Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.
Objectives

• Learn about hiring processes
• Discuss the importance of job descriptions
• Gain knowledge about discrimination and biases
• Discuss interview goals and steps
• Review interview questions to avoid
• Understand reference and background checks methods
• Understand FMLA Leave Issues
• Understand Disciplinary Issues
• Understand the Termination Process
INTERVIEWING AND JOB DESCRIPTIONS
The Hiring Process: Major Exposure Areas

- Job descriptions
- Job postings and advertisements
- Application forms
- Interview questions and statements
- Job offer
Steps to Hiring

1. Identify the essential job functions.
2. Identify the qualifications desired.
3. Post your positions.
4. “Get the word out!”
5. Screen applications to weed out the unqualified applicants.
Steps to Hiring

Work with Human Resources to help eliminate “potential” problems

Use standardized applications vs. resumes

Applications must be retained at least 2 years unless hired, then must be retained for 5 years after separation.
Job Descriptions

• A written summary of the significant aspects of a job.

• Not required under the ADAAA, but they help to ensure compliance with ADAAA.

• Can justify the employee selection decision in determining the best qualified applicant for the position.
Job Description Components

• A summary of the position
• Essential job functions
  “Why the job exists.”
• Marginal duties – additional duties
  “Other duties as assigned within the scope of the department.”
Job Description Components

• Physical requirements of job
  “Physical actions required to perform essential job functions.”

• Working conditions
  Environment, travel, overtime...
What are Your “Hang-Ups”?

• Perceptions
• Communication Style
• Bias towards...
• Attitude towards...
• More attention toward unfavorable issues than favorable
• Lack of training
Prepare to Interview

• Review the application and resume BEFORE the interview.

• Determine what questions to ask and a rating system to use BEFORE the interview.

• Provide each applicant a copy of job description.

• Ask all applicants the same questions and spend equal time with each applicant.
Interview Goals

What are you looking for?

• Does applicant meet job requirements?
• Any gaps in work history. Why?
• Is applicant interested in the job?
• Is applicant suitable for the job?
Interview Questions

• Must relate to the job requirements and the applicants ability to perform the essential functions.

• Steer clear from “protected status” types of questions.

• Ask “Open-Ended”, not Yes-No.
Interview Questions

• Do not ask questions about applicants personal life.

• Document strengths to justify selection of final candidate.
Interview Questions

Sex

Appropriate = NONE unless BFOQ

Inappropriate = “Do you plan to have children?” “Do you think a woman can do this job?”
Interview Questions

Religion

Appropriate = NONE

Inappropriate = “What is your religion?” “What church do you belong to?”
Interview Questions

Race

Appropriate = NONE

Inappropriate = “What is your race?” “What is your color?”
Interview Questions

National Origin

Appropriate = NONE

Inappropriate = “Were you born in the US?”
“What is your nationality?”
Interview Questions

Age

Appropriate = Are you at least 18 years old?

Inappropriate = “How old are you?” “What is your birth date?”
Disability

Appropriate = “Can you do the essential job functions with or without an accommodation?”

Inappropriate = “Are you disabled?”
Interview Questions

Arrest Record

Appropriate = Have you ever been convicted of a felony?

Inappropriate = “Have you ever been arrested?”
Interview Questions

Drivers’ License

Appropriate = Do you have a current drivers’ license?

Inappropriate = “Let me see your current drivers’ license.”
Interview Questions

Marital Status

Appropriate = NONE

Inappropriate = “Are you married?”
Interview Questions

Citizenship

Appropriate = “Are you legally authorized to work in the United States?”

Inappropriate = “Are you a U.S. Citizen?”
Interview Questions

Languages

Appropriate = “Do you speak English?“ or “Do you speak Spanish?” - only if necessary for the position

Inappropriate = “What is your native language?”
Military Experience

Appropriate = “Have you served in the United States Armed Forces?”

