

## **Smart Hiring in the Hospitality Industry: Legal and Business Perspectives**

**Kay Biga**  
**University of Wisconsin – Superior**

**Patrick Spott**  
**Spott Law Office**

**Emily Spott**  
**Minneapolis Grain Exchange**

*Effectively and efficiently hiring quality employees in the hospitality industry is challenging. This paper outlines strategies and techniques needed throughout the hiring process including: advertising, job application, interviewing, interview questions, reference checks, superstars, and after the hire. In addition, this paper outlines the legal framework that must be navigated by employers looking to hire. The State of Minnesota's laws are used as the principle example of this legal framework. Specifically, this paper discusses how to comply with laws related to: race, age, familial status, religion, criminal history, disability, drug and alcohol testing as well as nationality and citizenship.*

### **INTRODUCTION**

Employers in any business need a cost effective way to hire people. This is particularly true in the hospitality industry. Often the pay rates are lower and the demands on the worker are higher. In this context, there are significant resource limits in hiring.<sup>1</sup> Many hospitality businesses do not have human resource professionals on their staff. Search firms are not an economic option. Elaborate testing may not be feasible.<sup>2</sup> In many cases, the hiring manager leaves the “front line” for a few minutes to conduct an interview and then rushes back to work. This article explores the practical low cost efficient ways to increase the likelihood a quality worker will be hired in compliance with federal and state laws.

---

<sup>1</sup> See Steve Brooks, Getting A Hand Hiring Top Talent (Restaurant Business, Oct. 2007, Vol. 106, Issue 10) (Headhunting or recruitment fees are on the rise and are tied to the percentage of the first year salary and bonus. Such percentages in the restaurant industry start at 15% and go up to 35% of an employee's annual salary and bonus.)

<sup>2</sup> See, Frederick Morgenson, Michael A. Campion, Robert L. Dipboye, John R. Hollenbeck, Kevin Murphy, et al., Are We Getting Fooled Again? Coming to Terms with Limitations in the Use of Personality Test for Personnel Selection (Personnel Psychology, Winter 2007) (There is also evidence that self-reporting testing for personnel selection is not actually that useful for predicting success in a position.)

If a hospitality business is consistent with federal and state laws in its hiring decisions, but fails to hire effective employees, it will be out of business soon. There needs to be more than merely proceeding legally.<sup>3</sup>

Effective hiring practices at all phases of the process can be employed without running afoul of this social legislation. Hiring starts with advertising the position and the job application itself. The process can include techniques such as “bounties” and referrals. The interview is an important window into the potential of a new employee; there are a variety of approaches and techniques in the interview that can maximize success. Attention needs to be paid to work environment and the businesses philosophy with a continuous focus on customer service. Checking references, setting and maintaining standards are essential as well.

At the same time ignoring the maze of social welfare legislation on the federal and state level will likely result in expensive legal problems. Also, at the core of this legislation are ideals that are good business practices in and of themselves.

## ADVERTISING

There are a variety of ways to advertise an open position. Classified ads<sup>4</sup>, putting something on the outside reader board<sup>5</sup>, posting the position on LinkedIn, and utilizing the newspaper’s online job marketplace are a few.

Once a mainstay of hiring, a search limited to a traditional classified ad in the local newspaper has really become a thing of the past.<sup>6</sup> This method has always had some disadvantages. For example, sometimes the employer wants to replace someone and does not want their current worker to know that they are searching for their replacement.<sup>7</sup> Further, the number of people reading the local newspaper has plummeted in recent years.

Pre-internet, newspapers set up a post office box to which applicants could apply without knowing the name of the employer. This approach had significant disadvantages. First, the applicant can’t customize their application without knowing the details of the job. A great applicant may be missed in this way. Second, employees often identify with or want to identify with a specific employer. A potential worker is unlikely to get excited about the opportunity to work for a particular company without knowing the company’s identity.<sup>8</sup>

---

<sup>3</sup> See Also, Donald H. Weiss, Fair, Square & Legal: Safe Hiring, Managing & Firing Practices that Keep You & Your Company Out of Court 1-12 (2000) (Balancing the legal concerns while also being an effective manager is key. Being in compliance with the law while also effectively managing employees will prevent legal issues while also being effective management: “Fair and consistent application of personnel policies defines safe management and also contributes to proactive management, that is, preventing problems, or at the least preventing them from getting out of hand.”)

<sup>4</sup> See, Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People 182-184 (1999)

<sup>5</sup> See Also, Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People 214-216 (1999) (It is important to let the community know that a business is hiring. This might be a radio ad, bulletin board, chamber of commerce)

<sup>6</sup> Robert W. Wendover, Smart Hiring: The Complete Guide to Finding and Hiring the Best Employees 75-76 (1998) and Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People (1999) (The size of the ad and the placement of the ad in a publication will greatly influence the price of an ad. Additionally, the publication and distribution of the publication will influence price) and See Also, Dennis L. DeMey & James R. Flowers, Jr., Don’t Hire a Crook: How to Avoid Common Hiring (and Firing) Mistakes 11-13 (1999) (Don’t necessarily only rely on local papers, sometimes trade publications can be more useful to locate good candidates with specific backgrounds or skills.)

