

HR:101 Hiring Process

Communications

Follow us on social media!



Looking for the next HR professional to join your team
or searching for your next career move?

Check out the

THE LSHRM JOB BOARD

This is a FREE service to all members

LANCASTER
SHRM
Society for Human Resource Management



AFFILIATE OF
SHRM
BETTER WORKPLACES
BETTER WORLD™

Upcoming Programs and Events

- Sept. 29th – Fall Legal Update
- Oct. 10th – Breakfast Program
- Oct. 19th – B.Y.O. Lunch & Learn
- Nov. 2nd – End of Year Celebration
- Nov. 14th – Breakfast Program
- Nov. 16th – HR 101: FLSA/Wage & Hour
- Dec. 12th – Annual Business Meeting

MEMBERSHIP Referral Program

It's easy!

- 1 Refer a friend by filling out this form.
- 2 If they become a member...

There are no referral limits.
Breakfast Package holders will be issued a \$25 gift card.
Memberships expire 12/31/2023
New members eligible for 2024 renewal at 2023 rates starting October 2023!
*Membership rates increase 1/1/2024
- 3 **YOU** receive a **FREE** Breakfast Program!

Thank you to our sponsors!

Barley Snyder
ATTORNEYS AT LAW

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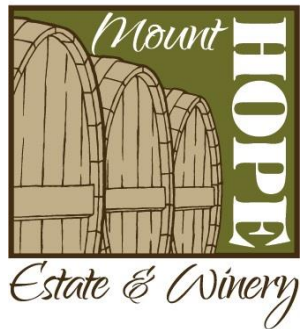


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DEVELOPMENT BOARD

“Pre-Work” Stage



JOB ANALYSIS



JOB DESCRIPTION



JOB LISTING

Job Analysis



Job analysis is the process of gathering, examining, and interpreting data about a job's tasks and responsibilities.



Evaluate the job, not the person doing the job



Understand the essential functions



List all the duties and responsibilities

Job Analysis Key Elements to Consider

Physical demands
(standing, lifting)

Environmental
conditions (hot/cold,
noise, lighting)

Physical
requirements (ability
to stand for 4 hours,
ability to lift 20 lbs.)

Include all in Job
Description

Job Description

Step 1: Perform a Job Analysis

Step 2: Establish the Essential Functions

Step 3: Organize the Data Concisely

Step 4: Add the Disclaimer

Step 5: Add the Signature Lines

Job Description Key Elements to Consider

Job Title and
Classification

Essential
Functions and
Competency

Work Environment
and Physical
Demands

Required
Education and
Experience

Job Listing

- Keyword Driven Description
- Clearly Defined Responsibilities
- Compensation and Benefits
- Unique Company Culture
- Use multiple sites



Job Listing Key Elements to Consider



Job Listing vs Job Sourcing?



Internal vs External Candidates?



Niche Job Boards vs Job/College Fairs?



Candidate Review Person vs Review Team?

SHRM Resources



How do I conduct a job analysis to ensure the job description matches the duties performed by the employee in the job?

https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/conductjobanalysis.aspx?_ga=2.64100399.1811898252.1689085431-1849468776.1678149820



SHRM Sample Job Descriptions

https://www.shrm.org/resourcesandtools/tools-and-samples/job-descriptions/pages/default.aspx?_ga=2.245891905.434472900.1695071405-1586043210.1692197876



Job Advertising: Missed Opportunities and Easy Fixes

https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/job-advertising-shrm-talent.aspx?_ga=2.172934118.434472900.1695071405-1586043210.1692197876

How To Avoid Discrimination in The Hiring Process



Education and Training



Standardized Processes



Train your Trainers



Recruitment Outreach



Legal Compliance

Education and Training

[EEOC](#)

DE&I

[Society for Human Resources SHRM](#)

Standardized Processes

Applications

Phone Screen Guides

Screening Questions

Evaluation Matrix

Background Check

Train Your Trainers

Focus on
qualifications and
skills

Why its
important

What types of
questions should
not be asked

Protected classes



**2,750,663 adults in Pennsylvania
have a disability¹**

This is equal to 26% or 1 in 4 adults
in Pennsylvania

<https://www.disabilityresources.org/pennsylvania.html>

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Recruiter Outreach



Diverse Sourcing
Pipelines



Candidate Outreach
and Engagement



Build relationships
with organizations that
promote DE&I

Legal Compliance



Research and educate Anti Discrimination Laws

Federal
State
Local



Consult with Experts

Attorney
HR Colleagues

What Are You Allowed To Say?