Inappropriate = “Were you dishonorably discharged?”
Interview Questions

Education

Appropriate =

Anything pertaining to the educational requirements of the job

“What degree, certification or training do you have?”
Interview Questions

Photograph

Appropriate = NONE

Inappropriate = Requiring a picture
Interview Questions

Personal Characteristics

Appropriate = NONE

Inappropriate = “What color are your eyes or hair?” “What do you weigh?” “What is your height?”
Creating Questions to Determine Attitude

1. Find a situation to elicit the **characteristic** you want to discover.

2. Question opening: “Tell me about a time you ______” (Be very specific and don’t lead them on.)

**Example:** “Tell me about a time you dealt with a difficult customer.” or “Tell me about a time you made a mistake.”

3. Grade/evaluate interview immediately when it is over (the 50 minute hour...)


Interview Closing

• Repeat job duties and expectations.
• Do not oversell the job.
• State the negative and positive of job.
• Ask if they have any questions.
• State when you plan to make a decision and thank them.
Checking References

• Ensures accuracy of information in all phases of the process (interview, resume and application)

• FACTUAL
  • Past Employment Information
  • Professional References
  • Educational/Certifications Information
Past Employment History

- Dates of employment
- Reasons for leaving a job
- Salary/position held
- Job duties/responsibilities
- Strengths/weaknesses
- Attitude/motivation
- Ability to work with others
Reference Verification Methods

Investigative Services – 3rd Party

• Used for specific types of jobs
• Fee-based
• Verifies education, work experience, credit history, criminal records, and certifications

Drawbacks: Fair Credit Reporting Act compliance – release forms
Fair Credit Reporting Act

Three separate authorizations/notifications required:

Before obtaining a report – written release required

Before taking adverse action – provide a copy and list of applicants rights

Upon rejection, inform of right to obtain a free report
Ready to Hire

• Make the offer – use the smallest amount of salary – hourly or weekly
• Provide information if requiring pre-employment physicals – these must be made post offer
• Be ready for your new hire

Orientations  Goals and Objectives  On the Job Training
FAMILY AND MEDICAL LEAVE ACT
How FMLA Helps Employees

✓ It allows them to take off for family and medical issues

✓ It provides benefits without interruption

✓ It “guarantees” reinstatement to the same or equivalent job
FMLA Eligibility

Employee has worked for county for at least 12 months
- Break >7 years not counted unless military call up
- >3 years burden on employee

&

Has worked at least 1250 hours during the last 12 months prior to FMLA Leave
- Part-timers and long-term temps might qualify

&

All time lost due to military service is counted as time worked
What is FMLA?

FMLA = Leave Entitlement

• Can be paid leave but the law does not require it to be paid.
• County policy dictates when to pay FMLA.

TIP— Require in policy use of all paid time off to be used under FMLA
Paid or Unpaid FMLA?

FMLA allows for substitution of paid leave for unpaid leave including:

- Vacation, personal or sick leave
- Compensatory Time Off
- Short Term Disability Leave
- Workers’ Compensation Leave
FMLA Allows 12 Weeks Leave For

A newly born, adopted or foster-placed child

A spouse, child or parent with a serious health condition

The employee’s own serious health condition
Serious Health Condition – Definition

• Overnight Stay in Hospital
• Lasts for > 3 full days
• 1 visit to health care provider within first 7 days and a regimen of continuing treatment (prescription)
• 2 visits to health care provider within first 30 days of incapacity
• Chronic, serious health condition (2 visits/year)
• Physical or Mental Health Issues
• Pregnancy or Prenatal
Military Qualifying Exigency Leave

Qualified employee can receive 12 weeks of leave in a 12 month period for:

Spouse, child or parent of the employee is being deployed to a foreign country.

Reserves  National Guard  Regular Armed Forces

Does not extend FMLA 12 weeks.
Military Qualifying Exigency Leave

Defined as...

- Short term notice of deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation expanded to 15 days in 2013
- Post deployment activities (during first 90 days home)
- Any additional agreed upon activities
Military Qualifying Exigency Leave

- Leave to care for military members parent
- Arranging for alternative care
- Attending meetings with staff at care facility
- Can require copy of military members rest and recuperation leave orders or other military documentation
Intermittent FMLA

May be taken when medically necessary to care for a seriously ill family member or because of the employee’s own serious health condition.
(usually chronic conditions)
Other FMLA Information

• Poster must be posted where all employees and all applicants have access, $110 fine for failure to do so.
• Needed to care for a family member with a serious health condition does not require that the employee be the only person available to provide the care – care does include “psychological care”
...Hired Employee has Become a PROBLEM Employee

What is next steps?
The only method of proof is: Documentation
Documentation

Documentation is important because:

• State requires facts, not conclusions
• Claim may be filed a year after separation
• Employer must be able to prove misconduct
Tips on Documentation

Avoid words like “Attitude” and “Behavior”.