<sup>7</sup> Id. At 78 and Lin Gensing, A Small Business Guide to Employee Selection: Finding, Interviewing, and Hiring the Right People 20 (1991)

<sup>8</sup> Hardy Caldwell, The Agile Manager’s Guide to Hiring Excellence 41 (1998)

Certainly electronic options should be utilized<sup>9</sup> as indicated above, but utilizing the existing staff for referrals, using the business's reader board and postings in the business itself can have great efficacy. In the hospitality business it never hurts to include the desire to hire people who are "friendly" and who have a focus on customer service. For example, "Now hiring friendly desk clerks."

Hospitality businesses are often located in geographic areas where the number of tourists can sometimes outnumber the local residents during "the season." This annual boom and bust cycle creates staffing headaches.

In order to combat this phenomenon a fast food restaurant in Hayward, Wisconsin offered a bounty to their current employees to bring in a qualified worker.<sup>10</sup> There was a caveat; the new employee needed to stay for a reasonable amount of time (at least two months) before the bounty was paid. This ensures that time spent training the new person is not wasted effort.

Also, to be effective the bounty has to be significant enough that it provides adequate incentive for the current employees to spend their time recruiting new workers. For many lower wage-workers this figure could range from \$ 50 - \$ 200<sup>11</sup> depending on the degree of difficulty in finding good people.<sup>12</sup> Some of the benefits of the bounty system are that the current staff reaches out to their family and friends.<sup>13</sup> Generally they will also want to make sure that their candidate does a good job so that it does not reflect badly on them.<sup>14</sup>

## **JOB APPLICATIONS**

At its most basic level a job application should ask for the applicant's name, contact information, availability, salary expectations, work experience, education, references and the applicant's signature.<sup>15</sup> More specific requirements of the job, such as ability to work with people or friendliness, or physical requirements of the job, such as ability to stand or lift, should be added as well.

It is at this point that federal and state prohibitions, discussed in detail below, become most relevant. In this regard, it is a good idea to have an at-will employment statement in states that allow that doctrine.<sup>16</sup> At-will employment means that there is no employment contract; the worker can be discharged for any legal reason at any time.<sup>17</sup>

---

<sup>9</sup> Charles H. Fleischer, Employer's Rights: Your Legal Handbook from Hiring to Termination and Everything in Between 20-21 (2004), See Also, Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People 203 (1999)

<sup>10</sup> Susan J. Herman, Hiring Right: A Practical Guide 61-62 (1994) ("An employee who knows both the organization and his or her associated and friends well is in a unique position to know if they would be a good match for each other." Companies that actively use a bounty/employee referral system include: Professional Salon Concepts, Liberty Mutual Insurance, and Fidelity Systems.

<sup>11</sup> Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People 201 (1999) (The market and demand for employees will affect the amount warranted for an employee bounty. "Payment can range from as little as \$50 to \$100 for lower-level employees.")

<sup>12</sup> Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People 2000-202 (1999) (Employees have direct knowledge of the requirements for a position and can therefore reach out to those people that they know who might fit the position well. Moreover, current employees will want anyone they recruit to work out and will likely help train/orient new staff.)

<sup>13</sup> Lin Gensing, A Small Business Guide to Employee Selection: Finding, Interviewing, and Hiring the Right People 17 (1991)

<sup>14</sup> Id.

<sup>15</sup> Fitzke and Luger-Nikolai, Job Applicant Screening A Practice Guide 1-2 (MSBA 1<sup>st</sup> Edition 2014) and Lin Gensing, A Small Business Guide to Employee Selection: Finding, Interviewing, and Hiring the Right People 28-30 (1991) and See Also, Dennis L. DeMey & James R. Flowers, Jr., Don't Hire a Crook: How to Avoid Common Hiring (and Firing) Mistakes 22 (1999) (Job Applications should be signed and dated)

<sup>16</sup> Montana and several other states do not recognize the at-will employment doctrine.

<sup>17</sup> See e.g. Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369, 371 (Minn. 1995).

Although not required, it is a best practice to include the Equal Employment Opportunity Commission's (EEOC) equal opportunity employer statement: "We are an Equal Opportunity Employer. We do not discriminate on the basis of race, religion, color, sex, age, national origin or disability."<sup>18</sup>

The Americans with Disabilities Act (ADA) also does not require any reference in a job application, but the ADA does require "reasonable accommodation" for individuals with disabilities.<sup>19</sup> Accordingly, a reference to the employer's willingness to positively respond to a request for accommodation is recommended.

The Immigration Reform and Control Act of 1986 (IRCA) mandates employers verify identity and employment eligibility of all workers who are hired.<sup>20</sup> It is recommended the job application simply inform applicants of that fact. For example, "In compliance with federal law, all persons hired will be required to verify identity and eligibility to work in the United States and to complete the required employment eligibility verification document upon hire."

Discussed in greater detail below, the application should not ask for information suggestive of a protected classification, such as race, age, national origin, sex, religion, or disability.<sup>21</sup> Accordingly, asking for a maiden name (sex), dates of high school or college graduation (age), social or community affiliations (religion), or next-of-kin to notify in the case of emergency (marital status) are all illegal or problematic.<sup>22</sup>

## INTERVIEWS

Once applications have begun to arrive, it's a good idea to have a short telephone interview to verify the basic information from the job application.<sup>23</sup> For example, is the person still interested in the job? Are they trying to work at more than one job at the same time? What are their salary expectations? This is an opportunity to obtain information missing from the application or clarification if there is confusion.<sup>24</sup> The telephone interview is also a chance for the employer to make a good first impression with the candidate.<sup>25</sup> To hire someone who is going to be successful in the hospitality industry, the hiring manager needs to model that behavior.

