

# “PICK ME ... PICK ME ... PICK ME!”

## Designing & Conducting A Legal and Effective Interview

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### I. IMPLICIT BIAS

**Implicit (Subconscious) Bias**  
refers to all of the stereotypes, opinions and attitudes that live in our subconscious brain, all of which directly influence the way we view the world, the way we interpret what others say and the decisions we all make ... all in a subconscious way.

How We View The World  
**Priming IN ...** (Implicit Bias)  
**Projection OUT ...** (Confirmation Bias)



Do You Want To Reveal Your Biases and Prejudices?

[www.implicit.harvard.edu](http://www.implicit.harvard.edu)

Implicit Association Test (IAT)





## II. EMPLOYMENT APPLICATIONS

### A. What May An Employment Application Ask Legally?

Whenever a human resource professional attempts to draft an employment application, the question always arises regarding what questions can be asked legally? In short, when drafting an employment application form, or when selecting questions to use in the interviewing process for that matter, two cardinal rules should be observed:

1. The questions asked are job related or have a legitimate business reason for being asked and
2. The questions do not ask about a person's protected class.

Examples of permissible inquiries that can be made on employment applications include:

1. Biographical data, such as name, address, and primary and secondary phone numbers. It is also advisable to ask permission to contact the applicant at work with his/her current employer before doing so, in order to avoid breaching any possible assurances of confidentiality.
2. If the applicant is eligible to work in the U.S. (It is **not** permissible to ask if the applicant is a U.S. citizen.)
3. If applicant has ever been convicted of a crime other than a minor traffic offense that has not been expunged or sealed by a court of law. Still, remind the applicant on the application that a criminal conviction will not necessarily bar the applicant from employment. (Offense must be related to the position.) It is also permissible to ask the applicant the dates of his/her incarceration and the nature of the conviction.

**NOTE:** Considering the developments in the area of negligent hiring, it is becoming more common for employers to ask their applicants if they have any arrests pending before the courts, other than minor traffic offenses. Still, only those violations that are job-related may be considered.

4. The applicant's military service, including branch of the service, rank, special training or honors received, omitting any information that may reveal protected class status. Do not ask for dates of service. (Reveals age and Vietnam Vet status.)
5. Educational background of applicant, including school name, location and address of school, major, grade point, and degree received. It is also permissible to ask if the applicant participated in any special activities, received any awards, or held any particular offices while in school *if* such information does not reveal applicant's protected class status. Do not ask for dates of attendance. (Reveals age).
6. If the applicant has ever worked for the company in the past, or previously applied for a position with the company, or if the applicant knows anyone who works for the company.
7. How the applicant came to know of the available position.
8. The applicant's employment history, including the employer's name, address, telephone number, supervisor, reason for leaving, position held and its duties or responsibilities, the applicant's beginning and ending rates of pay and the applicant's dates of employment for each position held. Employers should also ask if the applicant objects if any of his/her former employers are contacted for a reference. If the applicant does object, the employer should ask why.
9. For the applicant's references, both personal and/or professional.
10. Any licenses or certifications or applicable skills held by the applicant.
11. Employers can remind their applicants that they maintain a smoke-free environment and do not provide "smoke breaks," if that be the case.

## **B. Other Issues Related To Employment Applications**

Whenever an employer provides employment applications to individuals, the following items should be followed:

1. Be dated by the applicant.
2. Be completed for **each** position for which the applicant is applying.
3. Provide notice to the applicant that the company is an equal opportunity employer and does not discriminate on the basis of race, religion, national origin, ancestry, color, sex, age, disability or handicap, or Vietnam Veteran status.
4. Place the applicant on notice that the employer will keep the application on **active** file for only so many days, such as 30, 60, 90, etc. It is important for employers to realize that they should not keep old employment applications on active file for extended periods of time. Once the average employment application becomes over 90 or so days old, it is rarely of any great use any longer and is seldom reviewed by employers for recruitment purposes. However, employers must understand that all of the resumes or applications they keep in their active recruitment files may be used to form a case of disparate impact against an employer. Therefore, employers should determine how long they will keep their old applications and resumes on active file and then indicate what this time limitation is on the top of the application form.
5. The employer should then place the non-active applications in storage for at least one year from the date it was completed. Placing these applications and resumes into storage for one year is for recordkeeping purposes only, which is quite different from keeping them in an active file and using them for employee recruitment.
6. Have an EEOC data sheet for all employers who are required to draft and maintain affirmative action plans included with the employment application as a separate sheet. Basically, this EEOC data sheet asks job applicants to anonymously indicate to which protected classes they belong. This EEOC data sheet should explain to the applicant that this information will be kept separate from the application and is necessary in order to maintain, develop and monitor the employer's affirmative action plan. The applicant should have the option to refuse to complete the form. The data sheet should ask the race, sex, Vietnam Veteran status, disabled veteran status, and disability/handicap status of the individual, including if any accommodations are necessary. The applicant should

then sign and date the form. It should then be separated from the application and placed in a separate file.

7. Include a complete "agreement" or "disclaimer" at the end of the employment application. This disclaimer must then be signed and dated by the applicant. In short a proper disclaimer will establish some of the more important terms and conditions of employment with the company, as described in more detail below.

Obviously, there are many different ways in which to assemble an employment application. The design and content of employment applications may therefore differ greatly from one employer to the next depending upon the type of information an employer is seeking in relation to its job candidates. Many times, the very nature of the employer's industry greatly influences what type of individuals are needed, which in turn directly effects what type of information should be sought. Still, the cardinal rule in drafting employment applications is that none of the questions asked on an application should reveal the applicant's protected class status and they should be job-related.

Purely for illustrative purposes only, a sample employment application and its corresponding EEO Data Sheet that are typical of those found in today's marketplace have been included in this chapter.

ABC COMPANY

Equal Employment Opportunity Data Sheet

ABC COMPANY is an Equal Employment Opportunity employer. It is the philosophy, intent and commitment of ABC COMPANY to adhere to a policy of equal employment opportunities for all applicants and employees without regard to race, color, religion, sex, age, ancestry, national origin, veteran status or mental or physical disability or any other status protected by law.

To help us comply with federal/state equal opportunity record keeping, reporting, and other legal requirements, please answer all questions as they apply below. This data is used only for periodic government reporting and will be kept in a confidential file separate from employment applications and individual personnel records.

Last First MI Social Security Number Date
Sex: M F Birth Date \_\_\_/\_\_\_/\_\_\_

Position Sought

Check one of the following (Race/Ethnic Group):

- White (All persons having origins in any of the original peoples of Europe, North Africa or the Middle East)
Black (All persons having origins in any of the Black racial groups of Africa)
Hispanic (All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race)
Asian or Pacific Islander (All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This includes China, Japan, Korea, the Philippine Islands and Samoa).
American Indian or Alaskan Native (All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition).

Check if any of the following are applicable:

- Vietnam-Era Veteran (A person who served on active duty for at least 180 days, part of which was between August 5, 1964 and May 7, 1975).
Disabled Veteran (A person entitled to disability compensation through the Veteran's Administration for a disability rated at 30% or more; or a person discharged or released from active duty for a disability incurred or aggravated in the line of duty).
Disabled (Physical or mental disability which substantially limits one or more major life activities).

Referral Source: Advertisement Name of Publication Employee Name

School Name of School Walk-In Agency

Other Explain

Signature of Applicant

## ABC COMPANY APPLICATION FOR EMPLOYMENT

**ABC COMPANY IS AN EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER. IT IS THE PHILOSOPHY, INTENT, AND COMMITMENT OF ABC COMPANY TO ADHERE TO A POLICY OF EQUAL EMPLOYMENT OPPORTUNITIES FOR ALL APPLICANTS AND EMPLOYEES WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, AGE, ANCESTRY, NATIONAL ORIGIN, VETERAN STATUS, MENTAL OR PHYSICAL DISABILITY OR ANY OTHER STATUS PROTECTED BY LAW.**

When completing this application, do not leave any questions blank. Do not substitute “see resume” for any requested information. Complete one application for every job for which you are applying.

THIS APPLICATION WILL REMAIN ACTIVE FOR THREE (3) MONTHS UPON SIGNING.

### PERSONAL DATA

Last Name	First	Middle	Date
Street Address		Home Phone	
City, State, Zip		Business Phone	
Are you 18 years or older?		Social Security No. 	
Position Desired		Salary Desired	
Are you currently employed?		Are you currently on “lay-off” status and subject to recall?	
When would you be able to begin work?	Are you available to work: <input type="checkbox"/> Full-Time <input type="checkbox"/> Part-Time <input type="checkbox"/> Shift Work <input type="checkbox"/> Temporary		
Are you legally eligible for employment in the United States?		If necessary, are you available to work overtime?	
Have you been convicted of a felony or misdemeanor (other than traffic violations)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes explain:		NOTE: A conviction will not necessarily be a bar to employment. Factors such as date, nature and number of offenses, age at the time of offense and rehabilitation will be considered.	
How did you learn of ABC COMPANY?		Are you related to anyone employed at ABC COMPANY?	

**EMPLOYMENT HISTORY (List most recent employer first)**

Company Name:	Telephone Number:
Address:	Employed (mm/yy) From: _____ To: _____
Name and Title of Supervisor:	Annual Pay: Start: \$ _____ Finish: \$ _____
Job Title and Job Description:	Reason for Leaving:

Company Name:	Telephone Number:
Address:	Employed (mm/yy) From: _____ To: _____
Name and Title of Supervisor:	Annual Pay: Start: \$ _____ Finish: \$ _____
Job Title and Job Description:	Reason for Leaving:

Company Name:	Telephone Number:
Address:	Employed (mm/yy) From: _____ To: _____
Name and Title of Supervisor:	Annual Pay: Start: \$ _____ Finish: \$ _____
Job Title and Job Description:	Reason for Leaving:



**EDUCATION**

School Name, Address and Phone Number	High School	College/University	Graduate/Professional
Years Completed	9 10 11 12	1 2 3 4	1 2 3 4
Diploma/Degree			
Course of Study			
Honors Received			

Degree of educational achievement is considered in the hiring process only to the extent that specific educational achievement is a requirement for performing the job.

**SPECIAL SKILLS AND TRAINING**

Other than English, are you fluent in any language? Please List::
In which computer programs do you feel you have proficiency?
Do you have any other advanced training, continuing education or special study experience that you think would be helpful in the position for which you are applying? Please list:

**REFERENCES**

Name	Relationship	Years Known	Telephone Number
May we contact your current employer?			

## C. Employment Application Disclaimers

In order for employers to protect themselves legally as much as possible, the best time to preserve their rights is clearly at the beginning of the employment relationship. Therefore, as part of the employment process, many employers clearly specify what some of the more important aspects of the prospective employee's terms and conditions of employment will be on the employment application.

