



Make Hiring Your Organization's Strength

BY CARISSA TANZOLA

While great employees can make a great workplace, hiring the wrong individuals can be a costly mistake. For the best outcomes, follow these do's and don'ts of the application, interview and employment contract process.

Step 1: Job Advertisements

"Say what you mean, and mean what you say" when it comes to writing job advertisements. An accurate and thorough ad helps employers target and ultimately hire the right employees.

A well-drafted job advertisement can also reduce an employer's exposure to liability. In one court case, an applicant was hired without being told the job was contingent on the approval of funding. After the applicant accepted the position, quit his current job, sold his house and moved his family, he was told that funding had not been approved. He

successfully sued the employer for negligent misrepresentation.

Step 2: Interview

Employers should always exercise their right to meet a candidate in person. The only restriction is that questions cannot be asked regarding race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

Candidates applying for a position as a fitness instructor may submit a video demonstrating their skills and abilities. This is a helpful evaluation tool, but it should not replace a face-to-face interview. Great employees require skills above and beyond those that can be demonstrated via video or over the phone. Get to know the person behind the video. Is this someone

For information on provinces other than Ontario, contact your local employment standards or labour standards branch.

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you would be proud to have represent your organization?

Step 3: Check References

Surprising as it may seem, many employers do not check references. Even if a candidate has provided an impressive job application and given a great interview, references should be checked. Ask question such as, Was he or she technically sound, professional, dedicated and receptive to constructive feedback? Is this candidate a leader, a follower and a role model for other employees? What are his or her strengths and weaknesses? Why did the candidate leave your organization? Would you hire back this candidate?

Remember that a prospective employer is not restricted to checking only the references offered by the candidate. An employer may check references from any appropriate source.

Step 4: The Decision to Hire

Some employers wonder if an offer of employment can be contingent on the results of pre-employment drug or alcohol testing and background checks.

Pre-Employment Drug or Alcohol Testing

In Ontario, for example, drug and alcohol testing is not permissible even when the position could involve health and safety risks. This is because courts have held that drug and alcohol test results indicate only whether an individual has consumed drugs or alcohol in the past; they cannot predict whether an individual is capable of performing essential job duties.

Pre-Employment Background Check

In some cases, an employer may wish to conduct a background check on a prospective employee. Traditionally, this is the case where the position of employment is also a position of trust involving money, children, personal safety, etc.

Recently, background checks have become additionally important

because of the Ontario government's Bill 168 – the violence and harassment amendments to the Occupational Health and Safety Act. Bill 168 (which comes into force on June 15, 2010) requires all provincially-regulated employers in Ontario to protect workers against violence and harassment in the workplace.

An employer may conduct a background check on a prospective employee if:

1. The candidate is advised at the outset of the recruitment process that a satisfactory background check will be a condition of employment; and
2. The employer obtains the candidate's written consent.

Upon receiving the results of the background check, an employer in Ontario may refuse to hire the candidate if:

1. The candidate has a criminal record which has not been pardoned under the Criminal Records Act and;
2. The candidate's record does not involve an offence under an Ontario statute (such as the Highway Traffic Act).

This is the case regardless of both the nature of the job and the nature of the offence.

Step 5: The Employment Agreement

A written employment contract is one of the most effective tools an employer has to confirm the expectations of the parties, and it helps quantify and contain employment-related liability. Provided the terms comply with minimum rights and benefits set out in applicable provincial legislation, an employment agreement should protect the employer to the fullest extent possible.

The agreement should cover every material term and condition of employment, including but not limited to compensation, duties and responsibilities, vacation, confidentiality, non-competition, non-solicitation, entitlement upon termination, and intellectual property protection. Without an employment agreement, the common law, which is typically more generous to employees, will apply.

The candidate should be given an opportunity to review and consider the agreement and to seek his or her own legal advice. The agreement should be signed by the employee prior to the commencement of work, not at the beginning of the first work day or when the employee commences training. A signed employment agreement should be in hand at least two days prior to the employee commencing work.

Termination Entitlement

One of the most important terms in the employment agreement is a termination clause. In most cases, the notice of termination should be offered in accordance with the applicable statutory minimum. This provides an employer the flexibility to make staffing decisions with a quantifiable cost in mind. Of course, an employer can always decide to offer additional notice or pay in lieu of notice at the end of the employment relationship. Without a statutory minimum clause, an employee may be entitled to common law notice which can be considerably more expensive for the employer.

In Ontario, the Employment Standards Act states that an employee is entitled to one week of notice or pay in lieu of notice where he or she has been employed for three months to one year. Where an employee has been employed for more than one year but less than three years, the employee is entitled to two weeks of notice, or pay in lieu. Thereafter, an employee is entitled to an additional one week of notice for each year of continuous employment to a maximum of eight weeks of notice. Employees may also be entitled to severance pay if employed by the employer for five or more years and the employer has a payroll in excess of 2.5 million dollars. FBC

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