Similarly, when interviewing the candidate that person should be offered a beverage and positioned in a comfortable chair (with a place to write notes if necessary).<sup>26</sup> There should be no distractions such as ringing phones or customers needing attention so that the focus is on what the candidate can provide for the company.<sup>27</sup> The candidate needs the courtesy of the manager's full attention.<sup>28</sup>

---

<sup>18</sup> See Equal Employment Opportunity Commission, "EEO is the Law" Poster (2008) and Lin Gensing, *A Small Business Guide to Employee Selection: Finding, Interviewing, and Hiring the Right People* 35 (1991)

<sup>19</sup> 42 U.S.C. Sections 1121(a) and 12112(b)(5)(A). See also, Susan J. Herman, *Hiring Right: A Practical Guide* 22-23 (1994)

<sup>20</sup> 8 U.S.C. Sec. 1324(a).

<sup>21</sup> Hardy Caldwell, *The Agile Manager's Guide to Hiring Excellence* 29 (1998)

<sup>22</sup> Fitzke and Luger-Nikolai, *Job Applicant Screening A Practice Guide* 1-6 (MSBA 1<sup>st</sup> Edition 2014).

<sup>23</sup> Ron Fry, *Ask the Right Questions: Hire the Best People* 32-34 (2000)

<sup>24</sup> Hardy Caldwell, *The Agile Manager's Guide to Hiring Excellence* 47-48 (1998)

<sup>25</sup> Susan J. Herman, *Hiring Right: A Practical Guide* 89-91 (1994)

<sup>26</sup> Dennis L. DeMey & James R. Flowers, Jr., *Don't Hire a Crook: How to Avoid Common Hiring (and Firing) Mistakes* 74-75 (1999)

<sup>27</sup> Ron Fry, *Ask the Right Questions: Hire the Best People* 36-37(2000)

<sup>28</sup> Dale Carnegie, *Pathways for Success: A Combined Edition of How to Win Friends and Influence People and How to Stop Worrying and Start Living* 80-88 (1999)

## Observation

One of the challenges for a manager in the hospitality industry is finding employees who are willing and able to work in a fast paced and sometimes difficult environment.<sup>29</sup> Many employees start when they are teenagers and may not realize the difficulties they may face in the workplace. Actually these challenges will affect employees of any age if the job duties don't match up with what they expect.

Oftentimes a prospective employee sits in the lobby with the manager, sipping on a beverage and talking about the job. It really doesn't sound too difficult. The reality is that this does not provide a complete or even accurate picture of what it like to do the job itself. Even on the first day of work, the employee is probably filling out paperwork and getting acquainted with the rest of the team.<sup>30</sup>

Then the truth comes out during the first days of training. Many employees quit when they realize that this job is not for them due to the duties of the job itself. Unfortunately, by then the company has already spent a fair amount of time doing a reference check, preparing the employee file with the needed documentation and initial training.

One company in the tech industry, Automatic, holds "auditions," paying their potential employees a set rate on a contract basis to obtain concrete information on the possible new worker:

"The most significant shift we've made is requiring every final candidate to work with us for three to eight weeks on a contract basis. Candidates do real tasks alongside the people they would actually be working with if they had the job. They can work at night or on weekends, so they don't have to leave their current jobs; most spend 10 to 20 hours a week working with Automatic, although that's flexible...The goal is not to have them finish a product or do a set amount of work; it's to allow us to quickly and efficiently assess whether this would be a mutually beneficial relationship. They can size up Automatic while we evaluate them."<sup>31</sup>

Automatic puts every prospective employee, whether a new customer service employee or the Chief Financial Officer through this process. Many hospitality businesses would not have the resources to employ the "audition" method, but a few hours of "observation" might be an effective cost efficient substitute.

In an effort to improve the odds that a new employee will stay in the job, a period of observation prior to hiring with a tour of the facility is recommended.<sup>32</sup> Each prospective employee could benefit from at least one to two hours of optional observation of the actual work that they will be required to do. It will be important they do not get in the way and that are not injured during this optional observation. Potential hires should be encouraged to participate during this tour so that they can make a good decision about whether the job is a good fit for them.

If the position is assembling sandwiches in the back of the house at a McDonald's restaurant, then the prospective employee will stand and observe in that area. The heat, the smells and overall working conditions will become clear in a way that helps the person make a good decision.

Additionally, current employees will have a chance to interact with the prospective employee. The current staff will be pleased if they are asked for their opinion of the potential hire. Ultimately, the staff

---

<sup>29</sup> Lin Gensing, *A Small Business Guide to Employee Selection: Finding, Interviewing, and Hiring the Right People* 100 (1991)

<sup>30</sup> Arthur H. Bell, *The Complete Manager's Guide to Interviewing: How to Hire the Best* 85 (1989) (It can be very valuable for employees to interview at the job site. "Embassy Suites hotels, puts applicants in the position of on-site decision maker. "We bring the candidate in over the weekend and ask him or her to review the front desk. We ask what he or she would do to improve it.")

<sup>31</sup> Matt I. Mullenweg, *The CEO of Automatic on Holding "Auditions" to Build a Strong Team*, *Harvard Business Review*, 00178012, Vol. 92, Issue 4 (April 2014).