The job candidate is expected to read the rights being preserved by the employer listed on the employment application, usually referred to as the "disclaimer," and then sign and date the application, indicating that he has read, understands, and agrees to all of the rights being secured by the employer as a condition of his employment. The reasoning here is clear: If the applicant does not agree to these terms and conditions of employment, then he should not accept the position. As a result, from the outset, employers can secure numerous legal protections for themselves from employees by having a thorough documentation process, which begins with the employment application.

Typically, the following items are included in the employment application disclaimer:

1. A statement indicating that the employer is an employment-at-will employer, meaning that it can terminate the employee at any time with or without just cause.
2. A statement reserving the right to change the employee's compensation at any time for any reason, regardless of whether or not they have just cause to do so.

This "compensation clause" is particularly important for salaried employees since some courts have found that placing any employee on an annual salary not only provides that employee with an implied contract of employment for that year, but it also guarantees his level of compensation for that period of time. Such a disclaimer alleviates that concern for employers.

3. A statement reserving the right to change the terms and conditions of the employee's employment at any time.
4. A statement that any other agreements made with the employee are superseded by the agreements made on the application. Such disclaimers often state that no one other than the president of the company, the chairman of the board of directors, the board of directors as a whole, or any other specifically named company representative can make any binding agreement with the

employee....and even then the agreement must be in writing. Such a clause helps to alleviate the employer's concern that any of its supervisors or other representatives might make their employees or prospective employees any promises that may be used later to form an implied contract of employment or a promissory estoppel argument.

5. A statement granting permission to the employer to perform whatever background investigation checks it deems appropriate. Such clauses should:

- a) Grant permission to all parties to release reference information to the employer, as well as for the employer itself, should it ever later release information regarding this employee to anyone in the future, and
- b) Provide a release of liability for anyone providing this reference information, as well as for the employer itself, should it ever later release information regarding this employee to anyone in the future.

If the employer intends to use a consumer reporting agency to perform a background check on the applicant, the employer should be sure to comply with the requirements of the Fair Credit Reporting Act, or "FCRA," which is discussed in more detail later in these materials.

6. A statement that the applicant releases all parties from liability and agrees to take any medical, drug or chemical test required by the employer at any time throughout the applicant's employment with the employer, or before, upon request. (Still, under the Americans With Disabilities Act of 1990, a physical examination of the applicant cannot be performed until after the offer of employment has been made, even though the offer can be made contingent upon successfully passing such an examination that is shown to be related to the applicant's work.)

7. And finally, a verification by the job candidate that all of the information provided on the application is true, while reminding applications that providing false information will be grounds for dismissal. (Some courts hold that employers may still only terminate employees under this clause for falsehoods that are substantially related to the position or to the employer's business on the whole, depending on the jurisdiction.)

**APPLICANT’S CERTIFICATION AND AGREEMENT**

“I understand and agree that, if I am employed by the Company, my employment and/or compensation is entirely “at will,” which means neither are guaranteed for any definite period of time, and that my employment and/or compensation can be modified or terminated, with or without cause, and regardless of the date of payment of my wages and salary, and with or without prior notice at any time, at the option of either the Company or myself. I understand and agree that the Company reserves the right to establish and change any of the terms and conditions of my employment at its discretion at anytime as it deems appropriate. I understand and agree that if any previous agreements between any Company representative and myself have been made, they are superseded by the contents of this Agreement. I understand and agree that no representative of the Company, other than the President, the Chairman of the Board, or the Board of Directors as a whole, have any authority to enter into any agreement with me relating to my employment with the Company, or for the duration of my employment for any indefinite or specified period of time or to make any agreement with me contrary to the foregoing, except that the above-mentioned officials of the Company may do so in writing.

I authorize the investigation of any and all of my background, qualifications and/or any other information from whomever the Company deems appropriate or desires, as I also authorize the release of any and all information by whomever the Company deems appropriate or desires. I also release all parties from all liability for any damage that may result from furnishing this information to the Company. This release extends to all information deemed appropriate to be released by any requesting and/or releasing party, personal or otherwise, as well as to the Company itself, should it find it necessary at any time to release any information regarding myself, my employment record, or my employment status to any individual or organization the Company deems worthy of receiving such information.

I further agree to take any lawful medical examination, chemical, drug or alcohol test upon request by the Company at its sole discretion as a condition of my employment, or, if I am hired, as a condition of my continued employment at any time as deemed appropriate by the Company. I agree that my refusal to take any such examinations or tests immediately upon request may be cause for my not being hired or, if I am hired, may be cause for the immediate termination of my employment. I hereby release all persons or companies conducting such examinations from any and all liability.

I also certify that the facts contained in this application are true and complete to the best of my knowledge and understanding that if I am employed, any statements I have falsified on this Application shall be grounds for dismissal. I further certify that I have read all of the foregoing, understand the same and do hereby voluntarily agree to all of the provisions contained herein.”

**READ CAREFULLY BEFORE SIGNING**

"I agree that any claim or lawsuit relating to my service with ABC Corporation or any of its subsidiaries must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary."

If you are hired, this employment application will become part of your official employment record.

\_\_\_\_\_  
APPLICANT’S SIGNATURE

\_\_\_\_\_  
Date

### III. DECIDING UPON SELECTION CRITERIA AND SELECTION TECHNIQUES

#### A. Selection Criteria

Just as with interviewing, in selecting an applicant to hire, transfer, or promote into a position, employers must follow two cardinal rules:

1. The questions asked are job related or have a legitimate business reason for being asked and
2. The questions do not ask about a person's protected class.

Examples of legal criteria include the experience or education needed to perform the position, references, pleasant demeanor, able to come to work on time, and able to work overtime, if such requirements are truly job-related.

Examples of illegal criteria include requiring the successful candidate to be under the age of 40, that he has no children, have an excellent medical history (if not related to position), a college degree when the degree is not related to the job, and that the candidate must have an excellent credit rating, if such criteria is unrelated to the job.

#### B. Testing Job Applicants

Even though an employer may not adopt selection criteria that discriminates against a protected class of persons, § 703(h) of Title VII specifically states that it "shall not be an unlawful employment practice for an employer to give and to act upon the results of any **professionally developed ability test** provided that such a test, its administration, or action taken upon its results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

Therefore, even if an employer's testing program is found to have a disparate impact against a protected class of persons, the test will be permissible if the employer can demonstrate the **job-relatedness** of the test and that it was not developed with the **intent** to discriminate.

In reality, there are three separate ways to validate the tests employers use, with some being easier to prove than others.

##### 1. Construct Validity

Construct validity is the most difficult type of validation to prove since the employer is in essence trying to measure some theoretical trait on an applicant, or a construct, such as "intelligence." The employer must prove that the test it is using accurately measures this

trait *and* that a correlation between a positive score on this test and good performance on the job exists. In other words, the employer must prove that this test predicts good performance on the job, which is a difficult goal to reach in trying to measure a construct.

In Albermarle Paper Company v. Moody, 422 U.S. 405 (1975), a class of present and former black employees challenged Albermarle Paper's policy of requiring its applicants for promotions within the company to pass two general ability tests. One of these tests was intended to measure the applicants' nonverbal intelligence and the other purported to measure the general verbal facility of the applicant. However, since Albermarle was not able to prove the "job-relatedness" of these tests, and since these tests were seen to have a disproportionate impact on minorities, the U.S. Supreme Court found that these tests were discriminatory.

Before the passage of the Civil Rights Act of 1991, some employers attempted to "correct" their discriminatory tests by awarding additional points to the scores of those minorities against whom the test was allegedly prejudicial. Such a practice was referred to as "norming." However, the Civil Rights Act of 1991 made such "norming" practices illegal.

## **2. Criterion Validity**

Criterion Validity is not as difficult to prove as construct validity since no abstract theoretical trait is involved. Instead, a specific ability that will be needed on the job, or criterion, is tested, such as when mathematical skills are needed in a certain job and the employer administers a math test. A statistical comparison is then made between the score received by the applicant and the score that is needed to predict the applicant's success in this job.

## **3. Content Validity**

Of the three ways to validate a test, content validity is the easiest. Whenever an employer tests an applicant in an actual duty performed on the job, such as when an applicant for a human resource specialist position is required to write a job description, then no formal statistical analysis is necessary. Merely verifying that an applicant can perform some of the actual duties or a content portion of the job will suffice as proper validation.

### C. Criminal Records

An employer may inquire into and consider the past criminal convictions of its job applicants under certain circumstances (Dozier v. Chupka, 395 F. Supp. 836 (S.D. Ohio 1975)). Generally, if the employer can show that a relationship exists between the nature of the crime for which the applicant was convicted and a legitimate business necessity, this conviction may be lawful grounds for denying the applicant employment. However, employment should not automatically be denied because the applicant has a conviction record.

Further, the EEOC has held in its administrative hearings that if an employer considers an applicant's criminal conviction when making its employment decision, the employer may be found to be in violation of Title VII if it automatically disqualifies the applicant on the basis of having a criminal conviction since a greater percentage of minorities have criminal convictions than do non-minorities.

Instead, the EEOC has held that if an employer disqualifies an applicant on the basis of the applicant's criminal conviction, the employer must first consider all of the job-related circumstances surrounding the conviction that would manifestly be inconsistent with the safe and efficient operation of the business.

Factors that should be considered include the job-relatedness of the offense, the circumstances surrounding the conviction, the time, nature and number of convictions, how long ago the conviction occurred, the applicant's rehabilitation efforts and the applicant's employment history before and after the conviction. If such factors are not considered in making the decision, then a disparate impact case of discrimination may be shown to exist since a greater percentage of minorities have conviction records than do non-minorities.

However, if such factors are considered and the employer disqualifies the applicant on the basis of the conviction, then the employer may be able to defend itself by arguing that the decision to disqualify the applicant was based on business necessity.

Considering an applicant's arrest records where no conviction resulted is widely viewed as being a discriminatory practice due to its disproportionate impact against minorities (see, Gregory v. Litton Systems Inc., 472 F.2d 631 (9th Cir. 1972)).

## IV. NEGLIGENCE HIRING AND NEGLIGENCE RETENTION

### A. General Theory

Under the theory of **respondeat superior**, employers are responsible for the acts of their employees that are committed **within the scope of their employment**. However, within recent years, legal theorists have wondered if employers can be held liable for the acts of their employees which are committed **outside** the scope of their employment, such as when an employee physically assaults a customer. This concept was the beginning of the negligent hiring and negligent retention causes of action against employers.

Under the theories of negligent hiring and negligent retention, an employer may be held liable to third parties for the injuries they suffer as a result of the tortious acts committed by the employer's employees. The general theory at work under these theories is that employers have a duty to exercise reasonable care in both their employee hiring and employee retention practices in order to protect the public from individuals who might foreseeably cause harm to others.