Use Verbs

Focus on what you want the employee to do.

Focus on what the employee does
Tips on Documenting

• State specifics like “argues with other co-workers”, “makes inappropriate jokes”...

• Avoid subjective phrases that are subject to interpretation and vague----these are indefensible:

  ✓ Don’t use: “maintain a positive attitude”
  ✓ Don’t use: “be a team player”, “need interpersonal skills”...
Disciplinary Forms

- Date of infraction
- Details of infraction
- Instructions for improvement
- Notice of next step
- Must state “job is in jeopardy”
- Employee must sign
Disciplinary Forms

• All counseling sessions and warnings must be in writing

• Do not procrastinate

• File must be available to provide to the state to successfully fight claim
Disciplinary Forms

• If an investigation was conducted, note who conducted it

• Take immediate action – do not allow employee to continue to work

• An unsigned discipline document still has value
Disciplinary Forms

• As documents are created, keep in mind in most cases the burden of proof is on employer

• The scope of your documentation may extend beyond unemployment

• Documents might help defend other lawsuits
Misconduct vs. Inability

- Poor work performance your fault not employees
- Must prove employee was capable at some point during employment
- Did he/she knowingly do anything to cause termination?
Quits

• Always get in writing
• Claims can be filed for up to a year
• Letter of resignation
• Reason for quitting
• Copy of exit interview

I Quit!!
TERMINATIONS
Separation Issues

• Absenteeism – uncontrollable not disqualifying
• Part-time employee
• Mutual agreement – viewed as discharge
• Delayed for employer convenience
• Last infraction not serious
Ask yourself these questions before terminating:

- What are the real reasons for terminating this employee?
- Are they work related reasons?
- How would a jury of the employees peers look at the reasons?
- Have you consulted legal counsel?
Texas Unemployment Costs

- Weekly Pay: Minimum $69/week Maximum $521/week
- Normally only liable for 26 weeks = $13,546
Terminations

• Do you have SPECIFIC, OBJECTIVE, VALID documentation?

• Does the employee fall into a protected class?

• Is your decision CONSISTENT with your past practices and current policies?

• What do you have in the employees personnel files?
Terminations – The Process

- Work with your legal counsel or HR Manager.
- Have all your documentation in order and complete.
- Don’t delay your actions – if you need time to prepare – send the employee home until you are prepared to take action.
Terminations – The Process

Once your documentation is in place and you have consulted with your legal counsel...

1. Meet with the employee in private. Always have one unbiased witness (preferably another supervisor).
2. State the purpose of the meeting.
3. Give only valid and documented work related reasons for your decision.
4. No small talk or personal talk.
Terminations – The Process

1. Keep the meeting professional and on track.
2. Stay calm, remain objective and avoid emotion.
3. Help the employee retain their dignity.
4. Explain the exit procedure and begin at end of meeting.
Immediate Terminations

- Some offenses require immediate termination
- Consult with your legal counsel or HR immediately

Remember – suspension is possible while consulting with legal and preparing your final documentation paperwork.
Final Considerations

PLEASE DO NOT DO INAPPROPRIATE THINGS...

• Do not say or put anything into writing that could be considered stereotypical or retaliatory.

• If you get advice and don’t understand the advice...CLARIFY IT BEFORE PROCEEDING!

ask a lawyer!
The Final Consideration

THINK BEFORE YOU ACT!

• Make certain your story makes sense, you have anticipated all the potential flaws and properly documented all actions.

• If not, HOLD UP the process, regroup and rethink your actions.
Any Questions?
DISCIPLINARY STATEMENT

Name: _______________________________                 Date: _________________

Date of incident or occurrence: _________________

Action(s) taken (check all that apply):  

_____ Coaching  _____ Verbal Warning  _____ Written Warning  
_____ Termination  _____ Other: ______________________________

Description of incident, issue, or occurrence:  

_____ Absence/Tardiness  _____ Safety Violation  _____ Conduct  
_____ Policy Violation  _____ Performance Issue  _____ Other: ______________________________

Explanation of incident, issue, occurrence, or policy violation:  

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Corrective action plan:  

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

Disciplinary action if not corrected:  

_____ Written Warning  _____ Final Warning  _____ Termination  
_____ Other: ______________________________

Employee Comments:  

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

By signing below, you acknowledge that you have received this disciplinary statement:  

Employee: _______________________________                 Date: _________________

Supervisor: _______________________________                 Date: _________________