<sup>32</sup> Lin Gensing, *A Small Business Guide to Employee Selection: Finding, Interviewing, and Hiring the Right People* 100-101 (1991)

will be more invested in the success or failure of the new person, because they had a role in the selection of that person. The converse can be true.

For example, a small symphony orchestra had hired a new music director utilizing a small group of committed symphony board members. The committee who hired him became his staunchest supporters. Unfortunately the musicians and executive director didn't feel the same way and lobbied for his ouster after just a few years.

There are a couple of lessons that can be learned and applied in the hospitality industry. First, allow folks from different parts of the company to weigh in on a hiring decision. One example would be that the front line worker has to sell the products that the new marketing manager plans to promote. Another would be to make sure the back of the house manager gets to help develop the position description for the front of the house manager. This greatly helps to coordinate the efforts of both employees and leads to more success for the company.

Second, when people have input into the hiring decision they will work very hard to make that person successful in their new job.<sup>33</sup> This input can come in many forms (verbal questions, written analysis, use of a survey).

It is also essential to keep an open mind throughout this process. For example, an interested person applied using a handwritten note. There was no fancy resume and the business owner really discounted the application in his mind, despite the beautiful cursive writing. As it turned out the owner still decided to interview the woman. She not only got the job, but stayed for many years with the company.

## **INTERVIEW QUESTIONS**

There are many areas of inquiry that are problematic or potentially illegal, discussed in detail below. On the affirmative side, how can you find out if the person being hired for the hospitality business is the right person? Although criminal background checks<sup>34</sup> are indeed available, small hospitality businesses may lack the expertise and money to hire a professional company to provide this service. As discussed below, the state in which the business is located may prohibit or restrict such inquiries.

Also, an employee without a criminal history is not automatically a good employee. In fact, many states have made a policy decision to de-emphasize an applicant's possible criminal history in the employment process. Certainly, a prospective employee's poor work history would never show up in such a search even if it is allowed.

As a general principle the goal of an interview is to collect facts, learn work history and experience level, identify skills and abilities, and evaluate work ethic, values, intelligence and aptitude.<sup>35</sup>

### **Previous Employment**

Attendance and retention are important for any job; they are essential in the hospitality industry. Effective performance of a hospitality business is dependent on proper staffing; made impossible if people do not show up for their shifts or quit unexpectedly. Gaps in employment are also suggestive of potential problems.

Certainly it is useful to ask, "Why did you leave your former employment?" The candidate will respond with something; their explanation will provide a chance to evaluate their veracity. A follow up

---

<sup>33</sup> See also, Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People 200-202 (1999)

<sup>34</sup> Dennis L. DeMey & James R. Flowers, Jr., Don't Hire a Crook: How to Avoid Common Hiring (and Firing) Mistakes 44 (1999)

<sup>35</sup> Hardy Caldwell, The Agile Manager's Guide to Hiring Excellence 58 (1998), See Also, Alan S. Horowitz, The Unofficial Guide to Hiring and Firing People 244-248 (1999), See Also, Linchi Kwok, Charlie R. Adams, & Margaret A. Price, Factors Influencing Hospitality Recruiters' Hiring Decisions in College Recruiting, (Journal of Human Resources in Hospitality & Tourism, Oct-Dec 2011, Vol. 10, Issue 4, p. 372-399) (The most influential factors in hiring decisions are: leadership, job experience, person-organization and person-job fit as well as personality.)

question would be, “What would your former employer say about you if we call them?” This will undoubtedly provide even more information, because the candidate wants the new job and will have to answer the question even if it is unfavorable to them.

### **Ask the Right Question**

An experienced motel owner was in need of a qualified maintenance person who could work between two locations owned by the company. The work included using the company truck for snowplowing. The owner decided to interview all of the applicants so she knew her hiring options. Over the course of thirteen interviews the owner later realized that she continued to ask the wrong question.

The question that the owner asked was “Do you have transportation?” to make sure the applicant could get back and forth between the two motel locations. In all cases the answer was YES! The owner selected the best candidate out of the pool of applicants and started the hiring paperwork. One of the required items in this paperwork was verification of a valid driver’s license which would allow the worker to drive the company vehicle between the two locations. The candidate that appeared the most qualified did not have a valid driver’s license and the hiring process had to begin again. It was at this point that the owner realized the correct question was “Do you have a valid driver’s license?” rather than, “Do you have transportation?” In this instance 10 out of the 13 applicants did not disclose they did not have a valid driver’s license, because they had “transportation,” either walking or a receiving a ride from someone else, to get to work.

### **Will They Stay?**

How does one find out the candidates motivation for a job and about the likelihood they will stay in the position? How does one gather information this kind of information without violating federal and state law?

A viable technique is to ask open ended questions. Instead of asking “What does your spouse do?” (which is definitely problematic) you might consider asking “What brings you to our town?”

If the candidate offers that her “husband took a one year position as an adjunct instructor” this information lets you know that there is a good possibility that the couple might be leaving town at the end of the school year. The one year restriction might not be a problem for the company, but it’s valuable to have that information nonetheless.

Questions like, “Where did you grow up?” or “Where did you go to school?” will illicit information that will suggest whether or not the candidate is “local” and might have ties to the area, increasing the possibility of retention.