Additionally, Workers' Compensation statutes may not preclude employees from suing their employers under these theories when they are injured by fellow employees. In Potter v. Troy (1992), 78 Ohio App.3d 372, the court held that the employer may be held liable to its employees for failing to take corrective action against a potentially dangerous employee which it *knew* posed a threat of harm to other employees. Therefore, in spite of the liability protections offered to employers by Workers' Compensation laws, employers may still be liable to their employees for the intentional torts committed by fellow employees under either a negligent retention or negligent hiring theory.

### B. Duty Of Care

In order for the employer to be held liable for the violent acts of one of its employees under a negligent hiring or a negligent retention theory, the employer must first owe the plaintiff a duty of care. In general, a duty of care is usually owed to third parties by the employer when:

1. Both the employee and the plaintiff were in places where each had a right to be when the wrongful act occurred,
2. The plaintiff met the employee as a direct result of the employee's employment, and
3. The employer received some benefit, even if only potential or indirect, from the meeting that occurred between the employee and the plaintiff.



If these three requirements are met, then the employer will most often owe a duty of care to the third party, or the plaintiff.

Some jurisdictions, on the other hand, extend liability to employers only when a “special duty” is owed. For instance, in D.R.R. v. English Enterprises, CATV, 356 N.W. 2d 580 (Iowa Ct. App. 1984), where a cable installer raped a customer, the court found that the cable company owed a special duty to its customers since the installers had keys to the residences they served. Therefore, the employer owed its customers a special duty to ensure that they were safe from employees that were foreseeably dangerous.

In fulfilling its duty of care, employers are basically required to act “appropriately.” In negligent retention cases, this generally means that employers are first expected to investigate and correct employee behavioral problems. An employer is most often held to a “knew or should have known” standard, so closing its eyes to a workplace problem may easily be viewed as being a negligent act.

Then, after conducting a reasonable investigation, employers are expected to formulate an appropriate response to the employee’s behavioral problem. However, determining what is an appropriate response is a very fact-specific determination.

In some instances, a verbal warning might be appropriate, while in others, termination might be the proper remedy. Whatever disciplinary action is chosen by the employer, it is expected to serve as an “appropriate” response to the employee’s offense.

In negligent hiring actions, employers are expected to properly screen job applicants before hiring them. However, not all jobs need to be screened to the same extent in most jurisdictions. In general, the more exposure or contact an employee has with the public, the more extensive the background check the employer is expected to perform, which may include drug tests, criminal checks, reference checks and so on. Still, at a very minimum, employers are commonly expected to perform at least a reasonable investigation into the potential employee’s references.

In Stephens v. A-Able Rents Co. (Cuyahoga Cty. 1995), 101 Ohio App. 3d 20, the employer, A-Able Rents, hired Taylor, who had a history of abusing illegal drugs. The court stated that Taylor's history of drug use would have been discovered if the employer had performed a background check on Taylor, such as by contacting Taylor's former employer, Kroblin's. Taylor later used illegal substances while on duty for A-Able Rents, and then assaulted a female customer. The court held that:

"Taylor abused drugs, which is criminal conduct in Ohio. This information was known to Kroblin's, Taylor's former employer. With a reasonable amount of care, A-Able Rents could have known of Taylor's criminal propensity. By its own admission, A-Able Rents stated that had it known of Taylor's abuse it would not have hired him. . . . Consequently, a reasonable jury could have found the failure to inquire into Taylor's employment history before hiring is causally connected to and may have proximately caused the attack on Marie Stephens. Taylor was in Marie Stephens' home to provide work for A-Able Rents. Had Taylor not been an employee, this attack would not have happened." (Stephens at 27.)

Thus, where an employer does not exercise reasonable care in hiring or maintaining an employee, liability may arise under a theory of negligent hiring.

### **C. Foreseeability**

Whether the injury inflicted upon the plaintiff was foreseeable is also a very fact-specific determination. For example, in Gaines v. Monsanto Company, 655 S.W.2d 568 (Mo. Ct. App. 1983), a mail clerk worked in the same building as a certain secretary, although each worked for different employers. One night, the mail clerk followed the secretary home from work one night and killed her.

The parents of the secretary filed suit against the mail clerk's employer. The employer then filed a motion to dismiss the suit based on the reasoning that aside from the fact that the mail clerk learned of the secretary's home address through his employment, no real connection with the employer existed.

However, the court dismissed the employer's motion based on the fact that the mail clerk had previously made advances toward this secretary, that this mail clerk had a reputation for harassing female employees, and the employer failed to take any action to remedy this employee's behavior. Therefore, the court reasoned that it was foreseeable that someone with a background like this mail clerk's would commit such an act and the employer failed to act "appropriately" in dealing with these previous incidents.

## **D. Various Potential Solutions**

In an effort to both avoid potential problems and protect themselves from either negligent hiring or negligent retention lawsuits, the following is a list of practices that may be adopted by proactive employers:

1. All applicants are required to complete an application.
2. No applicant is to be hired until all the required pre-employment checks have been completed.
3. The proper background checks that are needed for each position should be determined, based largely on the amount of contact the employee will have with the public, or other employees, such as criminal checks, drug tests, driving records, if driving is a part of the position, and so on.
4. All employment applications are to be reviewed uniformly, looking for gaps in employment, suspiciously short terms of employment, any unusual entries or omissions, and, of course, any criminal convictions related to violent behavior.
5. The written permission of each applicant to check references is obtained by signing the employment application disclaimer, thus allowing the employer to inquire with any company or person it desires regarding the applicant. The applicant should also release all parties from liability for providing such information.
6. Check with each reference and with each former employer regarding the applicant. Written notes should be taken and retained. Specific questions regarding the applicant's character traits should be asked relevant to the position for which the applicant has applied.
7. If the application or background check raises any questions in the employer's mind, either the applicant should be disqualified from consideration or further inquiries should be made into the applicant's background. However, since a uniform ban on hiring applicants with criminal records has been held by some courts to have a disparate impact on minorities, employers should disqualify an applicant due to a criminal conviction only if the conviction is related to the candidate's fitness for the particular position.

(It is also important to note that in most states, employers may refuse to hire an applicant based on a previous conviction related to the applicant's fitness for the position, but employers are not allowed to use previous arrests as the basis for such decisions.)

8. Review all complaints made regarding employees and address these problems immediately. If the misconduct involves an act of violence, failure to discharge the employee may very likely lead to employer liability for the future acts of the employee.
9. Of course, the abusive or violent acts of supervisors should not be tolerated.
10. Implement Employee Assistance Programs to help employees deal with stress, marital problems, substance abuse, and so on.
11. Consider performing additional background checks whenever employees change jobs within the organization.
12. Train managers in workplace violence issues and how people deal with stress and burnout, particularly regarding layoff and reorganization situations, as well as how to spot signals which may indicate possible employee violence.
13. Establish, publicize and enforce a strong anti-violence and anti-threat policy, which includes requiring employees to report any acts of violence or threats made towards others in the workplace. Additionally, a “threat of violence” assessment team should be established to investigate such reports. This team should be comprised of employees from human resources, legal counsel and security.
14. An anonymous or confidential hotline for employees should be established through which employees can report such incidences.
15. If an incident does occur, it should be determined whether the offending employee should be required to undergo assessment before being allowed to return to work.
16. Seek the assistance of legal counsel before acting.

## **V. FAIR CREDIT REPORTING ACT**

### **A. General Coverage**

The Fair Credit Reporting Act, or the “FCRA,” (15 U.S.C. § 1681, et seq.), which was an amendment to the Consumer Credit Reporting Act, and was most recently amended by the Consumer Credit Reporting Reform Act of 1996, regulates two types of background reports generated by consumer reporting agencies. These two types of reports include "consumer reports" and "investigative consumer reports." The FCRA is regulated by the Federal Trade Commission, or the "FTC."

### **B. Definitions**

#### **1. Consumer Reporting Agencies**

The FCRA further defines "consumer reporting agencies" as being any person or organization which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing this information to third parties, such as employers.

#### **2. Consumer Report**

The FCRA defines a “consumer report” as being any written, oral or other communication of any information by a consumer reporting agency relating to a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is to be used or is expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- a) Credit or insurance to be used primarily for personal, family or household purposes,
- b) Employment purposes, including reassignment, retention, and so on, or
- c) Any other purpose permitted under the FCRA.

#### **3. Investigative Consumer Report**

The second type of report governed by the FCRA is an “investigative consumer report.” The FCRA defines an "investigative consumer report" as being any report generated by a

consumer reporting agency which involves investigating an individual's character, general reputation, personal characteristics and mode of living by interviewing the person's friends, neighbors, relatives, associates and so on.

Therefore, an investigative consumer report differs from a consumer report in that no personal interviews with friends, former employers or anyone else occurs in generating a consumer report. Instead, basically a "records only" type of report is requested when an employer authorizes a consumer report, unlike an investigative consumer report.

### **C. Requirements For Requesting A Consumer Report**

Under the FCRA, whenever an employer requests a consumer report be generated on an employee or job applicant, the following requirements must be met:

1. The job applicant or employee must be provided with a "clear and conspicuous" written **disclosure** informing the individual that the employer intends to request and possibly use a consumer report in making its employment decision. This disclosure must exist as its own document and may not be part of the employer's employment application or any other form.

However, this disclosure notice may be combined with the individual's authorization to perform and use the consumer report. The employer is then required to obtain the individual's signature acknowledging receipt of this disclosure either **before** ordering the report from the consumer reporting agency or within three days of placing such an order. This signed disclosure must then be retained by the employer.

2. The employer must also first obtain the individual's written **authorization** to have the consumer reporting agency conduct such an investigation. This authorization form must state that the job applicant or employee consents to the employer's use of this report. The individual's authorization may be included on the same form as the employer's notice of disclosure, as mentioned above.

Further, consumer reporting agencies are prohibited from supplying an employer with any information relating to the individual's medical history without first obtaining that person's written permission. (See sample "Consumer Report Disclosure and Authorization" form at the end of this section.)

## **D. Requirements For Requesting An Investigative Consumer Report**

The second type of report governed by the FCRA is the “investigative consumer report.” The FCRA defines an "investigative consumer report" as being any report generated by a consumer reporting agency which involves investigating an individual’s character, general reputation, personal characteristics and mode of living by interviewing the person’s friends, neighbors, relatives, associates and so on.

Therefore, an investigative consumer report differs from a consumer report in that no personal interviews with friends, former employers or anyone else occurs in generating a consumer report. Instead, basically a "records only" type of report is requested when an employer authorizes a consumer report, unlike an investigative consumer report.

Due to the more intrusive nature of conducting investigative consumer reports, either before an employer orders an investigative consumer report from a consumer reporting agency or within three days of making such a request, included in the disclosure the employer provides to the employee or job applicant is a statement which also informs the person that he has the right to request a complete and accurate disclosure of the nature and scope of the investigation requested by the employer and a summary of the individual’s rights under the FCRA.