HR/ Witness (optional): _______________________________                 Date: _________________
DISCIPLINE REMINDERS

Remember the Regulations and Protected Classes:

- Title VII – Race, Color, Religion, Sex, National Origin
- Americans with Disabilities Act, As Amended (ADAAA) – Disability
- Pregnancy Discrimination Act (PDA) – Pregnancy
- Age Discrimination in Employment Act (ADEA) – Age
- Fair Labor Standards Act (FLSA) – Minimum Wage, Overtime, Recordkeeping, Exemptions
- Family Medical Leave Act (FMLA) – Protected 12 weeks off, No magic language needed
- Military Family Leave Act (MFLA) – Protected 12/26 weeks off
- USERRA – Active Military Duty – Job protection and reinstatement required
- Equal Pay Act – Equal pay for equal work

Types of problems that might occur:

- Mishandled Discipline
- Mishandled Termination
- EEOC Claim
- Retaliation
- Lawsuit

Compliance Tips:

- Enforce all policies consistently at all times
- Comply with all federal, state, and local regulations
- Treat all employees equally and fairly
- Create an environment of respect
- Give accurate and objective performance evaluations
- Lead by example
- Have SPECIFIC and VALID work related reasons for all actions
- Document EVERYTHING you do
- Stick to the facts
- Tolerate nothing that makes reasonable people uncomfortable
- NEVER retaliate
DISCRIMINATION CHECKLIST

Go through the following statements to ensure that you are not discriminating against an employee or applicant.

___ Identify the “essential functions” of each job and have a written job description.

___ Are all employment decisions focused on “job-related” abilities and skills?

___ Is your employees individual performance of the essential duties of their job how you make employment decisions?

___ Are there any protected status red flags? If there are red flags when making employment decisions, proceed with caution.

___ Did you clearly and concisely document everything you did with your legal reasons for making your decisions? If not, stop action and consult with HR or legal counsel.

___ Did you make hiring decisions based on appearance, associations or personal habits? Did you take age into your employment decision? Did you make any employment decision based on military service, workers’ comp claims or any whistleblower activities? These may not be legal reasons to make your decision.

___ If you received a complaint, did you take it seriously? Make certain all complaints of discrimination or harassment are immediately investigated.

___ Do you use an exit interview to find out where problems may exist?

___ Do you conduct audits of your employees work environment to make certain they do not have any inappropriate items such as, posters, cartoons, jokes etc. displayed?

___ Do you talk with your employees about discrimination and harassment and emphasize that you expect them to behave appropriately and that you do not allow any inappropriate behavior?

___ Do you allow for alternative religious holidays and arrange for your employees to have time off if needed?

___ Do you treat pregnant woman who are unable to work the same as any other temporarily disabled employee?

___ Do you treat all requests for accommodations seriously and get outside assistance when needed to make the right choices on accommodations? Make certain you listen to your employees and recognize their requests for accommodation.
SAMPLE COUNTY
JOB DESCRIPTION

Position Title: ___________________________      Department: ____________________________

Reports To: _____________________________       Salary Range: ___________________________

Position Summary:

Essential Job Functions (listing most important first):
1. Regular attendance and timeliness at the worksite is required
2.
3.
4.
5.

Additional Job Duties: Any other duty as assigned by the supervisor within the scope of the department

Education:

Experience:

Required Skills:

Preferred Skills:

Physical Requirements:

Exempt/Non-Exempt (Circle One)          Full-Time / Part-Time (Circle One)
LIMITATIONS AND DISCLAIMER

The above job description is meant to describe the general nature and level of work being performed; it is not intended to be construed as an exhaustive list of all responsibilities, duties and skills required for the position.

JOB DESCRIPTION

All job requirements are subject to possible modification to reasonably accommodate individuals with disabilities. Some requirements may exclude individuals who pose a direct threat or significant risk to the health and safety of themselves or other employees.

This job description in no way states or implies that these are the only duties to be performed by the employee occupying this position. Employees will be required to follow any other job related instructions and to perform other job-related duties requested by their supervisor in compliance with Federal and State Laws.

Requirements are representative of minimum levels of knowledge, skills and/or abilities. To perform this job successfully, the employee must possess the abilities or aptitudes to perform each duty proficiently. Continued employment remains on an "at-will" basis.

Employee’s Signature                                      Date

Department Head Signature                               Date

Revision Date:
Employee Should Sign Following Revision