

# Time Invested Up Front in the Hiring Process Will Save Time Later

By Rebecca Simkins

**A**s an employment defense lawyer, I represent a variety of businesses that are sued for wrongful discharge, employment discrimination, or some other type of employment-related claim. There are steps employers can take during the hiring process to minimize these types of problems. Unfortunately, many businesses, including law firms, hire candidates without investing much time in the interview and hiring process. Hiring decisions may be made because the person has worked for another lawyer, is pleasant and personable at the interview, or is physically attractive. Lawyers are often too busy and don't realize that the investment of time in the hiring process is critical to the success of the employment relationship. This article will address steps that can be taken during the pre-employment process to make the employment relationship a positive one. Emphasis in this article will be on hiring clerical employees.

## Step 1: Selecting Candidates to Interview

Sadly, in this Michigan economy with its high unemployment rate, it is fairly simple

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—JoAnn Hathaway and Diane Ebersole,  
Practice Management Advisors

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to find applicants for positions. A glance at the Sunday want ads and the legal newspapers and journals is a grim reminder of the current economic times. However, even with record numbers of people available for work, in the legal workplace, qualified applicants can still be hard to find. Hiring the wrong person can lead to problems, wasted time, and even litigation.

Smaller law firms may not have human resource professionals on staff to sift through résumés and conduct initial screening interviews. Additionally, the firm's budget may not permit the use of an employment agency to locate suitable candidates or conduct pre-employment testing and initial interviews. It may be difficult for lawyers in these firms to devote precious time to the hiring process because it takes time away from the legal work that generates revenue. With this in mind, it is critical that the attorneys involved in hiring *make* time for the process, because time invested up front may save time later dealing with problems and unexpected performance deficiencies.

The selection process first involves a careful review of résumés. An advertisement for a job opening may result in the receipt of many résumés. Once the résumés are reviewed, three to five candidates should be selected to interview.

The next step is the phone call to set up the interview, which can provide a great deal of useful information about the potential employee. How does the individual sound on the phone? Will answering the phone be a job duty, and if so, what impression does he or she make? If you are greeted with a recorded message, listen to it for content. I called a legal secretary once for an interview, and her voice-mail greeting was so inappropriate that I didn't leave a message to set up an interview.

## Step 2: Using an Employment Application

Another critical, but surprisingly overlooked, step in the hiring process is the use of the employment application. The application can set forth in writing the at-will employment relationship, the need to communicate accommodation requirements, and other useful information. The applicant must execute the application, indicating agreement to the terms and that the information represented is accurate. If an applicant refuses to sign the application, the employer has no obligation to continue the interview.

I recently handled two lawsuits, representing employers who had been sued for employment claims. In both cases, the properly drafted and executed employment application was critical to the quick disposition of the case.

In case "A," the prospective employee filled out the employment application, indicating that she had voluntarily left certain employers. At the end of the application, she "certified" (via her signature) her status as an at-will employee, that the information contained in the employment application was true, and that if any of the information she provided proved false, she would be immediately terminated. When my client terminated this employee for poor performance and absenteeism, she filed a lawsuit claiming wrongful discharge. During the case, it was established through information subpoenaed from prior employers that the plaintiff had falsified her employment application. Her attorney agreed to settle the case for a nominal amount after the employment application fraud was discovered.

In case "B," the prospective employee applied to work at a medical facility and

was required to disclose criminal convictions on the application pursuant to Michigan law. She certified that the information she provided on the application was true, and that if the information was proved false, she would be immediately terminated. However, she had been convicted of two felonies that she failed to disclose on the application. These felonies did not appear in the Michigan State Police Criminal Conviction Record for several years. When this information was discovered, the employee was terminated and then claimed that her discharge was discriminatory. The employer successfully defended the matter on the basis of the employment application fraud.

### Step 3: Conducting Pre-Employment Testing

The need to test critical skills such as typing, spelling, and grammar is often overlooked in the hiring process. Skills tests must be administered uniformly and given to *all* applicants for a position so that there is no perception of discrimination in administering the testing.

Some years ago, I conducted interviews for a legal secretary. It was surprising how many applicants overstated their credentials. The person who claimed to type 110 words per minute in fact typed 65 words per minute.

During the hiring process for the legal secretary, applicants were asked to compose a letter and type it. They were also given a timed typing test. Because the position required knowledge of litigation, applicants were asked to prepare a pleading from scratch, using the court and party information that was provided. Applicants were also asked which documents were necessary in filing a motion. Those indicating knowledge of the particular software required in the position were asked to prepare a document using the software, such as an Excel spreadsheet or a PowerPoint presentation. Applicants who objected to this testing were thanked for their time, but told that skills needed to be verified before hire.

The failure to test applicants can lead to problems later. In one situation, an attorney hired a legal secretary who fell into several civil-rights-protected classes. This

individual had a great interview and provided all the right answers. However, her skills were not tested. Immediately after the secretary was hired, the attorney was involved in a trial lasting more than a month. By the time the attorney realized that the secretary's skills were substandard, the secretary had been employed for four months—beyond any presumptive probationary period. When the attorney abruptly fired the secretary because she was a slow typist, a civil rights claim was filed. Had the attorney taken the time to administer skills tests during the interview process, she would have known that the applicant's skills did not meet the job requirements.

The steps discussed are just a few that are involved in the hiring process. A thoughtful interview and proper reference checks are also important in helping an employer

make the right hiring decision. For the reasons discussed in this article, it is critical that employers devote enough time, energy, and effort to the hiring process to ensure that the candidate who is selected has the qualifications required to be a successful employee. ■

*Nothing in this article is to be construed as legal advice.*

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