(Opinion letters generated by the Federal Trade Commission indicate that it is only necessary to provide these individuals with a summary of their rights after they have made such a request. This disclosure therefore must merely inform them of their right to receive such information.)

(See sample "Summary Of Rights Under The Fair Credit Reporting Act" handout, the "Acknowledgment Of Receipt Of Summary of Rights And/Or the Nature and Scope of the investigative Consumer Report Requested Under The Fair Credit Reporting Act" and the "Fair Credit Reporting Act Investigative Consumer Report Disclosure and Authorization" form at the end of this section.)

However, the FCRA provides an exemption from complying with the requirements of the Act regarding investigative consumer reports for employment agencies. Specifically, the Act states that if an agency is procuring an employee to work for a prospective employer, and that agency regularly performs such procurement, and the information collected is used only for the purpose of procuring the individual's employment, then the requirements of the FCRA for conducting an investigative consumer report need not be met. This situation most often arises when a search firm checks the references of a potential job candidate.

## **E. Obsolete Information And The FCRA**

Reports supplied to employers under the FCRA cannot include any **obsolete** information that may be adverse to the individual. Previously, obsolete information was defined so as to include records as arrest records, indictments, convictions, law suits, judgments, and so on, which are over seven years old.

However, this seven-year limit on considering arrest records, indictments or convictions has been eliminated. Therefore, employers now have no time restrictions placed upon them by the FCRA when considering such information in relation to their employment decisions.

Any information relating to **bankruptcies** over ten years old is also considered obsolete and may not be included in these reports. However, if the report is relating to the employment of an individual who will earn an annual salary of \$75,000 or more a year, such information may be included.

## **F. Requirements Relating To Adverse Actions Taken Against Individuals**

**Before** an employer takes any action adverse against a job applicant or an employee that is based even in part upon the results contained in any consumer report or investigative consumer report, the individual must be provided with the following:

1. Oral, written or electronic notice of the adverse action to be taken against the person,
2. A copy of the report,
3. A summary of the person's rights under the FCRA, which includes the individual's right to request a disclosure of the nature of the report, the sources of the information contained in the report and a listing of anyone who received a copy of the report,
4. The name, address and telephone number of the consumer reporting agency that provided the report (If a toll free telephone number exists, that must be provided as well.),
5. A statement that the consumer reporting agency did not make the employment decision which was adverse to the individual and is therefore unable to explain why the decision was made,
6. A statement informing the individual that he is entitled to receive a free copy of his file from the consumer reporting agency within 60 days of making such a request, and



7. A statement informing the individual that he has the right to dispute the accuracy and/or the completeness of the information provided by the consumer reporting agency.

(The FCRA defines an "adverse action" as being any denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.)

(See sample letter to a person receiving an adverse action based at least in part upon a consumer report at the end of this section.)

Although the FCRA fails to state how long an employer must wait to take its action which is adverse to the job applicant or employee after the individual has received notice of the employer's decision, an FTC Opinion Letter dated June 27, 1997 states that a reasonable period of time for an employer to wait would be **five business days**.

#### **G. Third Party Workplace Investigations May Now Be Covered By The FCRA**

With the explosion of illegal harassment claims in recent years, as well the U.S. Supreme Court's rulings requiring employers to prevent acts of illegal harassment rather than simply taking reasonable measures to correct these situations after they arise, many organizations have started using outside resources as "harassment hotlines" and third-party investigators when employees report such instances. However, the Federal Trade Commission (FTC) has released a Staff Opinion Letter that may make it more difficult to use such third-party investigators.

In this Staff Opinion Letter, the FTC states that using a third-party to investigate a claim of illegal harassment, or to conduct **any** internal investigation for the employer, is an investigative consumer report covered by the FCRA. Therefore, all of the proper notices must be provide and disclosures made to the employee.

Of course, if the investigation is performed by one of the employer's own employees, such as by the human resource department, then no FCRA issue exists. However, the reason employers use outside parties to investigate such incidents is due to the level of expertise and objectivity that exists with a third-party, such as with a human resource consultant or employment attorney.

Therefore, in light of this Staff Opinion Letter, it is probably a good idea for employers to ensure that the proper consumer investigative report documentation is completed before bringing in an outside party to conduct an internal investigation that involves researching and asking questions regarding the conduct of employees.

## H. **Disputing Information In An Investigative Consumer Report Or A Consumer Report**

### 1. **Dispute Existing With Consumer Reporting Agency Data**

If an applicant or employee wishes to dispute the information contained in the report, the individual must first inform the agency that he is challenging the accuracy of its data. The agency would then have **30 days** in which to reinvestigate its information. If the applicant or employee supplies the agency with new information, the agency would then have an additional **15 days** to investigate, if necessary. The agency would then have **five business days** after receiving the individual's objection or presentment of new information to inform its source of this dispute and to supply its source with this newly discovered information.

Within **five days** after completing its reinvestigation, the agency must inform the applicant or employee of its results. If the agency changes its report as a result of this reinvestigation, then the agency must also give the individual a copy of this revised report within this **five day** period.

### 2. **Dispute Existing With An Employer's Data**

If a job applicant or employee notifies an employer that it has supplied incomplete or inaccurate data, the employer is also under a duty to conduct an investigation and review all of the relevant information it has supplied to the consumer reporting agency within **30 days** of receiving the individual's notice. If the employer discovers an error, it must notify the consumer reporting agency of its correction. The employer must also notify the agency of any such disputes as they arise.

The FCRA also prohibits employers from providing information to a consumer reporting agency that they know or consciously avoid knowing to be incomplete or inaccurate.

Further, if an employer "regularly and in the ordinary course of business" supplies information to either one or more consumer reporting agencies and later discovers that it has furnished incomplete or inaccurate information, the employer must promptly notify the agency of the error. The employer must inform the agency of any additional information it discovers and it must make any necessary corrections to the information it furnished to the consumer reporting agency in order to ensure the accuracy and

completeness of the information it provided.

## **I. Requirements Placed Upon Consumer Reporting Agencies**

The FCRA also places significant restrictions on consumer reporting agencies themselves. Under the FCRA, consumer reporting agencies may furnish employers with consumer reports only if:

1. They have provided the employer with a written summary of their job applicants' and employees' rights under the Act and
2. They have obtained a written certification from the employer stating that the report they requested will be used only for purposes permitted under the FCRA, that the employer will fulfill its disclosure and adverse action obligations under the FCRA and that the information contained in the report will not be used in violation of any other federal or state equal opportunity law or regulation. As a result, it will then be the employer's responsibility to ensure that it is in compliance with the law.

## **J. An Additional Consideration Regarding The Use Of Credit Information In Making Employment Decisions**

Of course, if an employer does request that a consumer report or an investigative consumer report be conducted and intends to consider the individual's credit history in making its employment decision, the employer should be certain that the person's credit is **clearly** relevant to the position.

If it can be shown that the individual's credit is not clearly relevant to the position, then using such information in making the employment decision may be seen as a discriminatory employment practice in violation of Title VII. Since more minorities have poor credit than do non-minorities, then such a practice has been found to have a disparate impact against certain protected class individuals.

## **K. Penalties Under The FCRA**

Penalties for violating the FCRA can be quite severe. For willfully violating the Act, an employer could be forced to pay the applicant or employee his actual damages, statutory damages, attorney's fees, costs and punitive damages. Such damages may be no less than \$100.00 and no more than \$1,000.00.

If an employer willfully obtains a report from a consumer reporting agency under false pretenses or without a permissible purpose, both the individual who was the subject of the report and the consumer reporting agency may collect the greater of their actual damages or \$1,000.00 from the employer.

If either the employer or the consumer reporting agency acts negligently and violates the FCRA, both could be held liable to the applicant or employee for actual damages. Costs and attorney's fees are also available.

Violating the FCRA may involve criminal penalties as well. Obtaining a consumer report under false pretenses may also bring criminal penalties, which may include fines and imprisonment for up to two years.

Officers or employees of a consumer reporting agency may also be held criminally liable for disclosing report information without the proper authorization.

**L. Fair Credit Reporting Act Sample Forms**

## **Legal Advice Disclaimer**

**The purpose of these sample forms and letters is not to act as legal advice. Instead, these sample forms and letters are provided for illustrative purposes only and are not intended to provide legal counsel. No one should use these forms or letters or rely upon any of their provisions without fully understanding their legal consequences in the context of their specific facts and circumstances.**

**In reality, the facts of each instance vary to the point that such a brief overview and such a general application of these forms to every situation could not possibly be used in place of the advice of legal counsel. For instance, not every clause included in these samples applies in every situation. Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.**

**Therefore, when using these forms and letters, the advice of an attorney should be sought.**

## Prescribed Summary of Consumer Rights

This summary must be a separate document on paper no smaller than 8x11 inches in size with text no less than 12-point type (8-point for the chart of federal agencies) in bold or capital letters as indicated. The form in this appendix prescribes both the content and the sequence of items in the required summary. A summary may accurately reflect changes in numerical items that change over time (e.g., dollar mounts, or phone numbers and addresses of federal agencies), and remain in compliance.

### A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as if you pay your bills on time or have filed bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. 1681-1681u, at the Federal Trade Commission's web site (<http://www.ftc.gov>). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

- **You must be told if information in your file has been used against you.** Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.
- **You can find out what is in your file.** At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.
- **You can dispute inaccurate information with the CRA.** If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs -- to which it has provided the data -- of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.

- **Inaccurate information must be corrected or deleted.** A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified. If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.
- **You can dispute inaccurate items with the source of the information.** If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.
- **Outdated information may not be reported.** In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.
- **Access to your file is limited.** A CRA may provide information about you only to people with a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.
- **Your consent is required for reports that are provided to employers, or reports that contain medical information.** A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.
- **You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers.** Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.
- **You may seek damages from violators.** If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA:

**FOR QUESTIONS OR CONCERNS  
REGARDING:**

CRAs, creditors and others not listed below

National banks, federal branches/agencies of  
foreign banks (word "National" or initials "N.A."  
appear in or after bank's name)

Federal Reserve System member banks  
(except national banks, and federal  
branches/agencies of foreign banks)

Savings associations and federally chartered  
savings banks (word "Federal" or initials "F.S.B."  
appear in federal institution's name)

Federal credit unions (words "Federal Credit  
Union" appear in institution's name)

State-chartered banks that are not members of  
the Federal Reserve System

Air, surface, or rail common carriers regulated by  
former Civil Aeronautics Board or Interstate  
Commerce Commission

Activities subject to the Packers and  
Stockyards Act, 1921

**PLEASE CONTACT:**

Federal Trade Commission  
Consumer Response Center - FCRA  
Washington, DC 20580 202-326-3761

Office of the Comptroller of the Currency  
Compliance Management, Mail Stop 6-6  
Washington, DC 20219 800-613-6743

Federal Reserve Board  
Division of Consumer & Community Affairs  
Washington, DC 20551 202-452-3693

Office of Thrift Supervision  
Consumer Programs  
Washington, DC 20552 800-842-6929

National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314 703-518-6360

Federal Deposit Insurance Corporation  
Division of Compliance & Consumer Affairs  
Washington, DC 20429 800-934-FDIC

Department of Transportation  
Office of Financial Management  
Washington, DC 20590 202-366-1306

Department of Agriculture  
Office of Deputy Administrator - GIPSA  
Washington, DC 20250 202-720-7051

NOTE: The telephone number (toll free number, if one exists) of the consumer reporting  
agency supplying this report should be included on this form.