Of course, the problem here is that information regarding protected classifications that is received by the employer can be a basis for a claim of discrimination even if the employer did not directly request this information. The “What brings you to our town?” question can bring information that is not wanted, such as marital status, medical or disability issues, nationality information, etc. The question, “Where did you go to school?” could result in the year of graduation, or other unwanted information as well.

There needs to be a balance. The small hospitality employer needs to avoid making a completely blind hire, but at the same time great care needs to be taken to also avoid decision making based on illegal criteria, discussed in more detail below.<sup>36</sup>

### **“Gut Instinct”**

Why do some employees turn out to be great and some turn out to be duds? Of course, there are measurable ways to try to determine the future success of an employee in the hospitality industry. These include how many years of experience, what level of education they have achieved and the number of previous jobs a candidate has held.<sup>37</sup>

---

<sup>36</sup> Susan J. Herman, *Hiring Right: A Practical Guide* 83-92 (1994)

<sup>37</sup> DeAnne Rosenberg, *A Managers Guide to Hiring the Best Person for Every Job* 39-40(2000) (“Every once in a while, a candidate who looks perfect on paper—with appropriate skills, experience, qualifications, and

However, managers need to make sure that they follow their “gut instinct” when making a hiring decision.<sup>38</sup> A good manager will take into account the items that follow:

- Did they make any disparaging remarks about a former employer?
- Are they dressed properly?
- Can they make and maintain eye contact?
- Do they seem truthful about their qualifications?
- Does their desire for the job seem genuine or an act of desperation?<sup>39</sup>

One chief operating officer in the motel industry relies on her “Slick-O-Meter” when sizing up a potential candidate. If they seem too good to be true, then they probably are. This skill is hard to teach. Managers with the ability to correctly size up a candidate are extremely valuable to the organization.

Don’t hire anyone who doesn’t give their current employer at least a two week notice. If an employee leaves their employer in the lurch, then they may do the same thing to their future employer. For some positions a two week notice is inadequate. Certain supervisory or management positions might require closer to four weeks. A longer period than that is probably unrealistic. This should be discussed during the initial interview so that the prospective employee knows up front what is expected.

It is better to not hire someone than to hire the wrong person.<sup>40</sup> In this regard, it is important for one manager to interview and a different manager to check references, discussed further below. An objective assessment of the employee is important. This same principle of objectiveness is important to determine if there is an acceptable person to hire or not.

### **Customer Service**

In the hospitality industry every employee has to have a mind for customer service.<sup>41</sup> While certain positions, like server, counter person, desk clerk or concierge might involve almost constant customer service, every team member has to interact with customers. Housekeepers, the maintenance staff and the laundry staff need to look and act professional.

A key driver for most customers is being treated as special, as an individual.<sup>42</sup> For example, when the housekeepers for a resort operation on the north shore of Lake Superior notice that a customer has a cold (probably based on the number of tissues in the trash and the cold remedy on the night table), the housekeeper leaves a note saying “I hope you feel better” along with some tea bags.

It is well known that many hospitality jobs are rigorous.<sup>43</sup> A recent study suggests that employees with a customer orientation, defined as “an employee’s tendency or predisposition to meet customer needs in an on-the-job context” are much less likely to suffer from burnout, related lower job performance

---

background—will seat him-or herself in front of you...you develop a gut-level feeling that tells you, despite the apparent glorious background, this candidate is all wrong for the job...It is important to listen to those gut-level messages.”)

<sup>38</sup> But Also, Susan J. Herman, *Hiring Right: A Practical Guide* xiii (1994) (While gut instincts can be very helpful in making determinations: “The instinctive abilities managers bring to the hiring process are enhanced exponentially by combining their instincts with a professional, systematic approach to hiring.”)

<sup>39</sup> Ron Fry, *Ask the Right Questions: Hire the Best People* 7-8 (2000)

<sup>40</sup> Hardy Caldwell, *The Agile Manager’s Guide to Hiring Excellence* 48 (1998)

<sup>41</sup> DeAnne Rosenberg, *A Managers Guide to Hiring the Best Person for Every Job* 261(2000) (“Service providers need a special attitude and psyche that is not tied to the important of being right in every situation.”)

<sup>42</sup> Robert C. Ford & Cherrill P. Heaton, *Lessons From Hospitality That Can Serve Anyone*, *Organizational Dynamics*, 00902616, Vol. 30, Issue 1 (Summer 2001).

<sup>43</sup> DeAnne Rosenberg, *A Managers Guide to Hiring the Best Person for Every Job* (2000) (People in the service industry “strive to surpass the expectations of their clients. They realize that without customers there is no business; and without an adequate level of service, the customer will not return.”)



and attendance problems.<sup>44</sup> A positive customer service orientation provides seemingly geometric advantages within the service industry. People that are able to most satisfy customers are happier, more effective and less likely to leave employment.

### **“That’s not my job”**

In every business, but particularly in the hospitality business, the most valuable employees are those who can and will step up and help in a crisis and be flexible. Employees who prefer a regimented work life with firm job descriptions are often not a good fit in the hospitality industry.

There also is often a necessary expectation the employees will work on nights and weekends. For example, a successful Duluth, Minnesota caterer married an equally successful 8:30 a.m. - 4:30 p.m. government employee. They wanted to spend their free time together. It became obvious their free time did not match. The caterer was working all hours and weekends. Her free time was not predictable. They were not happy. The caterer ultimately shifted to contract baking and providing food service sanitation training so their work lives could align.

