

THE AGONY AND THE ECSTASY



OF LAW OFFICE STAFFING

By Dina M. Mastellone and Amanda Frankel

Hiring is a necessity to expand any business. You must utilize your business resources and time effectively to sift through an unknown universe: the prospective applicant pool. It is the business-side hiring practices and operations that can dramatically impact the ultimate outcome of adding a new member to your law firm's team. If you want to ensure the best candidate is selected, hiring practices should be consistent and uniform.

Hiring talent is a huge investment of time, energy, and resources. Once hired, an employee will consume resources and organization expenses. With the right hire, magic can happen. With the wrong hire, calamity is just around the corner. While you can have outside search firms assist in gathering the applicants for your preliminary qualification review, there is simply no substitute for your vetting candidates and personally conducting interviews.

APPLICATIONS AND JOB POSTINGS

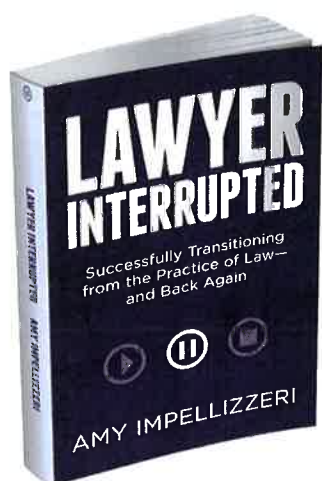
Developing internal processes and procedures can make the initial hiring process go smoothly and will protect your firm for the duration of the employment relationship. One area to consider is the employment application itself. It is beneficial to have all candidates complete the same application for employment as it strictly and consistently puts applicants

on a level field. This consistency also allows hiring processes to assume uniformity, which may diminish claims of unlawful and discriminatory practices. Moreover, it is crucial that you accurately define the position you are seeking to fill. Even though you have a job title in mind, be sure to carefully consider all the duties that the person hired will perform. Not only should the job duties be accurately posted for candidates to review when applying for a position in your firm, this description can be used as a checklist for evaluating your applicants during the job interview.

THE INTERVIEW PROCESS

During the interview, ask open-ended questions rather than "yes" or "no" questions. Ask questions and assess the applicants' personality, character, verbal skills, and ability to reason through tough situations that they may face while working at your law firm, whether in relation to co-workers, clients, or adversaries. Be mindful not to directly or indirectly request information that may be considered protected under law. For example, questions regarding the applicant's age, race, religion, national origin, marital status, child care plans or plans to have children, criminal convictions, citizenship, and health, including any existing or perceived disability, are red flags that could be problematic. These areas of inquiry could constitute evidence of

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LAWYER INTERRUPTED SUCCESSFULLY TRANSITIONING FROM THE PRACTICE OF LAW—AND BACK AGAIN

BY AMY IMPELLIZZERI

This book covers both the practical and the ethical considerations for lawyers taking a break in service for a variety of (voluntary and involuntary) reasons, including temporary leaves of absence, taking care of family, changing careers, disciplinary actions, and retirement. *Lawyer Interrupted* focuses on the importance of pre-planning, addresses the considerations unique to each reason for a break, and shares stories and advice from a broad population of lawyers who have taken a break from service for each of these reasons.

Lawyer Interrupted is an innovative, practical, concrete, and substantive resource that provides extensive information, enabling readers to understand and explore relevant situations in more detail. Be better prepared for when the time comes for a break in service.



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discrimination and lead to failure-to-hire claims. Thus, inquiries of all candidates should be reasonably related to the actual job for which the applicant is applying.

Sometimes, however, it is unavoidable that certain topics will be brought up even by the candidates themselves. During the interview, you should not take notes or make comments about a candidate's age, marital status, race, or national origin. Noticing a candidate's appearance, however, is acceptable in order to determine if the candidate is the right fit for your firm. Obtaining or confirming a candidate's marital status, age, and/or number of children is only acceptable post-hiring for insurance or benefits purposes.