**SAMPLE  
FAIR CREDIT REPORTING ACT  
CONSUMER REPORT  
DISCLOSURE AND AUTHORIZATION**

\_\_\_\_\_ (Company) has disclosed to me that it may procure and may take into consideration the results of a consumer report as part of its background investigative process for pre-employment purposes and/or at anytime throughout my employment with the Company, should I be hired.

I also authorize \_\_\_\_\_ (Company) to procure and use as part of its background investigation the results of such a consumer report for pre-employment purposes and/or at anytime throughout my employment with the Company, should I be hired.

Should I become employed by \_\_\_\_\_ (Company), \_\_\_\_\_ (Company) will retain this form on file.

My signature below signifies my authorization of these above mentioned items and my receipt of this disclosure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name



**SAMPLE  
FAIR CREDIT REPORTING ACT  
INVESTIGATIVE CONSUMER REPORT  
DISCLOSURE AND AUTHORIZATION**

\_\_\_\_\_ (Company) has disclosed to me that it may procure and may take into consideration the results of an investigative consumer report for pre-employment purposes and/or at anytime throughout my employment with the Company, should I be hired.

I also authorize \_\_\_\_\_ (Company) to procure and use as part of its background investigation the results of such an investigative consumer report for pre-employment purposes and/or at anytime throughout my employment with the Company, should I be hired.

Should I become employed by \_\_\_\_\_ (Company), \_\_\_\_\_ (Company) will retain this form on file.

I understand that I have the right to demand a complete and accurate disclosure of the nature and scope of any investigative consumer report requested on my background, as well as a summary of my rights under the FCRA.

My signature below signifies my authorization of these above mentioned items and my receipt of this disclosure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**Sample letter to individual receiving adverse action  
based at least in part upon a consumer report.**

Dear \_\_\_\_\_:

This letter is to inform you that (Explain the adverse action taken against the individual.)  
As part of our decision making process, a consumer report was obtained on you.  
Attached you will find a copy of this report for your inspection, as well as a summary of  
your rights under the Fair Credit Reporting Act.

In compiling this report, the following sources were used: (List the sources of this report  
from the agency.) Further, this report was provided only to (List those who received a  
copy of this report.)

This report was provided to us by (Give name, address and telephone number of the  
Consumer Reporting Agency compiling the report. If a toll free number exists, it must be  
provided as well.)

You are also entitled to receive a complete copy of your file from this agency at no  
charge within 60 days of making such a request in writing to the agency at the previously  
mentioned address. However, even though this agency provided this report to us, it  
played no part in making this decision and is unable to explain to you why this decision  
was made.

You also have the right to dispute the accuracy and/or the completeness of the  
information provided by the agency.

Sincerely,

## **VI. REFERENCE CHECKS**

### **A. The Need For References**

In a 1998 survey, the Society for Human Resource Management asked employers what were the types of information they most often discovered as being falsified on job application materials. Those employers who responded to the survey indicated that the following areas were most commonly falsified on application materials:

- Length of Employment 53%
- Past Salary 51%
- Criminal Records 45%
- Former Job Titles 44%
- Former Employers 35%
- Driving Records 33%
- Degrees 30%
- Credit 24%
- Schools Attended 22%
- Social Security Number 14%

Therefore, considering the frequency in which such falsifications occur, it would certainly be wise for employers to conduct background and reference checks on their job applicants before hire.

### **B. Using A Proper Release**

Due to ease by which employers may attempt to check their potential employees' references, failure to do so will almost certainly be seen as being "inappropriate" should a negligent hiring suit ever arise. In order to afford the best chance of obtaining references, it is important to have a proper release in place. A "proper release" will":

1. Grant permission to the prospective employee's references to release information and
2. Release those providing this information from all liability.

### **SAMPLE**

"I authorize investigation of any and all of my background, qualifications and/or any other information from whomever the Company deems appropriate or desires, as I also authorize the release of any and all information by whomever the Company deems appropriate or desires. I also release all parties from all liability for any damage that may result from furnishing this information to the Company. This release extends to all information deemed appropriate by any requesting and/or releasing party, personal or otherwise, as well as to the Company itself."

#### **C. Questions Commonly Asked When Obtaining References**

1. Dates of employment/reason(s) for leaving?
2. Ending wage?
3. Position(s) held with the company and dates?
4. Duties?
5. Accomplishments?
6. Supervision of other employees?
7. How well applicant worked with others?
8. Applicant's strengths?
9. Weaknesses or disciplinary problems?
10. How the reference sees the applicant "fitting into" this vacant position.
11. Would the reference hire/rehire this person?
12. "Can you think of anyone else who might be familiar with his/her skills or who might have worked with him/her in the past?" (These are called "Secondary References" since the applicant is unaware that the employer might be speaking with these people.)

Of course, these same types of questions can be placed on a written form with a proper release signed by the prospective employee and mailed or faxed to the reference.

It is also a good idea to thank the reference for his/her time and ask permission to call back if further information is needed.

## **D. Getting Reference Information**

### **1. Personal References**

If a reference is particularly reluctant in giving information on a former employee, it is sometimes quite effective to ask the person if it would be all right to call him/her at home and get a “personal” reference. Many times, people feel much more comfortable talking to reference checkers from their homes in a personal manner than they do from work.

If the person is reluctant to give out his/her number, it may then be a good idea to give the person a number he/she can call after hours to give a personal reference.

### **2. Remind the person of the protections they have under the law.**

It may also be a good idea to remind the person giving the reference that the applicant has not only signed a permission to release information and a release of all liability, but state law gives tremendous protections to employers when giving reference information on previous employees. It may then be quite effective to fax or e-mail to the reference a copy of the law. The reference may then feel more comfortable in giving the reference information.

### **3. Ask to get reference from the employer’s employment attorney**

Employment attorneys are usually more comfortable in giving reference information to prospective employers since they understand the many protections employers in most states enjoy. (Do not assume that all attorneys are familiar with this area of the law if it is not an area in which they normally practice. Many times, attorney’s who practice in other area need to be educated in this area of the law.)

Ask to speak with the company’s employment law counsel and inquire if he/she might be able to communicate information regarding the applicant.

## **VII. EMPLOYMENT CONTRACTS**

There are many ways to draft employment contracts. However, certain clauses in the standard employment contract have become so popular that they have actually become stand alone contracts of themselves, such as non-compete agreements, as just discussed, non-solicitation agreements, confidentiality agreements and non-raiding agreements. Employers now commonly use these clauses independently of one another or they combine with one another to form overall employment agreement.

### **A. Non-Solicitation Agreements**

Closely related to non-compete agreements are non-solicitation agreements. Under non-solicitation agreements, employees agree to not solicit the company's clients, or possibly even do business with the clients (which is sometimes referred to as a limited non-compete agreement, for a certain period of time after they leave the organization.

The primary difference between non-solicitation agreements and non-compete agreements is that non-solicitation agreements allow employees to continue to work in their employer's industry...they just cannot solicit or conduct business with their former employer's clients for a certain period of time after leaving the company, such as one year.

Therefore, non-solicitation agreements are less intrusive on employees than are non-compete agreements, which the courts tend to prefer.

### **B. Confidentiality Agreements**

Even if employees sign non-compete and non-solicitation agreements, they may still be able to divulge their former employer's confidential information, such as client lists. Therefore, it may be a very good idea for employers to also consider having their employees sign confidentiality agreements.

Basically, confidentiality agreements are contracts in which employees agree not to divulge any of the employer's trade secrets or confidential information both during their employment and for a certain period of time after their employment with the company ends.

### **C. Non-Raiding Agreements**

In today's tight labor market, employers desperately want to hold onto their good employees. However, whenever an employee leaves the organization, the fear of employers is that their former employees may raid the company and take their best employees. To help prevent this from happening, more

and more employers are requiring their employees to sign non-raiding agreements.

A non-raiding agreement states that for a certain period of time after employees leave the organization that they will not solicit or hire away the company's employees. Of course, there are many ways to work around such agreements, but having them in place may act as a deterrent to those former employees who do intend to "steal away" the company's best personnel.

## VIII. THE PRE-INTERVIEW STAGE

It is at this stage, before the manager ever sees the applicant, where most employment interviews fall short and are doomed to fail. **Managers must prepare themselves for the interview.** If managers go into an interview and try to "**wing it**," they have already handicapped themselves greatly. Deep down, they will know they have not prepared themselves properly, which greatly damages their confidence and severely limits their control of the interview.

As a result, due to them being unprepared, these managers have introduced a great number of unknowns into the situation, which will only increase their nervousness even more. Even highly skilled interviewers, interviewers who could "get by" in an interview better than most managers, prepare themselves for each employment interview.

Granted, it may not take a skilled interviewer as long to prepare for the interview as a novice, but they are still prepared. That is why they are "professionals."

Managers should do both themselves and their applicants a favor by preparing for the interview.

### A. Pre-Interview: Managers Should Review The Applicant's Materials

The first thing managers should do in preparing for an interview is to **review the applicant's materials**, such as the candidate's application, resume, letters of recommendation, or any other submitted materials.

Managers should review this material for flaws and for any pertinent information relating to the position available. Managers should also ask themselves such questions as:

- Are all of the blanks on the application completed? Is it neat and orderly?
- Do all the dates coincide with each other?
- Are there any gaps in employment?

- What education or experience does the applicant possess that correlates well with the vacant position?
- Does the applicant's work history seem stable or applicable to the position? Is the application signed?
- Are there any "typos" on the resume or cover letter? (Some managers discount an application immediately for a single typo. This is a judgment call.)

When spotting a typo on a candidate's application materials, good interviewers consider the position for which the candidate is applying. They consider the entire application, resume, and cover letter. Does it appear to be professional? Is the grammar correct? If so, then perhaps they do not discount the entire application for one small error.

Everyone makes mistakes, so interviewers need to consider the entire picture of the person applying for the position when reviewing each candidate's application materials. It is very easy to discount an applicant for one reason or another, where, on the other hand, it is difficult to take the time and be diligent enough to scrutinize an applicant. Managers should be conscientious.

Good interviewers do not discount an applicant simply because it is easier to do so. They use valid reasoning and wisdom. (Again, this is a judgment call.)

