description?
- Is your interview site readily accessible?



PRE-EMPLOYMENT MEDICAL EXAMINATIONS

- Why? Drug Testing? Fitness for Duty?
- All similarly situated employees subject to the same examination?
- Have you extended an offer of employment and specifically stated that such offer is contingent upon the results of the examination?
- Is the examiner provided with information about the essential job functions to be performed (written description or videotape description?)



EMPLOYMENT

- Policies
- Performance Management
- Discipline



EMPLOYMENT POLICIES

- At-Will Disclaimer
- Equal Employment Opportunity?
- Drug Testing Policies & Procedures?
- Computer and Telephone Usage Policies?
- Privacy Policy
- Access to Personnel Records?
- Time-Off?
- Leaves of Absence?
- FMLA
- Discipline and Termination?
- Wage Payment Form?
- FLSA Overtime Policy?

EMPLOYMENT POLICIES

- Non-Discrimination/Non-Harassment Policy?
 - Define, including sexual, in understandable terms and include internal complaint procedure
 - No retaliation for complaints
 - Sanctions for harassing/discriminatory conduct, up to & including termination of offending employees
 - Designate individual to conduct investigations & monitor complaints of harassment
 - Provide training
 - Post policy in common areas.

SEXUAL HARASSMENT IN THE WORKPLACE

- **Quid Pro Quo:** An employee is required to choose between submitting to sexual advances or losing a tangible job benefit (i.e. continued employment, wage increase, promotion or not a demotion)
- **Hostile Work Environment:** Unwelcome sexual conduct unreasonably interferes with and individual's job performance or creates a hostile, intimidating, or offensive work environment.

SEXUAL HARASSMENT QUID PRO QUO

- Essential that harasser had power to control the employee's employment benefits, most often occurring between supervisor and subordinate.
- No requirement that these requests be express demands for sexual favors (may be implied).
- Acquiescence or even voluntary participation in sexual activity does not mean the advances were welcome.

EFFECTIVE HARASSMENT POLICIES

- Enhances organizational integrity
- Protects to organization from the stress, financial hardship and loss of public trust that comes with exposure to legal liability.
 - **Courts require employers to take reasonable care to prevent harassment and correct harassment when reported*
 - ***Retaliation is an unlawful employment practice*

PERFORMANCE EVALUATIONS

- Conduct annually, in a timely manner
- Set clear and specific performance expectations
- Develop factors used to evaluate employees that are objective and job-related



PERFORMANCE EVALUATIONS

- Review performance evaluations to ensure they're:
 - Completed fully;
 - Supported by documentation;
 - Based on job-related factors to evaluate the employee;
 - Include positive & negative assessments;
 - Contain no inappropriate comments;

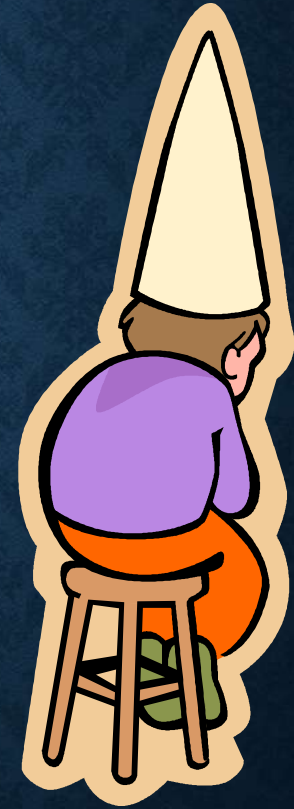
PERFORMANCE EVALUATIONS

- Cons
 - Time consuming
- Pros
 - Increased performance
 - Increased productivity
 - Employee morale and quality of work
 - Reduction in employee turnover and employee relations problems

Positive Performance Reviews +
Negative Employment Action =
Appearance of Discrimination

DISCIPLINE

- Have you adopted policies and practices with the following key elements in mind:
 - Consistency;
 - Uniformity;
 - Fairness; and
 - Documentation?



DISCIPLINE

- Have you provided management training on how to discipline employees in accordance with company policy?
- Do personnel files document all employment issues relating to performance, attendance, tardiness?
- Have you documented all disciplinary actions taken? Written warnings/reprimands should be placed in the employee's personnel file.

DISCIPLINE

- Are disciplinary actions consistent with the employee's personnel record?
- Have you designated an individual to ensure that all employees are treated fairly and equally and that like offenses receive like punishment?
- Are employees given the opportunity to tell their side of the story before disciplinary action is taken?

DISCIPLINE

- Are employees given a reasonable opportunity to correct deficiencies, if appropriate?
- Have you consistently enforced final warnings?
- Do you follow up with employees following disciplinary action to provide necessary training and counseling?



EMPLOYEE SEPARATIONS

- Termination for cause
- Employment Law



TERMINATION FOR CAUSE

- Have you created a procedure to conduct a thorough investigation before terminating an employee?
- If a termination decision is based on a witness statement, have you documented the witness statement in writing?
 - *“If it’s not in writing it didn’t happen”*
- Does the employee’s work record and personnel file support the decision to terminate?



TERMINATION FOR CAUSE

- Is the decision to terminate consistent with employer personnel policies?
- Have you reviewed terminations over the previous 12 months to ensure that protected classes of employees are not being terminated in numbers disproportionate to their representation in the workforce?

TERMINATION FOR CAUSE

- Best Practices
 - Make sure termination is consistent with past practice and company policy
 - Have a written policy for terminating employees
 - Articulate a reason for the termination (even for at-will employee)
 - Have a witness present and document meeting
 - Be honest and concise; do not argue; do not apologize
 - Maintain confidentiality

EMPLOYMENT PRACTICES HOTLINE (SDPAA)

- Deductible waived for employment related claim if:
 - Contact the Hotline prior to any action taken regarding employment issue, and
 - Advice provided by the Employment Practices Hotline is followed
- Minimum deductible for employment practices is \$5,000
- 1-888-313-0839



TAKE-AWAYS 1 OF 2

- Solid Recruiting, Selection, Hiring, and Employee Retention initiatives will ensure the right employee for the right job and save \$\$ in the long term.
- Sexual Harasment Policies – Communicate expectations to all employees that includes multiple avenues for reporting harassment.
- Performance Evaluations = Performance Excellence.
- Performance Evaluations can lay the foundation for legally defensible employment decisions.

TAKE-AWAYS 2 OF 2

- Progressive Discipline Policies – demonstration of a good faith effort to make employees successful.
- If termination for cause is necessary ensure proper documentation is available to support your decision.
- If in doubt seek legal advice on questionable employment decisions.

THANK YOU

Jeff Jones

Safety Benefits, Inc.