### **Hospitality From The Heart**

A resort company with six large resorts on or around Lake Superior is very serious about trying to hire the right people. They work with a university some distance away with a tourism and hospitality program and offer extensive internship opportunities. The company also gives every new employee the book, Hospitality From The Heart, to demonstrate the company’s commitment to the principles of hospitality.<sup>45</sup> This shared experience of reading the same book seems to create a bond amongst the staff members. Such a program is similar to a university that assigns the same book for all incoming freshman students. It is even more effective with some type of reflection exercise. The owner values this book along with the entire management team.

Distributing a book is not enough. There needs to be follow up and, most importantly, time to address the topic. A hotel owner in the same community as the referenced resorts heard about the book distribution program and passed the book to her manager and assistant manager. Unfortunately their books were never cracked open. This failure was not for lack of interest; it turns out the problem was the constant needs of the day. The parking lot needed to be plowed, the swimming pool chemicals were off, someone called in sick for their shift, etc.

As part of the interview process of for management level positions an employer might have prospective candidates read such a book or article and give their impressions before they were hired.

In any case, prospective employee should be asked specific hospitality related questions. For example, the following questions will elicit their opinions regarding service and hospitality:

- What is your favorite restaurant? What do you like about it?
- What is an appropriate amount of tipping?
- Where did you get great service in any type of business?
- What do customers want from the people who take the order, register the guest or put on the event?
- What does hospitality mean to you?

---

<sup>44</sup> Emin Babakus & Ugur Yavas, Customer orientation as a buffer against job burnout, The Service Industries Journal, Vol. 32, No.1 (January 2012).

<sup>45</sup> Brandon Johnson & Katherine Roden, Hospitality from the Heart: Engage Your Employees, Deliver Extraordinary Service, and Create Loyal Guests (Beaver's Pond Press 2013).

## REFERENCE CHECKS

Reference checks are probably the single best way to make sure that a hospitality business is hiring the right person.<sup>46</sup>

For example, a well-established restaurant chain with ninety-three restaurants (Big Time) acquired four more locations from one of their fellow franchisees (Small Fry). Big Time was shocked to find the Small Fry employees to be vastly superior. After three months the district manager for Big Time called the former owner of Small Fry to find out what their secret formula was when hiring.

Most importantly, Small Fry did not allow the same person to both do the interview and conduct the reference check.<sup>47</sup> Often the person who conducts the interview is influenced by the personality of the candidate.<sup>48</sup> This can cause them to look past any inconsistencies or problems with the candidate's work history.<sup>49</sup> Teachers who grade student work will understand the phenomenon. It is human nature to respond to a smile or a handshake. The interviewer starts to root for the candidate. They start to look past inconsistencies and red flags on the application.<sup>50</sup>

The truth is that if a manager is shorthanded for the weekend shift, everyone starts looking pretty good.<sup>51</sup> This will certainly put pressure on the manager to make a quick decision. Sometimes the hard pressed manager rolls the dice and imprudently gives a weak candidate a try.

What happened when Small Fry separated the duties of interviewing and checking references? The results were quite dramatic. After receiving the application of the person that the interviewer was 100% prepared to hire, the person checking references rejected at least 30% of the candidates.<sup>52</sup> This statistic stayed constant month after month and year after year.

As indicated above, it's also important to look for gaps in employment. It is recommended to go back at least five years to look at the applicant's work history. Sometimes there might be a gap due to the birth of a child or someone that is finishing their schooling. However, sometimes such gaps are because of serious performance issues.<sup>53</sup> Candidates with something to hide will intentionally leave off one of their employers.<sup>54</sup>

When checking references ask about the candidate's employment history and for other people who would know the candidate. This can reveal a work location that was omitted on the application.<sup>55</sup>

Some prospective employees with past performance issues put down incorrect phone numbers.<sup>56</sup> Such candidates rely on the fact that many employers don't put enough time and effort into checking

---

<sup>46</sup> Hardy Caldwell, *The Agile Manager's Guide to Hiring Excellence* 81-86 (1998)

<sup>47</sup> See Also, Alan S. Horowitz, *The Unofficial Guide to Hiring and Firing People* 228-231 (1999) (Often the initial interview via phone or in person might be done by a lower level manager and a higher level manager or the owner will conduct final interview or the reference check.)

<sup>48</sup> See Susan J. Herman, *Hiring Right: A Practical Guide* 115 (1994) (Person to person contact can often lead to bias. This bias might be positive or negative. This bias should not mean a candidate is or is not hired.)

<sup>49</sup> See also, Susan J. Herman, *Hiring Right: A Practical Guide* (1994) ("the interview is just one tool not the sole deciding factor in the selection process." It is important to also consider: Resume and Cover Letters, Applications, phone interviews, employee testing, reference check and job offer.)

<sup>50</sup> M. Disney, *Reference Checking to Improve Hiring Decisions*, *Industrial Management*, Vol. 36, Issue 2 (March/April 1994).

<sup>51</sup> John Farr, *Better Interview, Better Employees* (Restaurant Hospitality, May 1999, Vol. 83, Issue 5) (Too often interviews for lower wage positions come down to three points: "Is your heart beating?...Will you promise not to steal too much?...and, most importantly, Can you work this weekend?")