**B. Pre-Interview: Managers Should Decide What They Need To Know About This Applicant, Then Choose Their Interview Questions Accordingly**

After the manager has reviewed the applicant's materials, the manager should then have some sort of image in his mind as to what this person is like. Also, and most importantly, certain curiosities about this applicant should cause different questions to come to mind as the manager reviews these materials.

At this point, managers should begin to form a list of what it is they need to know about this applicant. These questions should revolve around the applicant's:

1. Job knowledge, experience, general background.
2. Skills, education.
3. Character (i.e., reliability, honesty, motivation, and attitude).



4. Intelligence (i.e., judgment, curiosity, ability to communicate clearly, flexibility, adaptability).
5. Personal and emotional factors (i.e., self-confidence, emotional stability, level of aspiration, outside interests, and ability to relate to others).
6. Job requirements (i.e., salary, benefits, promotions, and responsibilities).

Managers should also record any discrepancies they find in the applicant's materials and ask the applicant to clear up any such confusion in the interview.

**Managers must choose questions that they are comfortable with and seem appropriate to ask each applicant.**

For example, a skilled interviewer would not ask applicants applying for a janitorial position about their basic management philosophy. The question is not appropriate for such applicants. Instead, the interviewer might want to ask these applicants about various past managers they reacted well to and why.

Still, the questions asked of each applicant asked for each position should be as uniform as possible to help ensure a more equitable comparison of the answers given by the various candidates. (When a set format of questions are asked of each applicant for a given position, the interview is referred to as being a "structured interview.")

Each question managers choose to ask in an interview should be designed to tell them something about the applicant. Managers should strive to gain some insight into their applicant's personality. They are trying to get to know this person. They realize they may have approximately 45 to 60 minutes to assess the worth of another human being, which is no small task. Managers cannot do that accurately unless they "get to know" the candidate somewhat.

"Getting to know" the applicant gives the interviewer insight into this person's values. All successful employees have values comparable to those of the company. Does the employee see both management and labor's side of various issues? How does the candidate feel about tardiness? Stealing? Does the candidate take criticism well and see it as a tool for improvement? The most qualified candidate in the world is worthless without proper values, so managers must choose applicants who have the same values as professed by the firm's management (i.e., positive attitude, good work ethic, etc.) to most effectively staff a successful department.

Still, above all else, managers must remember to make whatever questions they ask the applicant their own. Managers must sound natural as they ask

their questions. Even the best interview questions are worthless if they sound "staged."

Again, an interview is a conversation between individuals to elicit information. Therefore, the interview must flow...it must sound natural... **conversational**. Interviewers must make all the questions they ask in the interview their own, which only comes with practice. They must "take charge" of the interview by directing and controlling it with their questions.

Managers must have an understanding of not only the available position, but also of the department and the company itself. The Human Resource Department can help with such questions regarding policy and benefits, but managers should also have a basic understanding of such areas to appear well-informed to the applicant. This layman's knowledge of policy and benefits will enhance their professionalism. The organization's personnel policy handbook can help in that respect as well.

### **C. Legal Parameters of Interview Questions**

In short, when selecting questions to use in the interviewing process, two cardinal rules should be observed:

1. The questions asked are job related or have a legitimate business reason for being asked and
2. The questions do not ask about a person's protected class.

Therefore, only information that is needed to make the employment decision for the job in question should be solicited. In choosing these questions, interviewers should ask themselves:

1. Why do you ask the question?
2. What is the information you are seeking to ascertain?
3. How is that information important or necessary for you to make a decision on whether or not you are going to employ this person?

### **D. Legal v. Illegal Interview Questions**

#### **1. National Origin**

##### **a) Legal**

- Applicant's place of residence.
- Can applicant legally work in the U.S.?

- Languages which applicant writes or speaks fluently, if applicable to position.

b) Illegal

- Applicant's birthplace, or applicant's parents', spouse's, or other close relative's birthplace.
- Require applicant to submit birth certificate, naturalization, or baptismal certificate before hire.
- Of what country applicant is a citizen.
- Whether applicant is naturalized or native-born citizen, or date citizenship was acquired.
- Inquiry into applicant's lineage, ancestry, national origin, descent, parentage, or nationality.
- How applicant acquired ability to read, write, or speak a foreign language.

**2. Race**

a) Illegal

- Complexion, color of skin.
- Require photograph affixed to employment form before hire.

**3. Religious affiliation**

a) Legal

- Willingness to work required work schedule.
- General personal and work references not related to any protected class.

b) Illegal

- Inquire into applicant's religious denomination, affiliation, church, parish, pastor, or religious holidays observed.
- Request references specifically from clergy or any other persons who might reveal an applicant's protected class status.

**4. Sex**

a) Legal

- Does applicant have any family, business, health, or social obligations that would prevent him/her from working consistently, or working overtime, or traveling? (Takes in religious preference area as well.)
- Is applicant willing and able to lift "X" number of pounds? If yes, and there are doubts, then applicant can be tested by the employer. (Must be applicable to position and present employees.)

b) Illegal

- Intentions of marriage or plans to raise a family?
- While applicant is working, who will take care of children?
- If applicant is married, divorced or widowed.

**5. Age**

a) Legal

- Is applicant over 16 years of age? 18 years of age? 21 years of age?

b) Illegal

- Applicant's age.

**6. Other Areas**

a) Legal

- Organizations of which applicant is a member, excluding organizations which indicate the person's protected class status.
- Is applicant willing to relocate?

## E. Types of Interview Questions

There are many different ways to ask interview questions.

1. **Closed-Ended Questions:** Closed-ended questions ask for a short definitive answer from the interviewee (“Did you like working with ABC Company?”)
2. **Open-Ended Questions:** Open-ended questions ask for a longer explanation from the interviewee (“Tell me why you liked it at ABC Company.”)
3. **Hypothetical Questions:** Hypothetical questions occur when the interviewer poses a specific situation to the interviewee and the interviewee explains how he/she would handle the situation. (“If a disgruntled employee came into the building wrapped in dynamite, what would you do?”)

It is always a good idea to include in an interview hypothetical situations to determine how the interviewee would react in certain situations. Good interviewers also give their interviewees real-life situations to reason through based on situations that actually happened within the organization.

The true advantage of asking interviewees to solve hypothetical situations based upon real-life instances is that they allow the interviewer to get a glimpse of the person’s instantaneous thought and problem-solving processes.

4. **Experience/Behavioral Questions (S/A/R Format: Situation-Task/Action/Result):** Experience/Behavioral questions in an S/A/R format ask the interviewee to think of a specific **situation** he/she has had in the past, what was the interviewee’s role, what **actions** the interviewee took in this situation and what was the **result**. This allows the interviewer to see how the person reacts in such situations in real life, how their thought processes work in real situations and how successful this person has been in these situations.

Such questions would be posed in the following manner:

“Think of a situation you have been in where you had to layoff an employee. What actions did you take to do this and what was the final result?”

As follow up questions, it may also be a good idea to ask the interviewee if he/she would now do anything differently. Also, in

order to help establish the truthfulness of the answer, interviewers may want to ask the interviewee what his/her supervisor or co-workers would say if the interviewer was to call them on the phone and ask them about this instance? The interviewee's reaction to such follow up questions can be quite revealing.

## **F. Sample Interview Questions**

Perhaps the most important part of the interview process lies in preparing for the interview itself, which includes choosing the proper questions to ask. Below is a list of sample interview questions from which interviews may choose a set of questions for their upcoming session.

### **1. Experience (Review Pertinent Former Positions or Responsibilities):**

- a) Tell me about this (particular former) position?
- b) Why did you or are you leaving?
- c) What did you like best about this job or find particularly satisfying?
- d) What did you not like? (Is that why you left?)
- e) What kind of responsibilities did you have and what kind of decisions did you typically make?
- f) What did you like best about the company?
- g) What did you like least?
- h) What sort of atmosphere or environment did this company promote?
- i) What was the most challenging part of this position?
- j) What do you feel are the greatest strengths you can bring to this company?

### **2. Knowledge of Organization**

- a) What do you know about our organization?
- b) What do you like and dislike about this type of organization?
- c) How does this organization fit into your goals?

### **3. Goals/Motivations**

- a) What motivates you most of all on a job?
- b) What do you feel this position can give you that your other positions have not?
- c) In the next five or ten years, where would you like to be career-wise?
- d) How does this company and this position fit into that goal?
- e) What attracted you to this kind of work?
- f) What specifically do you hope to gain from this position?

### **4. Attention to Detail**

- a) Describe an instance to me where you worked on a very detailed project. Tell me what your role was, how you handled the situation and what was the outcome.
  - (1) Is there anything you would now do differently?
  - (2) What if we called your former supervisor or co-workers and asked them about this instance? What would they tell us?

### **5. Flexibility**

- a) Describe to me a specific instance where you had your plans at work changed by your supervisor or a co-worker that disrupted your agenda. What was your reaction and what was the result?
  - (1) Is there anything you would now do differently?
  - (2) What if we called your former supervisor or co-workers and asked them about this instance? What would they tell us?

### **6. Work Ethic**

- a) Describe to me the worst aspect of your current job?
- b) When do you do your best work? Why?
- c) What is your greatest accomplishment in your life? Why?

## **7. Managing Multiple Priorities**

- a) Describe to me how you organize your day.
- b) We have all had an occasion when we were working on something that just “fell through the cracks” and did not get done. Can you think of an instance where this has happened to you? How did you handle it and what was the result?
  - (1) Is there anything you would now do differently?
- c) If not, what would you do if I gave you a project that needed to be done in two days, another manager gave you another that needed to be done in two days, and a third manager gave you a project due by the end of the day?

## **8. Computer Skills**

- a) Tell me specifically what computer software systems have you operated?
- b) What work specifically have you done with these systems? Formatted documents? Created tables? Etc.?
- c) If we were to call your supervisor and ask about your computer skills, what would he/she say?

## **9. Communication Skills**

- a) Describe to me an instance when you had to communicate bad news to another employee (person). How did you handle the situation and what was the final result?
  - (1) Is there anything you would now do differently?
  - (2) What if we called your former supervisor or co-workers and asked them about this instance. What would they tell us?
- b) If you cannot think of an instance, how would you communicate bad news to another person, such as telling the person he is not doing well in his job?



**10. Perceptions:**

- a) What do you suppose your co-workers would say about you if we were to contact them?
- b) What would your supervisor say about you if we contacted him/her?
- c) Do you have a particular reason to believe he/she would give such a reference?

**11. Likes/Dislikes:**

- a) Which position did you like the best?
- b) Why?
- c) Describe the perfect atmosphere or environment in which you would like to work.
- d) Describe an ideal co-worker.
- e) Describe the ideal supervisor.
- f) Describe the perfect job for you, no matter how imaginative.

**12. Attitude/Ethics**

- a) What do you feel your obligations are to the company for which you work?
- b) What do you think a company's responsibilities are to you as an employee?