Recruiters are
Recruiters, NOT ...

What Are You Allowed To Say?.... Cont

Job-Related/Candidate
Questions

Clear and Concise Job
Description

Describe Physical Requirements
of Role

Inclusive language

Interview Process/Next Steps

What To Avoid During The Interview

Opinions or Judgements



Guarantees



Medical or Health related



Background Check



Laws that Apply to the Hiring Process

- EEO: Title VII, ADEA, ADA, GINA, PWFA, USERRA
- ADA: Accommodations
- FCRA: Background Checks
- INA/IRCA: Employment Eligibility
- Timing is a Factor: Pre-Offer and Post-Offer
- Record Retention/Documentation
- Job-related need

EEO: Title VII, ADEA, ADA, GINA, PWFA USERRA

Protected Categories:

race, color, religion, sex (includes gender identity, sexual orientation, and pregnancy), national origin, age (40+), disability, genetic information, and military/veteran status

Claims:

Disparate Treatment: intentional, direct

Disparate Impact: neutral policy disproportionately impacts protected group

EEO/Discrimination

- job ads
 - ad that seeks "females" or "recent college graduates"
 - recruiting
 - word-of-mouth recruitment by a mostly Hispanic if almost all new hires are Hispanic
 - questions about marital status and children
 - child care arrangements
- (EEOC examples)

EEO/Discrimination

- Pre-Employment Testing
 - skills test must be necessary and job-related
 - test all applicants for the position
 - ok to test for some positions but not all, as long as all applicants for the same position are tested
 - no Disparate Impact

Americans with Disabilities Act (ADA) Application Process

- Must provide accommodation to be able to apply, so long as it does not cause significant difficulty or expense
 - Deafness/hard of hearing: Teams chat, Sign Language interpreter
 - Vision: person to read or computer screen
- Even if you think cannot accommodate for actual job
- Explain what hiring process involves (interview, timed written test, or job demonstration), and ask “will you need an accommodation for the process?”

Americans with Disabilities Act (ADA) Application Process

- Evaluate accommodations separately for application and job
- If the need for accommodation is not obvious, may ask for reasonable documentation about disability
 - Functional limitations only (no medical information)
 - WHY??? Not recommended
- Document

Americans with Disabilities Act (ADA)

Pre-Offer Inquiries

- No questions that are likely to elicit information about a disability
- May ask whether applicant can perform any or all job functions, “with or without accommodation”
- If you believe applicant cannot perform a function because of known disability, may ask to describe or demonstrate how s/he would perform the function
 - Known = obvious or voluntarily disclosed
- May ask if accommodation needed to perform specific task and if yes what accommodation would be/what type

Americans with Disabilities Act (ADA)

Post-Offer Inquiries

- May ask disability-related questions, require a medical exam, ask whether accommodation is needed for job as long as all individuals selected for same job are asked the same
 - “Can you perform job with or without accommodation”
 - “How?”
- Focus on limitations not the medical condition
- Maintain confidentiality:
 - Supervisors with need to know of restrictions
 - No/limited information about medical condition
 - First aid and safety if might require emergency treatment
 - Government officials, WC, insurance

Fair Credit Reporting Act (FCRA)

- Applies to all background checks (not just credit checks)
- Regulated by Consumer Financial Protection Bureau
<https://www.consumerfinance.gov/>
- Disclosure and Authorization: stand alone format
- Description of “investigative report” (interviews of reputation and character)
- Certification of compliance and no misuse to vendor
- Pre-Adverse Action Notice: Report and “Summary of Rights”
 - right to dispute
- Adverse Action Notice after 5 days

Criminal Records: Post Offer

- Ban the Box
 - Pre-offer inquiries prohibited
 - Philadelphia, Pittsburgh
- Request self-disclosure and do background checks after making an offer of employment
- Offer is contingent upon passing background check

Criminal Records: Arrests

- Cannot deny employment based on arrest
- Arrest does not prove guilt or crime
- May review conduct leading to the arrest and ask applicant to explain the circumstances then decide whether the underlying conduct bars employment
 - News articles
- May postpone start date until Charges are disposed (depending on court dates)

Criminal Records: Convictions

- Disparate Impact
 - Studies show Black and Hispanic people arrested at higher rate
 - Must be job-related and consistent with business necessity
- Third Circuit Case: employers must show they “accurately distinguish between applicants [who] pose an unacceptable level of risk and those [who] do not”
- Exercise judgment
- Treat applicants consistently
- Predict who will be a responsible, reliable, and safe employee

