

### HEALTH LAW

# Hiring an Employee

■ IOHN SHUFELDT, MD, ID, MBA, FACEP

et's be honest, we have all done it: hired someone who, in retrospect, had only two brain cells, both of which turned out Lto be mutually inhibitory.

Have I told you about the time (many years ago) when I hired a provider who, on a busy day, locked himself in the bathroom and screamed, "If you don't get me some more help, I am going to start drinking?"

Since I was not sure what he could drink other than tap or toilet water, I was not concerned about him becoming intoxicated (for the internists in the audience, yes he could have become water intoxicated) during the shift. Had I taken the time to perform a background check on him I would have learned that he was a "troubled soul" who, years later, would be caught cooking meth in his garage.

There is wide variation in the diligence organizations use in their pre-hiring process. On one end of the spectrum there is an urgent care center whose screening criteria consists of measuring the BMI=IQ/4 ratio. An applicant's IQ had to be at least four times their Body Mass Index.

The other end of the spectrum was an urgent care that did indepth personality profiles and background checks on all their prospective applicants. Somewhere between these two extremes lies an appropriate screening process.

I recently had an ex-employee's prospective employer call me about a reference. Unfortunately, the former employee had difficulty working with the nursing staff and she treated the patients as if they were a bother to her. I commended the person on inquiring about her history and was very honest about the employee's strengths and shortcomings.

Interestingly, one study showed that less than half of employers check on the references of their prospective employees. Some former employers will only discuss dates of employment, title, position, and possibly salary. Many employers are reluctant to say anything negative, due to concerns about libel



John Shufeldt is the founder of the Shufeldt Law Firm, as well as the chief executive officer of NextCare, Inc., and sits on the Editorial Board of JUCM. He may be contacted at JJS@shufeldtlaw.com.

or slander suits. However, even incomplete information is helpful inasmuch as you can compare it to what the applicant submits on their application.

The take-home point is to call a prospective employee's references as well as others who can speak to their competency and integrity.

A gap in a resume can be a harbinger of something untoward and should be questioned until the truth is ascertained, as it may be attributed to something as noble as time spent de-worming orphans in Somalia (Legally Blond) or, conversely, it could mean that the applicant had a job which ended badly or was interred for a stint at Betty Ford.

Either way, it is information that is helpful in the hiring process.

### **Avoid "Oops" Questions**

It is also important to be aware of your own potential for missteps when conducting an interview.

Once, I was interviewing a woman to be our HR director. She was not very talkative and I was struggling to keep the conversation going so I asked her if she was planning on having children. She turned red and said, "Well, someday." After she left, our chief operating officer was nothing short of incredulous. She said, "What is wrong with you? You can't ask a woman if she is planning on having kids during an interview!" Who knew?

Federal and state laws protect people from being discriminated against on the basis of race, color, creed, sex, national origin, age, disability, pregnancy, and, in some states, marital status. Therefore, you must ensure that during an interview you do not imply that you have a preference for a certain "type of person."

You can ask if a person is able to perform the essential functions of the job with or without reasonable accommodations. If an accommodation is needed, you can ask what that accommodation consists of.

Also, during the interview, no remarks should be made about any protected characteristic (race, color, and creed) nor should hiring decisions be based upon what "kind of person" your staff or your patients want to associate with.

There are times when you may want to offer someone a job during the interview. I call these the "fog the mirror" or the "you

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had me at hello" situations. This occurs when you are so desperate for someone to start that all they have to do is be able to fog a mirror to qualify for the job.

My only recommendation is, don't do it. Wait until their pre-employment screening is concluded. The screen typically includes drug screening, criminal background check, and previous employment verification. If you absolutely need to have someone start before all their information is back, have them sign a statement that they have been advised that the employer reserves the right to terminate based upon any negative findings or facts uncovered during the initial screening process.

It is important to treat the employee interview like a patient interview. For example, keep notes about what was discussed. Many prospective employees will make statements like, "I have no problem working Saturdays, Sundays, and holidays." These notes become important later when the employee tells you that secondary to their religious persuasion they cannot work weekends or holidays.

It is also important to keep notes documenting the reasons you did not hire an applicant. In other words, if they file an EEOC complaint against you, the interview notes become part of the equation and can illustrate why another, more qualified applicant was chosen.

#### **Trust Your Gut**

A few weeks ago, I called the pediatric attending on-call for the emergency department and said, "I have a 2-year-old FLK (funny looking kid) here. I have no clue what underlying genetic disorder this kid has, but something is clearly against God's plan."

We have all walked into patient's rooms and thought, "I have no idea what is wrong with you but I know something is." This is following your gut instinct. The same holds true during interviews. If something seems amiss, trust your gut. Don't hire them

Finally, not everyone will have the same work ethic as your current "A" team. Hiring someone into the mix who does not have the same work ethic as the rest of your team will bring instant discord into your organization.

Although it is tongue in cheek, I tell prospective employees that the work ethic in our organization is, "If you don't show up for work on Saturday, don't bother coming in on Sunday." If the applicant starts hemming and hawing, I begin to worry about their ability to keep up with the rest of the team and will ask additional questions about their ability to multitask and digest large volumes of work.

The hiring process is a time- and labor-intensive undertaking, and rushing through the experience or tolerating shortcuts may, in the end, cost you exponentially more time and money than if you had done it correctly the first time.