**13. Honesty**

- a) Situations arise in life where we are asked to bend or even break the rules...or to even lie. Describe an instance to me where you were placed in such a situation, what did you do and what was the final result?
  - (1) Is there anything you would now do differently?
  - (2) What if we called your former supervisor or co-workers and asked them about this instance. What would they tell us?

#### 14. Miscellaneous

- a) What is the most challenging hurdle you have ever had to face and how did you go about overcoming it?
- b) What is the most difficult decision you have ever had to make in a job and how did you go about dealing with this situation?
- c) We all have regrets in life, but what is your greatest regret?
- d) What is your greatest accomplishment?
- e) What is your greatest fear in your career?
- f) Hobbies? Interests?
- g) Which subjects did you like best in school? Least?
- h) What other field did you consider before you chose this one?
- i) What does it take to be a good supervisor?
- j) Would you make a good supervisor? If so, why?

#### 15. Final Question:

- a) If I were to make you an offer of employment, what could I tell my supervisor in trying to justify this decision to him/her so he/she would think I was doing a good job in recommending you?

\*This is a **much** better way to ask an applicant:

"Why should we hire you?"

Once the manager has reviewed the applicant's materials, assembled a list of interview questions, and has become familiar with the particulars of the position, the manager is then ready to begin the interview.

## **IX. THE INTERVIEW ITSELF**

### **A. What Is An Interview?**

An interview is simply an exchange of information between people for the purpose of gaining a better understanding of their compatibility. Therefore, it is important that interviewers establish an atmosphere that is conducive to encouraging a free exchange of information in order to maximize this understanding of one another. Unfortunately, too many "false positives" and "false negatives" occur in hiring decisions simply because an environment conducive to communications was not created.

### **B. The Interviewer's Style**

In order to set the proper atmosphere for the interview session, interviewers should:

1. Set the proper tone. An interview is an opportunity to get to know the applicant, who is your guest.
  - a) Interviews are not "grill" sessions and the job candidate is not your prisoner. The job applicant is your guest and should be treated as such.
2. A good interviewer comes across as interested in the applicant. Good interviewers do not project an air of insincerity, boredom, superiority, a lack of interest in the candidate, or a lack of comprehension of the job requirements or the company.
3. Good interviewers are also well informed regarding the vacant position and the company itself. Never "wing" an interview. They prepare.
4. Interviewers should also:
  - a) Watch their nervous habits. They are distracting (i.e., pen clicking, knuckle cracking, etc.)
  - b) Look professional.
  - c) Schedule enough time for the interview. Don't rush the candidate.
  - d) Be well prepared. Have interview questions ready and the applicant's materials reviewed.
  - e) Make eye contact.

**NOTE:** Good interviewers look their applicants in the eye. That is singular – eye. It is physically impossible to stare someone in the eyes. Humans can only focus on one eye at a time, so if managers constantly glance from one eye of the applicant to the other, they will appear to be "shifty." This may cause the applicant either to be more nervous or to mistrust the manager.

- f) Not boast about themselves and try to "out do" the applicant. Interviewers sometimes feel as if they must impress the applicant with their own accomplishments and success. This is at the least unprofessional and at the most rude. Most people would not invite their friends over to their homes and then make them listen to the host brag about themselves for an entire evening...hopefully. So, interviewers should not do it to their applicants. Managers have jobs – they should now give the applicant a chance to get one.
- g) Allow applicants' an opportunity to ask questions. **REMEMBER:** the applicant is looking at the company too. The "best" applicants have the qualifications to go somewhere. Good interviewers realize this and do not want to be in a position where the best candidates are not interested in the vacant position, the company or both.

With these points in mind, it is then time for the manager to talk to the applicant.

### **C. Beginning The Interview Session**

When beginning the interview session, again, a few simple rules should be followed:

1. Escort applicants to the office where they will be interviewing. Do not make them wander around the building alone.
2. Offer a drink of water and a chance to use the restroom before beginning. (It is no fun to watch an applicant choke and squirm throughout the interview.)
3. Give permission to take notes and ask permission to take them yourself.
4. Put applicant at ease. Explain interviewing process you will be following. This sets the agenda for the interview. (Helps interviewer retain control.)
5. Break the ice. Develop a rapport. Get the applicant used to talking. (i.e., closed ended questions, discuss familiar topics, get applicant to talk about his/her work history, etc.)

6. Probe into deeper topics from your interview questions.
  - a) **Briefly** record answers on interview sheet. Interviewers should not spend all of their time writing down answers. It is awkward and has an adverse affect on the interviewer's ability to truly listen to the applicant's answers. Interviewers should jot down short notes, then fill in the details after the interview is over, which is part of the "Post-Interview" process.
7. Explain the position and the company to the applicant, both the good and bad.
  - a) Give applicants a **Realistic Job Preview, or RJP**. Tell them the good points as well as the bad points of the job. They will find out soon enough anyway. The secret to recruitment is retention...not attraction alone.

The RJP strategy for interviewing was developed for the Sears and Roebuck Corporation as a result of their tremendous turnover in their management trainee recruits. Within the first six months of employment, a ridiculous number of management trainees were leaving, which was costing Sears a literal fortune. The reason for this high turnover had to be discovered and corrected.

Upon investigation, it was discovered that Sears' recruiters were given very strict recruitment quotas to meet. Their success in these jobs was based on their level of recruitment, not the retention, of these new recruits. Therefore, to meet these strict quotas, it was discovered that Sears' recruiters were painting a very flowery, yet unrealistic picture, of what life as a management trainee was like at Sears, all in an effort to simply fill the available positions.

In essence, these recruiters were actually lying to their applicants in an effort to meet their recruitment quotas. As a result, when these new employees later discovered the truth, they felt tricked so they quit. Such practices were costing Sears millions of dollars in turnover costs.

Sears' solution: Eliminate the recruiters' quotas and force the recruiters to tell the applicants exactly what the job is really like -- give them a realistic job preview (RJP). As a result, the number of recruits dropped, but the retention of recruits increased greatly, which in turn reduced the number of recruits needed in the first place.

Overall, turnover dropped tremendously since the applicants knew what to expect from their new positions. They knew what they were "getting into." The RJP program saved Sears a fortune.

The bottom line of any manager's recruitment efforts is to make a good match between the vacant position and the person to fill the position. This can only be done by including an RJP in the hiring process and thus effectively controlling expectations.

**NOTE:** **In order to increase the realism of the job for the applicant, it may be a good idea to have the applicant come into the worksite for a morning or a few hours to observe. Applicants can then get a real picture of what it is like to work in this environment.**

**Also, since the applicant is not yet an employee, the employer can make such observation time a part of the application process. The employer is therefore not required to pay the applicant for his/her time.**

8. Allow all applicants an opportunity to ask questions. Remember: they are looking at you as well as you looking at them.
9. Inform applicant of the hiring procedure to be used, give them a business card, thank them for their time, and send them on their way.

## **X. THE POST-INTERVIEW PROCESS**

### **A. Filling In The Details And Due Diligence**

After the interview session is over, it is important for the interviewer to take a few minutes and do the following:

1. Write down impressions of applicant. Fill in the details of the answers the applicant gave by referring to the brief notes that were taken in the interview itself.
2. Perform background checks, as determined appropriate. (Make sure Fair Credit Reporting Act requirements are met.)
  - a) Check references. (See previous discussion.) Do not forget to use "secondary references," which occur when an interviewer asks the reference if anyone else knows the applicant and would be willing to provide information.
  - b) Drug testing.
  - c) Credit checks.

- d) Criminal checks.
- e) Bureau of Motor Vehicles report.
- f) Other background checks as deemed appropriate.

## B. Choosing A Candidate

1. Once the best applicant is chosen...ACT!
  - a) Procrastination is the kiss of death in recruitment. The best applicants go first.
2. Once the applicant accepts the position, send all of the rejected applicants "thanks...but no thanks" letters. This is merely the professional thing to do. It reflects **VERY** poorly on those companies that never contact their interviewees again.

Interviewers should then place all of their interview notes regarding these rejected applicants, along with their other applications materials, such as reference notes, applications, and so on, into storage. This way, if a disgruntled applicant claims he/she was rejected by the company for an illegal reason, these materials will prove invaluable in showing that no illegal activity occurred.

3. Many times a hiring decision comes down to two final candidates where the difference lies in one person having a higher level of technical knowledge while the other seems to have a higher level of motivation or better personality traits (values). Both qualities are important since **"ABILITY X MOTIVATION = PERFORMANCE."**
4. However, bright people can learn. Technical knowledge can be acquired, whereas high motivation and positive personality traits cannot. A company who tries to "give" employees different personality traits through training is wasting its time. Therefore, good recruiters give a great deal of weight to the level of motivation they see in job candidates, even at the expense of technical expertise.

Of course, ability (skills and knowledge) and motivation (attitude) are important qualities for employees to possess. To have all of one and none of the other is worthless. If an employee is a "10" on ability but a "0" on motivation, 10 times 0 is still zero, and vice versa. Therefore, both traits should be valued by managers, especially when they are interviewing.

Still, no one can "give" another person personality traits (i.e., intelligence, drive, sense of humor, etc.). Such an attempt is an exercise in futility. These basic characteristics must already exist

within the employee, which can then only be "molded" or polished" by the manager.

It is upon this reasoning that the old adage is based which says:

**"Never try to teach a pig to sing. It wastes your time and it irritates the pig."**

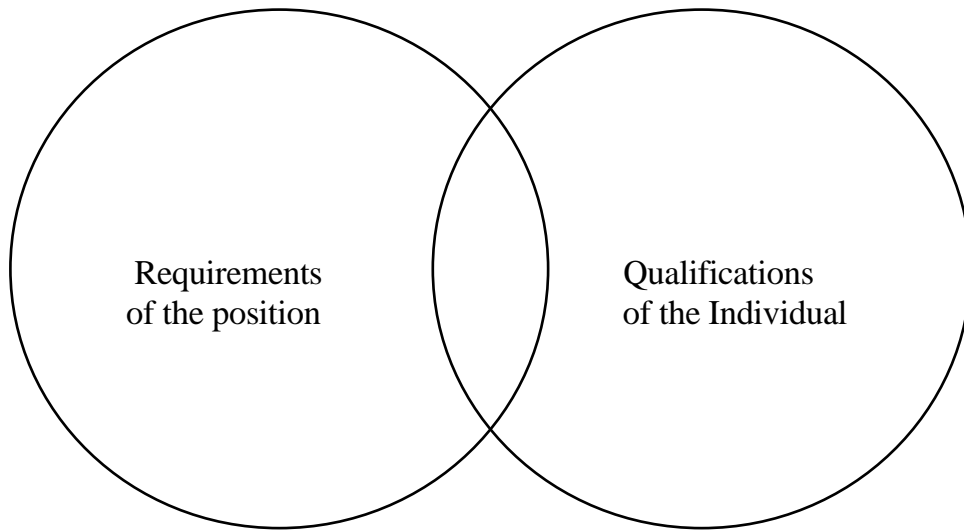
The moral: Managers should not waste their time on trying to teach someone something that they have neither the ability nor the motivation to learn.