Criminal Records: Convictions

- Individualized Assessment:
 - how crime relates to job
 - shoplifting/retail, bad checks/bank teller
- Type and seriousness of crime (fines, jail, and probation)
- Nature of job
- Time passed since offense, conviction, or completion of sentence
- Ability to maintain employment, obtain education
- Age at time of offense (youth may mitigate)
- Older age at time of conviction or prison release
- Facts and circumstances of offense
- Multiple convictions for multiple incidents

Record Retention

- EEOC: keep records including application forms regardless of whether applicant was hired, for 1 year after records were made or after a personnel action was taken, whichever is later
 - 2 years for schools, governments, and federal contractors with 150 employees and \$150k contracts
 - If Charge is filed, retain until case is concluded
- FCRA: dispose of background reports securely
 - shred documents and
 - dispose electronic information so it cannot be reconstructed

Citizenship and Work Authorization

- Immigration and Nationality Act (INA)
- Immigration Reform and Control Act of 1986 (IRCA)
- E-Verify
- Must verify identity and employment authorization of all employees
 - I-9 Form: Employment Eligibility Verification Form
 - New form published August 1, can use old form until October 31
 - Review documents of identity and work authorization
 - Employees may choose from Lists of Acceptable Documents
 - employer cannot require certain documents

Citizenship and Work Authorization

- I-9 Completion:
 - Cannot do I-9 and E-Verify before employee accepts offer
 - Must do within 3 days of hire, if not provided, cannot hire
 - Remote (Zoom) verification: E-Verify, email docs, Zoom with docs, keep copies, check box on new I-9 Form
 - Reverify if documents expire -- calendar prior to expiration
- I-9 Retention:
 - Keep a completed I-9 on file for each employee on payroll
 - 3 years from date of hire or 1 year after end date, whichever is later
 - Less than 2 years, keep for 3 years after First of Employment field
 - More than 2 years, keep for 1 year after date they stop working
- Penalties assessed for each violation on each form = \$\$\$\$\$

Immigration/Sponsorship

- Individuals with temporary work visas are not protected under INA
- May ask whether applicant will require sponsorship
- But detailed questions about citizenship status may cause claims of national origin, race, or ethnicity discrimination
- Ask:
 - Are you authorized to work in the US?
 - Will you now or in the future require sponsorship in an immigration case in order to be authorized to work?

Hot Topics: Pay Transparency

- State laws require including pay range in job ads when job may be performed in whole or in part in that state
 - CA CO HI IL NY NYC WA
- More states require disclosure of pay ranges upon request
 - MD
- PA: bill would require posting pay range and providing on request
- Indeed will provide estimate – applicants will expect
- Pros: pay equity, efficient, avoid wasting time
- Cons: current employees can see rates/ranges

Hot Topics: Artificial Intelligence (AI)

Per EEOC:

- Because selection procedures are subject to Title VII
- And selection procedures cannot cause adverse impact...
- Software that uses AI/algorithms that help to evaluate, rate, and make other decisions in recruiting and hiring
- If an algorithm causes adverse impact, it will violate Title VII unless use is job-related and consistent with business necessity
- **Employer may be liable even if AI developed or used by vendor**

Hot Topics: Artificial Intelligence (AI)

Per EEOC:

- Must evaluate whether use of AI tool causes a substantially lower selection rate for individuals in a protected category
 - 4/5^{ths} Rule (80%)
 - Employer vs vendor testing
- Self-analyze on ongoing basis and proactively change practice

Hot Topics: Non-Competes

- Law varies by state, news laws being enacted
- FTC proposed regulation prohibiting, maybe minimum wage level
- NLRB Opinion significantly restricts
- Protect legitimate business interests
- Reasonable in time limit, geographic location and scope (business interests)
- Sign at time of hire (or promotion or more pay/bonus)
- Come to LSHRM **BYO Lunch October 19!**

Links/Resources

<https://www.eeoc.gov/prohibited-employment-policiespractices>

See “Pre-Employment Inquiries and...”

<https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/fair-credit-reporting-act/>

Questions?



Questions?

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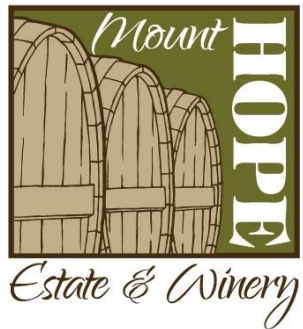


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