<sup>52</sup> Nick Huber, *Take the Risk Out of Hiring* (Caterer & Housekeeper, 8-6-2010, Vol. 200, Issue 4639) (Many prospective employees overstate their qualifications. In particular, correlations have been found between economic downturn and the extent of false/misleading statements about qualifications.)

<sup>53</sup> See also, Joel Handelsman, ed., *Hire Manage & Retain Employees: For Your Small Business* 72-75 (1998)

<sup>54</sup> DeAnne Rosenberg, *A Managers Guide to Hiring the Best Person for Every Job* 238-242 (2000)

<sup>55</sup> Susan J. Herman, *Hiring Right: A Practical Guide* 146-147 (1994)

<sup>56</sup> See Also, Susan J. Herman, *Hiring Right: A Practical Guide* 146 (1994) ("Studies show that 30% of all applicants lie outright on their resumes. Many more omit critical information, a lie of omission.")

references. If the phone number is incorrect, follow up is needed; rather than skim over this reference, further inquiry should be made. This task has been made much easier now that most businesses have websites.

One technique that is very effective is to ask for someone other than the contact person the applicant has listed at the past employer. Finding someone else in the organization can ensure that you get more objective information about the candidate's attendance, work habits, etc.

In any case, there are at least three essential topics that must be addressed: dates of employment; past position; and "Is this person eligible to be rehired?" Even with companies employing a strict policy of only give dates of employment and the position held, the reference source can sometimes be cajoled into answering the question about rehire. The folks you are asking are often afraid of being sued. Explaining defamation standards and the qualified privilege to provide this information is often ineffective.<sup>57</sup> Giving them an easy way to signal that the person might be trouble is often very effective.

## **SUPERSTARS**

Many employers are searching for the person with the best qualifications for the job. They know that they might have to pay that person at the top end of the scale, but feel it is worth it. After all, a person that can step right in will save the company lots of time and money in terms of hiring and training costs.

The downside of hiring a "Superstar" is that they will probably not remain satisfied for very long. If you come in at the top end of the pay range, then there is really nowhere to go regarding pay when a review comes up. What top talent will want to stay somewhere when their ability to increase their compensation is stunted? Of course, there might be some non-financial incentives that would appeal to a candidate. For example, it might involve a promotion in rank. A bar manager at one of the most successful steakhouses in the country left for a lower tier restaurant, because he had the chance to work as an assistant general manager. The ability to work at a higher management level was enough for him. He wanted to supervise more people, make more decisions, etc.

"Superstars" might also encounter more resistance if they are allowed to jump over folks at the lower levels of the organization who thought that the job should have been theirs. The rank and file employees might not have been privy to the candidate's glowing recommendations and excellent interviewing skills.

## **AFTER THE HIRE**

Many managers delegate initial training to less experienced and less motivated folks. It is a good idea for the manager to take an active role in reviewing the position description and spending time with the new employee.<sup>58</sup> Recently a new employee was working side by side with a more experienced hotel desk clerk.<sup>59</sup> Unfortunately the less experienced person was dispatched to deal with a customer issue. They did not handle the situation well and the company now had a new problem to handle. Throwing people in the deep end of the pool doesn't help them learn how to swim and it frustrates the employee and the customers alike.

Make sure your employee handbook is up to date and that each new employee has adequate time to read it and to ask questions.<sup>60</sup> The employer should have the new employee sign an acknowledgement receipt saying that they have read and understood the policies. This goes immediately into the employee's file.

---

<sup>57</sup> Susan J. Herman, Hiring Right: A Practical Guide 147-148 (1994)

<sup>58</sup> Lin Gensing, A Small Business Guide to Employee Selection: Finding, Interviewing, and Hiring the Right People 144-151 (1991)

<sup>59</sup> Danielle West & Melanie Shanks, How Hiring and Training the Right Way Saves You in the Long Run (Hotel Management, 8-1-14, Vol. 299, Issue 10) (On the job training can be helpful "Hire for attitude and train for skill")

<sup>60</sup> Donald H. Weiss, Fair, Square & Legal: Safe Hiring, Managing & Firing Practices that Keep You & Your Company Out of Court 247-249 (2000)

This practice has saved the day for many employers, especially when trying to respond to an unemployment claim.

## COMPLIANCE WITH THE LAW

There is a constant tension between business considerations in making the best possible hire and legal requirements, created primarily to deal with issues of social justice. On the one hand, knowledge is king. Businesses want to know as much as possible about an applicant to make the best possible hire. On the other hand, much of the social justice legislation makes it better for the employer to limit its knowledge to just the specific requirements of the position, hamstringing the employer in its effort to hire a “good person” in addition to a minimally qualified worker.

At first blush, it might appear that businesses in the hospitality industry would have nothing to fear. Most states have adopted the employment at will doctrine<sup>61</sup>, which allows the employer in a non-union situation to terminate an employee for any reason, as long as that reason is not illegal.<sup>62</sup> Under this doctrine, the businesses here can fire as they please, as much of the hospitality industry is not unionized. Accordingly, the risk of hiring the wrong employee and having to fire them after some period of substandard performance would seem to outweigh the risk of asking a “politically incorrect” question.

The problem here is that the “wrong questions” are at the core of significant state and federal legislation prohibiting employers from making employment decisions based on the “wrong reasons,” which have been defined as illegal reasons.<sup>63</sup> The best defense to an accusation that an employer has refused to hire or fired for an illegal reason would be to have no information at all regarding the employee except their job performance.