The secret to avoiding such problems as having unqualified employees who cannot be trained is to never hire them in the first place. Managers should try to discover who those individuals are with the positive personality traits and qualities in the hiring process. If managers can make such choices, their jobs will be much easier ones to perform. This is why managers must get to know their candidates.

5. A concentrated, concerted effort must be made along with human resources to find these "good people." It takes a great deal of time and effort, but it is all well spent when the right candidate is found and hired, especially when a manager considers the fact that it takes at least ten times as much time and effort to "correct" or "remove" a problem employee once they have "taken root" in the organization than it does to follow a proper hiring procedure in the first place. Therefore, it is far better to take the steps necessary to avoid the problem entirely.
6. Also, it is very rare for recruiters to find an applicant with exactly the skills that they need for a particular position. In reality, good recruiters look for applicants whose strongest qualifications overlap with the more important requirements of the available position.

When such an individual is found, the recruiter knows he has found a "winner," which can be diagrammed as follows:





7. Another important point many smart recruiters realize as being true is that studies reveal that hiring **disabled individuals** often results in acquiring an individual who is more dependable, has superior attendance habits, is more loyal, is more highly motivated, is more intelligent, is better qualified, and exhibits a longer retention period than non-handicapped employees. Therefore, smart recruiters give such people a chance to prove themselves, which they usually do.

### C. Offer Letters Should . . .

Welcome the new employee to the organization, but the letter should not make any promises or assurances, either expressed or implied, that the individual is either guaranteed his/her position for any period of time or that the person is anything but an employment-at-will employee. Examples of phrases to avoid are as follows:

1. "You will find that we always treat our employees fairly."
2. "We are looking forward to you working for us for many years to come."
3. "Our motto is that "You'll always have a home here at ABC Company."

An offer letter should simply outline the parameters of the individual terms and conditions of employment, including the person's:

1. Salary or wage in a weekly, bi-weekly or monthly manner rather than on an annual basis,
2. Position or Title,
3. Start Date,

4. Any other special considerations that may have been given to the individual from negotiation process, and
5. Who to contact with any further questions.

Basically, offer letters should be short, sweet, and to the point, as the following sample shows:

Dear John Doe:

We are very pleased you accepted our offer of employment and that you will soon be coming aboard here at ABC Company. It is our hope that you will find the environment here one that you will enjoy and find rewarding.

To clarify a few issues:

- Your starting wage will be \$1,000.00 per week.
- Your title will be that of Director of Human Resources.
- Your starting date will be October 1, 2000.
- You will earn three weeks of vacation time per year. However, per our agreement with you, you will receive five personal days to use at your discretion beginning your first day.

I hope I have addressed all of the pertinent issues in this letter. If I have forgotten anything, please feel free to give me a call at the telephone number listed at the bottom of this letterhead.

Sincerely,

Scott Warrick

**These materials are not intended to act as legal advice but are instead for informational purposes only. The facts of each instance vary to the point that such a brief overview cannot be used in place of the advice of legal counsel. Therefore, whenever such issues arise, the advice of an attorney should be sought.**

**EXERCISE: What Questions Does This Application Raise?  
ABC COMPANY  
APPLICATION FOR EMPLOYMENT**

**ABC COMPANY IS AN EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER. IT IS THE PHILOSOPHY, INTENT, AND COMMITMENT OF ABC COMPANY TO ADHERE TO A POLICY OF EQUAL EMPLOYMENT OPPORTUNITIES FOR ALL APPLICANTS AND EMPLOYEES WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, AGE, ANCESTRY, NATIONAL ORIGIN, VETERAN STATUS, MENTAL OR PHYSICAL DISABILITY OR ANY OTHER STATUS PROTECTED BY LAW.**

When completing this application, do not leave any questions blank. Do not substitute “see resume” for any requested information. Complete one application for every job for which you are applying.

THIS APPLICATION WILL REMAIN ACTIVE FOR THREE (3) MONTHS UPON SIGNING.

**PERSONAL DATA**

Last Name Doe		First John		Middle		Date Today	
Street Address 111 Main Street				Home Phone (614) 555-1111			
City, State, Zip Columbus, Ohio 43215				Business Phone N/A			
Are you 18 years or older? Yes				Social Security No. 100   00   000			
Position Desired Any				Salary Desired Any			
Are you currently employed? No				Are you currently on “lay-off” status and subject to recall? No			
When would you be able to begin work? When you want		Are you available to work: X Full-Time    X Part-Time    X Shift Work    X Temporary					
Are you legally eligible for employment in the United States? I think so				If necessary, are you available to work overtime? If you ask nice.			
Have you been convicted of a felony or misdemeanor (other than traffic violations)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes explain: Maybe				NOTE: A conviction will not necessarily be a bar to employment. Factors such as date, nature and number of offenses, age at the time of offense and rehabilitation will be considered.			
How did you learn of ABC COMPANY? I blacked out fell asleep in your doorway last week.				Are you related to anyone employed at ABC COMPANY? I’m not shur.			

**EMPLOYMENT HISTORY (List most recent employer first)**

Company Name: Allied, Inc.	Telephone Number: (614) 436-5880
Address: 222 East Campus View Blvd., Cols. Ohio 43235	Employed (mm/yy) From: 1/96 To: 5/96
Name and Title of Supervisor: Tim Moore, Director of Facilities	Annual Pay Start: \$8.00 Finish: \$7.50
Job Title and Job Description: Janator: Cleaned restrooms, cutt grass, swept shovelled snow	Reason for Leaving:

Company Name: ABC Coop.	Telephone Number: (614) 555-1122
Address: 111 West Main Street, Cols. Ohio 43227	Employed (mm/yy) From: 10/95 To: 12/95
Name and Title of Supervisor: Billy, Head Janator	Annual Pay Start:\$ Finish:\$
Job Title and Job Description: Janator: See up there	Reason for Leaving: They fired me cause I stunk.

Company Name: XYZ Coop..	Telephone Number: (791) 543-2111
Address: 15 West LayFayett Ontario, Canada	Employed (mm/yy) From: 1/95 To: 12/95
Name and Title of Supervisor: Tom, VP of Janators	Annual Pay:Start:\$ 10.00 Finish:\$10.00
Job Title and Job Description: Janator: See up there	Reason for Leaving: Quit

**EDUCATION**

	High School	College/University	Graduate/Professional
School Name, Address and Phone Number	Montreal Institute For Kids		
Years Completed	(9) 10 11 12	1 2 3 4	1 2 3 4
Diploma/Degree			
Course of Study			
Honors Received			

Degree of educational achievement is considered in the hiring process only to the extent that specific educational achievement is a requirement for performing the job.

**SPECIAL SKILLS AND TRAINING**

Other than English, are you fluent in any language? Please List::

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In which computer programs do you feel you have proficiency?

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Do you have any other advanced training, continuing education or special study experience that you think would be helpful in the position for which you are applying? Please list:  
 I got all my teeth and I don't eet whut I find on the floor.  
 I have spent the last few years off frum work due to in-service.

**REFERENCES**

Name	Relationship	Years Known	Telephone Number

May we contact your current employer? **NO!!!!**

# ***Scott Warrick, JD, MLHR, CEQC, SHRM-SCP***

***Scott Warrick's HR Consulting & Employment Law Services***

(614) 738-8317 ♣ [scott@scottwarrick.com](mailto:scott@scottwarrick.com)

[WWW.SCOTTWARRICK.COM](http://WWW.SCOTTWARRICK.COM)

Link Up With Scott On [LinkedIn](#)

## ***Scott's Bio***

Scott Warrick ([www.scottwarrick.com](http://www.scottwarrick.com)) is a practicing Employment Law Attorney, Human Resource Professional and three-time best-selling author with over 40 years of hands-on experience. Scott uses his unique background to help organizations get where they want to go, which includes coaching and training managers and employees on site in his own unique, practical and entertaining style.

Scott combines the areas of law and human resources to help organizations in “Solving Employee Problems **BEFORE** They Start.” Scott’s goal is **NOT** to win lawsuits. Instead, Scott’s goal is to **PREVENT THEM** while improving **EMPLOYEE MORALE**.

Scott’s first book, [\*Solve Employee Problems Before They Start: Resolving Conflict in the Real World\*](#), is a #1 Best Seller for Business and Conflict Resolution. It was also named by EGLOBALIS as one of the best global Customer and Employee books for 2020-2021. Scott’s next book, [\*Living The Five Skills of Tolerance\*](#), is also a #1 Best Seller in 13 categories on Amazon. His most recent book, [\*Healing The Human Brain\*](#), is an International Best Seller in 14 categories with sales in over a dozen countries worldwide.

[\*\*Scott Trains Managers & Employees ON-SITE in over 50 topics\*\*](#), all of which are customized for each client. Scott is a national speaker who travels the country presenting seminars on such topics as Healing The Human Brain, Employment Law, Conflict Resolution, Leadership and Tolerance, to mention a few.

Scott is also a seven-time SHRM National Diversity Conference presenter. In 2023, he presented his ground-breaking “**TOLERANCE & BRAIN HEALTH**” program.

Scott’s [\*\*MASTER HR TOOL KIT SUBSCRIPTION\*\*](#) is a favorite for anyone wanting to learn Employment Law and run an HR Department.

Scott’s videos are also favorite tools for anyone wanting easy, convenient and affordable access to in-house training, including his [\*\*SCOTT'S SUPERVISOR MASTER VIDEO SERIES\*\*](#) and his [\*\*STOP BULLYING & HARASSMENT NOW!\*\*](#) video, which complies with all of the new EEOC Harassment Training Guidelines.

Scott was named one of Business First’s 20 People To Know In HR by CEO Magazine’ and a Human Resources “Superstar” in 2008. Scott also received the Linda Kerns Award for Outstanding Creativity in HR and the Ohio State Human Resource Council’s David Prize for Creativity in HR Management.

Scott’s academic background and awards include Capital University College of Law (Class Valedictorian (1st out of 233) and Summa Cum Laude), Master of Labor & Human Resources and B.A. in Organizational Communication from The Ohio State University.

For more information on Scott, just go to [www.scottwarrick.com](http://www.scottwarrick.com).

**“PICK ME ... PICK ME ... PICK ME!”**  
**Designing & Conducting A Legal And Effective Interview**

**Start Date: 3/11/2024**  
**End Date: 12/31/2024**

**Recertification Credit Hours: 3 General Credit Hours**

**SHRM Activity ID: 24-RRQUK**

**HRCI Program Activity ID: 662706**