Moreover, excessive talking about oneself or not exploring the application and résumé in detail with the applicant can have an adverse impact on applicant morale. Failing to allow or encourage the candidate to answer questions fully or expand on aspects of his or her answer does not allow you to see the full candidate and adequately evaluate qualifications. It is best not to focus solely on the application and résumé or ask leading questions. By asking vague questions or failing to adequately evaluate an applicant's particular skills and experience, you run the risk of overlooking a qualified applicant because of a rigid recruitment structure. It is also important, if possible, to have more than one person interview the applicant. Group consideration will give everyone on your team a vested interest in helping the new person be successful and will minimize the risk of discriminatory bias. Look to hire a leader, a problem solver, and someone who is in line with your firm's vision of success. Hire someone who can get along easily with others, not only with you and other members of your office staff but with your clients.

SOCIAL MEDIA

Be mindful of the pitfalls of social media. Social media has become one of the most popular tools for recruiting and researching candidates, through platforms such as Facebook, Twitter, Instagram, LinkedIn, WordPress, Google+, Tumblr, and MySpace. Social media, however, is

another area that can create liability before, during, and after your relationship with an employee. Employers may unwittingly discover information that is not job-related. For example, if a candidate lists his or her age, marital status, political affiliation, religion, sexual orientation, or race, these characteristics may not be used simply because the information was gathered independently from an interview or application. Moreover, what job candidates post on social media may unintentionally reveal to a potential employer information prohibited under the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA).

AFTER THE INTERVIEW

Remain mindful of any potential discrimination claims that may arise after the interview. To mitigate such scenarios, you must decide whether to use internal resources or third-party providers to conduct background checks. Hiring someone without a reference check, a background review, and validation of the information supplied on the job application can lead to problems down the line. Criminal background checks can provide employers with important applicant information and may assist in screening out individuals who would pose a risk to your business. If you decide to use a third party, you must follow the rules as established by both federal and state laws allowing notice to the applicant and time for the applicant to dispute the results. Moreover, if more information is needed, the applicant may be contacted to obtain whatever is necessary to ensure all relevant information pertaining to the position is acquired before making a final decision to hire or to not move forward. If an applicant is not hired, it is important to document reasons for not extending an offer to defend against any discrimination claims. Alternatively, if an applicant is hired or if an employment offer is to be extended, you should consider whether there is any necessary information outstanding.

MANAGING EMPLOYEES

Once the hiring process is complete, the task of managing employees is one of

the most challenging—and rewarding—experience for employers. Employees should be complimented on jobs well done, commitment to projects, and other work-related achievements. Good work should be rewarded through salary increases, employee bonuses, or other merit incentives. Evaluations should be conducted consistently for all employees and should focus on areas that may need improvement but also highlight an employee's strengths. By being open with employees about their performance and by addressing any areas needing improvement, workplace morale will increase. This high morale will foster a positive and supportive environment for employees.

Support can also be found in an employer's approach to discipline. Workplace "due process" gives employees an opportunity to be heard, which better informs the employer of relevant conditions and circumstances in the workplace. This encourages fairness in the discipline process by promoting consistency in the application and enforcement of rules and standards. Workplace due process also provides real-time feedback for guidance. In the event of termination, documentation not only eliminates any surprise but also encourages fair and equitable treatment among employees.

It is also important to be aware of unintended documentation when technology is involved. E-mails, texts, social media, and even calendar invites are

considered forms of documentation. Policies should include the right to monitor the use of such outlets in the workplace. Employees, as well as supervisors, should be trained regarding the use of such media when addressing harassment issues, wage and hour issues, and instructions to work after hours.

Most importantly for employers, the legal implications of performance evaluations cannot be overstated. Conducting performance reviews and documenting discipline are the best tools for employers to defend against claims of harassment, discrimination, and retaliation. Providing detailed and unbiased performance reviews, while also allowing employees the opportunity to meet and review their performance, will go a long way in demonstrating an employer's legitimate, non-discriminatory reason for any adverse employment actions.

YOUR GREATEST ASSETS

Remember, your employees are your law firm's greatest assets and have a direct impact on your firm's profitability. While the shortage of talent is the biggest hiring challenge today, with these tips in mind, hiring talent can be a rewarding experience. Once applicants are hired, developing and promoting a positive law firm culture and reminding employees of the value of being part of this culture are critical to keeping the talent that you have. Time invested in employee recruitment and retention is an investment in your law firm's success. ■



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