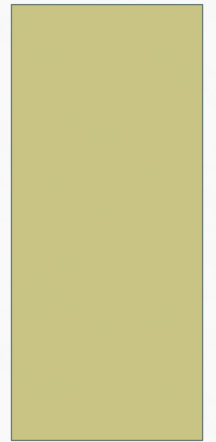


HIRING & FIRING LIBRARY EMPLOYEES

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LEGAL DISCLAIMER

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HIRING NEW EMPLOYEES

FROM JOB DESCRIPTION TO DAY ONE ON THE JOB

JOB DESCRIPTION

- Provide the “essential functions” of the position
- List required skills, education, training, & experience
- Describe attributes of ideal candidate in terms of the job duties and workplace environment, NOT using protected characteristics such as race, sex, age and religion.
- Routinely update job descriptions to reflect actual way job is performed on a day-to-day basis.



APPLICATION & INTERVIEW

DO NOT ask

- Race, citizenship (beyond legal working status in US)
- Age (unless there is an age minimum)
- Religion or religious holidays observed
- Sex or sexual orientation
- Disability
- Maiden name, marital status, family plans
- Membership in social or political organizations



APPLICATION & INTERVIEW

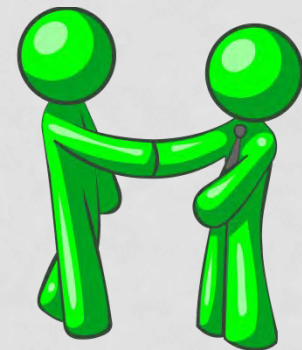
OK to ask about:

- Educational credentials necessary for the job
- Prior work experience related to the job
- Identity of former employers and past salary info
- References
- Membership in professional or trade organizations

POST-HIRING QUESTIONS

After a candidate has been hired, it is permissible to ask about:

- Family members to be covered by health insurance
- Age—for purposes of insurance enrollment
- Scheduling availability on religious holidays
- Need for any accommodations



CRIMINAL BACKGROUND CHECKS: NOT MANDATORY FOR LIBRARIES

- Mandatory to obtain day-care licensing and for all day care center employees.
- Educators are subjected to criminal background checks in order to be certified by Ga. Professional Standards Commission.
- No legal requirement to conduct background checks for library employees, but the legislature could expand the law to include libraries in the future.



GOOD REASONS FOR CONDUCTING CRIMINAL BACKGROUND CHECKS

- Aid in good hiring decisions
- Defense in negligent hiring/retention claims
 - Georgia employers have a duty to exercise ordinary care not to hire or retain an employee the employer knew or should have known posed a risk of harm to others.



CRIMINAL BACKGROUND CHECKS: CAUTIONS



- 2012 EEOC Guidance advises that blanket criminal background check is discriminatory
- EEOC criticized by 9 state Attorneys General including Ga.
- Lawsuits
 - BMW: settled \$1.6 million Sept. 2015
 - Dollar General: still in litigation
 - Freeman: employer prevailed—EEOC failed to make case b/c of poor expert analysis. Feb. 2015
- National Trends
 - 19 states have adopted “Ban the Box” policies.
 - NYC recently passed a law prohibiting criminal background check by employer until offer is extended.

CRIMINAL BACKGROUND CHECKS: GEORGIA'S 2015 EXECUTIVE ORDER

Government entities must implement hiring policy to:

- Prohibit use of a criminal record as automatic disqualification;
- Prevent use of app form that inappropriately excludes qualified applicants;
- Promote accurate use and interpretation of criminal histories;
- Provide qualified applicants an opportunity to discuss and refute contents of criminal record or to demonstrate rehabilitation.

TO DO OR NOT TO DO BACKGROUND CHECKS?

A policy decision to be made by library board in conjunction with library director.



IF YOU DO: BACKGROUND CHECKS

- At what point in the application process?
- What form of consent to obtain?
- Include volunteers?
- Discuss results?



DIVERSITY EFFORTS



- ALA encourages libraries to develop a workforce reflective of the communities served.
- Draft job ads to encourage the widest possible pool of applicants; communicate job posting in ways to reach widest audience.
- Keep the ad free of any unnecessary qualifications--even if these are for the purpose of encouraging diversity.

PROBATIONARY PERIOD

- Ga is an at-will employment state: absent an employment contract, an employee can be terminated at any time without reason or for any reason so long as it is not an illegal reason (i.e., a discriminatory reason).
- The concept of “at-will” employment means that an employer does not have to prove it had good cause for taking an adverse employment action; it must prove only that its reasons were not illegal ones.

PROBATIONARY PERIOD

- Weakens employer's at-will rights by creating implication that after certain time, the employer CANNOT terminate for any reason.
- What is the benefit for the employer?
- No problem with a waiting period for benefits or leave eligibility.





TERMINATING AN EMPLOYEE

FROM DOCUMENTING PROBLEMS TO THE EXIT INTERVIEW

ANY REASON EXCEPT



Discrimination

- Title VII: race, color, religion, national origin, sex, pregnancy, and childbirth
- Age Discrimination Act: 40+
- Genetic Information Nondiscrimination Act
- Americans with Disabilities Act: disability

All anti-discrimination statutes contain a retaliation provision.

DOCUMENTING PROBLEMS

- Goal: Allow your organization to demonstrate that it has made reasonable decisions in good faith.
 - Think about an outsider coming in to your organization to review how employment decisions are made; what records would you want to have available.
 - Think about how a judge or jury might view your decisions in the absence of documentation.



DOCUMENTATION: BEST PRACTICES

- Contemporaneous record-keeping: documents created long after the fact undermine credibility.
- Stick to the facts: concise and accurate reporting of what happened is paramount.
- Omit personal opinions: obvious dislike of an employee or disapproval of certain behavior could increase risk of liability.
- Sign and date: documents of unknown origin and without time reference are useless.

TERMINATION INTERVIEW



DO:

- Provide a coherent, precise explanation of why employee is being terminated (the honest one!).
- Allow employee to respond. Let employee speak his mind. Acknowledge any valid points and tell employee that you appreciate his input & candidness.
- Inform employee of any rights or entitlements that he may have coming.
- Ensure the return of any property that belongs to the employer.

TERMINATION INTERVIEW



DO NOT:

- Apologize, justify, or shift blame.
- Become defensive.
- Debate or argue with the departing employee.
- Offer advice or recriminations.

POST-TERMINATION REFERENCES

- Confirm the former employee has consented.
- Always safe to limit the disclosure to the dates of employment, description of the duties performed, and salary information.



UNEMPLOYMENT BENEFITS

- Why employee is terminated affects eligibility to receive unemployment benefits:
 - failure to obey orders, rules or instructions, or failure to perform duties disqualifies employee, but
 - burden of proof is on the employer to establish that some fault on the part of the employee.



CONCLUSION

Hiring

- Job description
- App & interview questions
- Criminal background check
- Probationary period
- Encouraging diversity

Firing

- Illegal reasons
- Documentation
- Termination interview
- Post termination references
- Unemployment benefits

SEE YOU IN THE SPRING!

- What issues would you like to discuss?
Send them to GPLS

