## **How to Interview Prospective Employees**

by Susan Boyd, J.D.

You are getting ready to interview a few job applicants. Do you know what you can and cannot say or ask during your interview?

Obviously, you cannot bring up anything in the interview that you cannot ask on the employment application. Additionally,

- If you do not hire someone, one word you do not want to use as the reason is OVERQUALIFIED. One Court in particular has stated that, "[overqualified] may often be simply a code word for too old." The Age Discrimination in Employment Act (ADEA) protects people over the age of 40 from discrimination.
  - You also cannot discriminate against applicants by making certain people wait longer before talking to you, by granting them significantly shorter interviews, and by making them interview with a greater number of individuals within your company than you do other applicants. The interview PROCESS can be as discriminatory as the QUESTIONS!

Basically, stay away from any discussion related to race, skin color, national origin, religion, sex, disability, age, veteran status and marital status. You are prohibited by federal law (Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act, and others) from discrimination based on these protected classes. In addition, some states prohibit discrimination based on sexual orientation and smoking. So, unless you know you're in a state that permits it, stay away from these topics as well. Even though Title VII does not apply to your business unless you have 15 or more employees and the ADEA (Age Discrimination in Employment Act) does not apply until you have 20 or more employees, it is always a good idea to comply with these the other, older people, etc. If so, your question is probably discriminatory. Ask only those questions which will elicit information from the applicant that is REALLY needed to judge his/her qualifications to perform the job in question.

Even when you are just engaged in "chit chat" with the applicant, stick to neutral topics. If the applicant brings up information voluntarily, like their national origin or their religion, DO NOT include it in your notes and DO NOT follow up on it during your conversation. It could later be used against you to prove discrimination if there is a notation about the applicant's protected class.

FROM BRADFOR D. SMART, Ph.D., The SMART Interviewer, John Wiley & Sons, "No Job Interview is complete without a review of the candidate's work history, but if you ask a candidate to begin by describing his or her current job responsibilities, you may miss out on some valuable details. Experts recommend that you ask candidates to begin with their first work experience. REASON: When candidates must think about their careers in a chronological sequence, it's natural for them to make

ASSOCIATIONS THAT REVEAL TO YOU THEIR WORK PATTERNS AND THOUGHT PROCESSES. THIS KIND OF INFORMATION MAY HELP YOU 'READ BETWEEN THE LINES' OF A RESUME."

<u>Court Talk</u>: Beware of painting too bright a future for an applicant with your company. Some companies have been sued because their "puffing" statements about their companies weren't true! Bases on negligent misrepresentation, one plaintiff sued the company that told him during the interview that the company was going to "double its size" in the next two or three years. The vice president told the applicant that the job was a "real opportunity" and had a "real future." The truth was that the warnings against giving applicants significantly inaccurate information that could cause them harm.

**<u>Don't Get Sued!</u>** You are getting ready to hire someone for a job that requires travel. The candidate you want to hire is married with children. What you want to know is what she will do with the kids while she is traveling for you, and is her husband O.K. with her being gone so much? DON'T ASK THOSE QUESTIONS!

Instead, explain the requirements of the job. Then ask, "Are you able to travel extensively on business?" or "This job frequently requires working late and/or unusual hours. Would this be a problem?"

Be sure to ask these questions of MEN too, if you're going to ask women.

## <u>Leading Causes of Poor Hiring Decisions</u>

From *Personnel Legal Alert*, as identified by William C. Byham, a specialist on hiring decisions, some of the leading causes of poor selection decisions are:

- Interviewers tend to lower their standards when they start to feel pressure to fill a position. You will be better off in the long run to do without an employee in a particular position, while you continue your search, than to fill it with the wrong person.
- Interviewers focus on whether a candidate can do the job but do not explore whether he/she is MOTIVATED to actually do it. A poorly motivated employee leads to poor performance and rapid turnover.
- Interviewers allow one characteristic to color their judgment in all areas. The
  "halo effect" occurs when one particularly strong candidate characteristic, such
  as good communication skills, influences an interviewer's judgment about the
  individual as a whole. This is the opposite of the "horn effect", which occurs
  when an applicant's weakness in one area leads to lower than deserved ratings
  in other areas.
- Interviewers make "snap" decisions. Research indicates that organizations that delay selection decisions while continuing to collect data make better-informed decisions.

Interviewers take insufficient notes and end up with a surface impression of the applicant. According to Byham, "Studies indicate that without notes, interviewers can recall little more than a fourth of the facts discussed in the interview immediately after it happens."

The Small Business Report found that 80% of job applications surveyed contained false information regarding prior work history, and 30% of the information regarding education was false!

Have all applicants complete the application form at your place of business. This will prevent someone from having the form filled out by someone else who is a better writer!

According to recent statistics determined by the Bureau of Justice, one-third of our workforce has a criminal record (mostly theft). Obviously, you need to be concerned about hiring someone whom you can trust. But, you need to be concerned about more than just, "Is this guy going to steal from me?" You have a legal duty to protect your customers, your other employees, and the general public from harm caused by an employee whom you know or should have known posed a risk of harm. Some guidelines to follow are:

- 1. Call or write each reference the applicant listed on the employment application. Let the reference know that the applicant has consented to his disclosure of information to you. Remember, you had the applicant sign this statement on your application!
- 2. Document all information you receive. Also document unsuccessful attempts to gather information. If a former employer won't tell you anything, keep a record that he refused to give you any information as to why you should not hire this applicant in order to protect yourself from negligent hiring claims.
- 3. If none of the applicant's references will talk to you, ask the applicant to intercede and request that his references provide you with the necessary information.

Do not offer the applicant a job until you have completed the reference.

This article originally appeared in the Fall 2001 (Vol. 5, Issue 3) Family-Owned Business Institute newsletter, <u>Heritage</u>. Susan Boyd is an Applied Assistant Professor of Business Law at the University of Tulsa and the Director of the Genave King Rogers Business Law Center. You can email her at: susanboyd@utulsa.edu.