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Managing the Hiring Process

By Marc A. Fishel

One of the most significant steps you, as an employer, can take to ensure efficiency and effectiveness in product or services delivery is to hire and retain the right people to do the job. Despite this reality, many businesses, both large and small, do not take adequate steps during the hiring process to ensure they hire the right individuals. While the hiring process is not an exact science, there are measures you can take to remove some of the guesswork.

When beginning the hiring process, you should ask a few internal questions:

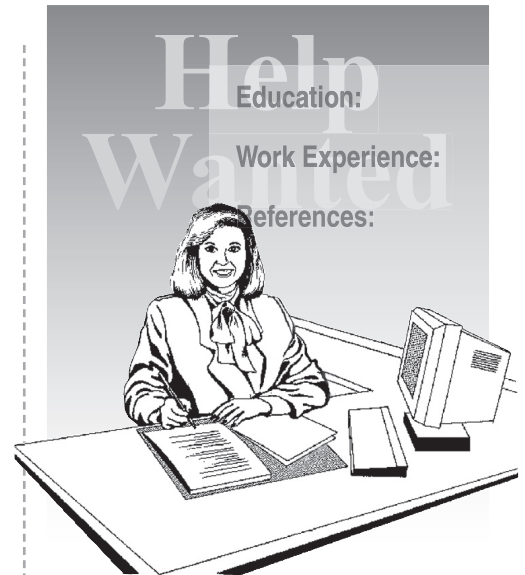
- What will the new employee do?

- What types of experience, skills and abilities should the person have?

- How will this person interact with other employees and customers?

Answering these basic questions will allow you to set a framework that will enhance the probability of hiring the right person.

On the job application form and during interviews, tailor your questions so they are job related. Ask all applicants the same basic questions. Be aware that federal and state laws place numerous restrictions on the types of questions that may be asked. For example, an employer cannot discriminate



based on certain characteristics such as age, race, color, gender,

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Letters of Intent – To Do or Not To Do

By Charles R. Schaefer

Business people involved in mergers, acquisitions and divestitures love them; their lawyers dislike and fear them. What are they? They are letters of intent.

The legal issue with a letter of intent has to do with whether the letter is a legally binding document or just an expression of the parties'

intent to try to make a deal. When drafted by the inexperienced, a letter of intent that was only meant to be an expression of ideas about a possible future agreement can produce costly litigation. Further, a court may decide that the seemingly nonbinding letter of intent is a wholly or partially legally binding contract.

Business people are often drawn to letters of intent because they feel that putting something on paper makes a deal more likely to

happen. A party may erroneously believe that the letter of intent morally commits the other side, while counting on the "nonbinding" nature of the letter to avoid making its own firm commitment.

Over the years, a lot of litigation has involved the binding effect of letters of intent. Even some letters of intent that specifically say they are *not* binding are held by a court to be binding in whole or in part for a variety of reasons.

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religion, disability, marital status or national origin, so inquiries in the interview process must avoid these subjects. (“Sexual orientation” is another characteristic that is protected by city ordinance in some municipalities including Cleveland, Columbus and Toledo.)

Even casual questions about protected characteristics can potentially create liability. Further, if an applicant volunteers such information, the employer who uses the information to discriminate can be held liable. It is important that all those involved in the interview process understand these limitations, since the actions of employees can create liability for the business.

Do not make any promises during the interview process. Employers should not bind themselves to conditions regarding discharge, benefits or policies and procedures. In Ohio, the general rule is that employees serve at the will of the employer, although numerous judicial decisions over the past 20 or so years have created many excep-

tions to this doctrine. Any promises could create an implied contract or a legal promise known as *promissory estoppel* that could bind the employer to the promise.

Make sure you request and follow up with references. This may seem obvious, but it is often overlooked. In addition to asking general questions, a reference check with previous employers should always include the question, “Would you re-hire this person?” Under Ohio law, employers are entitled to immunity concerning information they provide in response to a reference check in most situations, so long as the information given is true and accurate.

A successful interview process requires advance planning, so you should spend adequate time preparing for the entire process. Your

business should have an outline of interview questions and should be prepared to ask the tough questions.

With this advance preparation, a business can go a long way towards getting the right person while avoiding costly and time-consuming legal action.

Many businesses, both large and small, do not take adequate steps during the hiring process to ensure they hire the right individuals.

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For more information about the hiring process, visit the U.S. Department of Labor’s Web site at <http://www.dol.gov/dol/topic/hiring/index.htm>.



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Lawyers tend to dislike letters of intent because they understand the litigation risks and the uncertainty even when the letter says, “This is not a legally binding document.”

Nevertheless, a properly written letter of intent dealing with the merger acquisition or divestiture of a business sometimes serves a useful purpose. Such a letter is usually partially binding

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and partially non-binding. The usual binding provisions concern the preservation of confidentiality, exclusivity of negotiations, expense allocation and due diligence procedures. During a buyer’s due diligence, the parties negotiate the definitive purchase/sale agreement containing details of the transaction, such as the exact purchase price, price adjustments, and payment

terms, representations and warranties, closing contingencies and a host of other matters that need to be covered as facts become known through due diligence.

The bottom line is this: If you decide to use a letter of intent for any transaction, use it carefully and with help from experienced counsel.

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