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Understanding Risks Associated With Hiring

Verrill Annual Update Part 7

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Values. Value. Valued.

Roadmap

- Assessing Hiring Needs
- Job Descriptions & Advertisements
- Understanding Bias
- Interviewing Process & Avoiding Discrimination
- Choosing a Candidate
- Employment Agreements
- Background Checks
- Communicating with Applicants
- Recordkeeping

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Assessing Your Employment Needs...

- Job duties and responsibilities
 - Reporting structure
- Required vs. preferred education or training
 - Difference as to preferred education or training
- Physical requirements
- Compensation (wage and benefits)
- Other desired traits (that are legally permissible)

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Assessing Your Employment Needs: Wage & Hour

- Exempt v. Non-Exempt
- Relevant to whether the employee must be paid overtime
- Common exemptions
 - Administrative employees
 - Executive employees
 - Learned and creative professionals
 - Computer professionals
 - Outside sales employees
 - Highly compensated employees



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Assessing Your Employment Needs: Wage & Hour

- Exempt
 - Paid on a salary basis
 - Salary is at least...
 - Massachusetts: \$684 per week (federal law)
 - Maine: \$735.58 per week
 - Connecticut: \$684 per week (federal law)
 - New Hampshire: \$684 per week (federal law)
 - “Duties test” is satisfied
 - Additional duties concerning deductions to pay and limitations to same
- Non-exempt
 - Paid by the hour
 - Paid a salary but entitled to overtime for hours over 40 per work week

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Job Descriptions

- Where to advertise
- Accurately describing the position
- Location and remote opportunities
- Beware language that implies membership in a particular protected class, for example...



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Avoid:	Say instead:
Recent college graduates	Entry-level
Young and energetic	Enthusiastic
1-3 years of experience	At least 1 year of experience

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Is Implicit Bias Effecting the Process?

20 COGNITIVE BIASES THAT SCREW UP YOUR DECISIONS



- The unconscious association of stereotypes with particular groups.
- **Implicit Bias** does not just involve people outside the group in question (i.e., women, people of color, heavy people), but also people who identify with the group.
- In no way related to a person's intelligence, cognitive ability, or other personality traits.

Hiring Best Practices That Limit Bias

- **The Job Description & Ad**
 - Have multiple people review prior to posting and finalization
 - If someone currently holds the role, do they agree with how the position is described/the skill set necessary to effectively perform the job?
 - Have you performed a wage audit to determine the pay scale the position will fall within?
 - Is this scale or rate similar to what other employees in the position are being paid?
- **Choosing who to interview?**
 - Experience
 - Name
 - Volunteer/Community Activities
 - Gender
 - Physical Positions
 - Sedentary positions

Hiring Best Practices That Limit Bias (con't)

- The Interview
 - Standardized Questions
 - Form/fill in the blank model
 - Different questions/different positions
 - Diverse Hiring Team
 - Within and outside the chain of command
 - What is diversity?
 - Age, gender, political beliefs, socio-economic condition, position in organization, race, national origin, military history/status, sexual identification, sexual orientation

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Interviewing Applicants



- Selecting the interviewer(s)
 - Relevant to the position
 - Trained on interviewing
 - Presents company in a positive light
- Ask good questions designed to assess the applicant's potential as an employee
 - Consider using a script
- Avoid asking personal questions, even if interested
- Avoid risky questions (next slide)

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Interviewing Applicants: Ask the Questions that Limit Risk

Avoid:	Say instead:
Do you have a car?	Are you able to reliably get to work?
Do you have young children?	Do you anticipate having any problems reliably working the advertised shifts?
What is your current/most recent salary?	This job pays \$X. Is that consistent with your expectations for this job?
Do you have any disabilities?	Do you have any concerns about your ability to perform the essential functions of the job?

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Interviewing Applicants: Responding to Risky Statements

- “Over-Sharer” interviewee
 - Caretaker responsibility bias
- Be prepared to pivot topics
 - Employee keeps bringing it back to personal and not professional matters
- Emphasizes the importance of training interviewers
- What to do with the information after the interview

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Choosing a Candidate

- Internal versus external applicants and things to consider related to dynamics moving forward.
- Seek diverse input—diverse inputs should seek a more diverse result.
- Ask “why” a lot
 - Why do you believe they would be a strong addition to the team?
 - What part of the interview led you to believe that they could effectively lead xyz project?
 - What part of the interview created concerns for you regarding the candidate’s communication style?
- Sometimes it may make sense to ask some other “w” questions
 - What did you do to prepare for the interview with this candidate?
 - What were you doing in the ½ hour prior to the interview of this candidate?
- Consider your own implicit (or explicit) bias. Is that playing a role?
 - Have you had bad experiences with an employee/candidate coming from this school or past employer?
 - Have you had bad experiences with an employee/candidate who is the same age, sex, national origin, race, ect.?
- Do you like this candidate because they are “like you”?
- Do you not like this candidate because they are not “like you”?
 - Remember what the definition of diversity is.
 - Remember, we already employ someone like you (psstt...it’s you), we want people who will look at problems differently and come up with different solutions.

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Employment Agreements

- At-Will versus Term Employment
- Confidentiality Provisions
 - Maine statute
 - National Labor Relations Act concerns
- Non-solicitation versus Non-Compete
 - State standards
- Non-compete limitations
 - Notice
 - Salary Threshold
 - Termination
- Hiring from a competitor and understanding limitations and obligations under past employment agreements



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Offering the Job

- No requirement that employee have a contract
- In absence of contract, recommend use of an offer letter which sets forth...
 - Title/position
 - Start date
 - Supervisor
 - Rate and frequency of pay
 - Hours of work (including full-time, part-time, seasonal, etc.)
 - Eligibility for benefits
 - Conditions of offer
 - Confirm relationship is at-will

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Applicant Background Checks and Testing

- Reference verification
 - Listed references v. industry connections
- Skills tests
- Medical testing
- Drug testing
- Criminal background checks
 - Ban the Box laws
- Credit checks
- Social media and Google searches

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New Hire Paperwork

- W-4 forms
 - State and federal
 - Retain for at least four years
- I-9 form and verification
 - Within 3 days of hire
 - Retain for 3 years from hire or 1 year after employment ends
 - How do you handle remote employees?

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Unsuccessful Applicants

- Notify applicant if possible
 - Consider stage of interview process
- What information to include in communication?
 - Different strategies for internal versus external candidates?
- Responding to requests for additional information

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Recordkeeping

- Documenting recruiting/hiring activities
- Background check process
- Observe requirements for length of document retention
- Maintain confidentiality
 - Medical records should be kept separate

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THANK YOU!

Questions?

Ask now or email me at talvarez@verrill-law.com

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