

Hiring the Right People the Right Way



The Start of the Relationship

- Opportunities – both realized and missed
- Exposure in hiring process
- Exposure after hiring process
- Paperwork pitfalls and protections

Polling Questions

- Have you ever been arrested?
 - Lawful
 - Unlawful

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 - Unlawful**

Polling Questions

- Are you authorized to work in the United States?
 - Lawful
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- Are you authorized to work in the United States?
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Polling Questions

- What are your child care arrangements?
 - Lawful
 - Unlawful

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 - Lawful
 - Unlawful**

Polling Questions

- Were you honorably discharged from the military?
 - Lawful
 - Unlawful

Polling Questions

- Were you honorably discharged from the military?
 - Lawful
 - Unlawful**

Polling Questions

- Have you ever been convicted of a crime?
 - Lawful
 - Unlawful
 - It depends

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Unlawful Inquiries

- Photographs
- Age, race, religion, height, weight, marital status, sex, national origin
- Worker's compensation
- Arrests
- Military records

Criminal Records

- Avoid discouraging applicants, pre-application, because they have a criminal record. The EEOC is actively soliciting employees to report employers doing this.
- There are two ways in which an employer's use of criminal history information may violate Title VII: disparate treatment and disparate impact.
- Not all convictions are equal – must be conviction was “job related and consistent with business necessity.”

What Can You Do?

- The employer validates the criminal conduct exclusion for the position in question in light of the Uniform Guidelines on Employee Selection Procedures
- Targeted Screening: consider at least the nature of the crime, the time elapsed, and the nature of the job

Non-Job Related Physical and Mental Conditions; Medical Information

The ADA limits an employer's ability to make disability-related inquiries or require medical examinations at three stages: pre-offer, post-offer, and during employment. The rules concerning disability-related inquiries and medical examinations are different at each stage.

- **Stage 1 – completely off limits**
- **Stage 2 – Questions and exams permitted**
- **Stage 3 – only if job related and business necessity**

Takeaways on Medical Condition

- **Best to leave this line of questioning until after you make a conditional offer of employment. Offers of employment can be conditioned upon fulfillment of a pre-employment physical.**
- **It is recommended that no inquiries be made regarding physical handicaps, impairments, or abilities until after a conditional offer of employment. Offers can be conditioned upon fulfillment of a pre-employment physical.**

Michigan New Hire Form 3281

- Federal law requires public and private employers to report all newly hired or rehired employees who are working in Michigan to the State of Michigan
- Submitted within 20 days of hire
- Online/electronic reporting available

Fair Credit Reporting Act (FCRA) Compliance

- **Background**
 - When triggered
 - Litigation, class actions, and exposure
- **Compliance easy if you KISS**
 - Disclosure – “clear and conspicuous”
 - Authorization
 - And nothing else!

FCRA Pitfalls

- Releases for running the report
- Candidate certification regarding accuracy
- “Acknowledgments”
- Overly broad authorizations that permit release of info that the FCRA doesn't allow to be included in a background report, e.g., bankruptcies that are 10+ years old.
- Failure to notify if adverse action taken

FCRA Takeaways

- KISS
- Tailor the FCRA consent/authorization form to the information you actually need AND only request the information for a job that requires it