### Race

It is well known that discrimination in employment based on race is prohibited by federal law.<sup>64</sup> It would be hard to argue an “innocent mistake” was made in an employment inquiry into someone’s race or color. Yet, there are many other areas of potentially legitimate inquiry that can put an employer at risk for accusations of illegal discrimination. For example, experience on the job or in the field would often be an excellent characteristic in an applicant, making that potential employee more desirable. Further, “life experience,” “maturity” or “leadership” are highly prized qualities in employees.

### Age

Some would assume older workers might have more of these qualities than younger workers, but an employer will inquire into age during the hiring process only at great peril. Federal law and the laws of many states prohibit employment discrimination on the basis of age.<sup>65</sup> If the employer does not know the age of the applicant, the employer can readily defend any claim that a decision was made based on age.

---

<sup>61</sup> Charles H. Fleischer, *Employer’s Rights: Your Legal Handbook from Hiring to Termination and Everything in Between* 5-7 (2004)

<sup>62</sup> But see e.g. Montana, among other states. See also Fitzke & Luger-Nikolai, *Job Applicant Screening A Practice Guide* 1-3 (MSBA 1<sup>st</sup> Edition 2014).

<sup>63</sup> Joel Handelsman, ed., *Hire Manage & Retain Employees: For Your Small Business* 61-62 (1998).

<sup>64</sup> See Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.

<sup>65</sup> See Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. Sec. 621 et seq. (protects individuals 40 and older from discrimination on the basis of age); See also Minnesota Human Rights Act, Minnesota Statutes Chapter 363A (Minnesota prohibits all age-based discrimination. Unlike the federal act, “young” workers are protected as well as “old,” unless there a bona fide job requirement related to age. Generally, employers can ask whether an employee is 18 pre-hire and for the employee’s date of birth post-hire for legitimate business purposes, such as computations for retirement benefits.)

All questions that might illicit the applicant's age or from which age could be deduced carry the risk of an accusation of discrimination on the basis of age. Accordingly, questions such as the dates of graduation from high school or college as well as the dates of prior employment all carry risk.<sup>66</sup>

Employers might value experience raising children or leading a family as an indicator of important "life experience," "maturity" or "leadership." In the hospitality industry many employees are in their first job and are young. Wouldn't it make sense to hire someone with "life experience" supervising "young people" in their own homes?

### **Familial Status**

According to the Equal Opportunity Employment Commission: "Questions about marital status and number and ages of children are frequently used to discriminate against women and may violate Title VII if used to deny or limit employment opportunities.

It is clearly discriminatory to ask such questions only of women and not men (or vice-versa). Even if asked of both men and women, such questions may be seen as evidence of intent to discriminate against, for example, women with children.

Generally, employers should not use non job-related questions involving marital status, number and/or ages of children or dependents, or names of spouses or children of the applicant. Such inquiries may be asked after an employment offer has been made and accepted if needed for insurance or other legitimate business purposes."<sup>67</sup>

As a result the EEOC regards the following pre-employment inquiries as evidence of intent to discriminate when asked in the pre-employment context:

- Whether applicant is pregnant.
- Marital status of applicant or whether applicant plans to marry.
- Number and age of children or future childbearing plans.
- Child care arrangements.
- Employment status of spouse.
- Name of spouse.<sup>68</sup>

At this time sexual orientation is not a protected classification under federal law, but is for a number of states.<sup>69</sup>

### **Religion**

When an employer seeks to hire someone with "good values" or someone that might "fit in" and be retained longer, there might be temptation to ask about religion or faith. Many people ascribe positive moral characteristics to individuals who are active in some faith and might be tempted to inquire in this area. Discrimination on the basis of religion is specifically prohibited under federal law.<sup>70</sup> Many states have similar prohibitions.<sup>71</sup>

Generally questions regarding religion are problematic unless they are directly related to a bona fide occupational qualification. A 2001 survey of human resource professionals showed 36% reported an

---

<sup>66</sup> Fitzke & Luger-Nikolai, *Job Applicant Screening A Practice Guide* 1-6 (MSBA 1<sup>st</sup> Edition 2014).

<sup>67</sup> Equal Employment Opportunity Commission policy statement at [http://www.eeoc.gov/laws/practices/inquiries\\_marital\\_status.cfm](http://www.eeoc.gov/laws/practices/inquiries_marital_status.cfm). See Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.

<sup>68</sup> Equal Employment Opportunity Commission policy statement at [http://www.eeoc.gov/laws/practices/inquiries\\_marital\\_status.cfm](http://www.eeoc.gov/laws/practices/inquiries_marital_status.cfm).

<sup>69</sup> See e.g. Minn. Stat. Sec. 363A.02, Subd. 1.

<sup>70</sup> See Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.

<sup>71</sup> See Minnesota Human Rights Act, Minnesota Statutes Chapter 363A.

increase in the religious diversity of their employees in the preceding five years, suggesting religious diversity in the workplace as an ongoing fact of life.<sup>72</sup>

Again, an employer cannot discriminate on the basis of religion if they do not know the applicant's religion. Conversely asking such questions suggests a discriminatory intent.

Religious institutions in which practice in a specific religion is a bona fide occupational qualification are allowed to inquire into this area and are excepted from the application of the federal law prohibiting religious discrimination.<sup>73</sup>

### **Criminal History**

For many employers it would be simple common sense to initially screen out employees who have a criminal history. Recently several state legislatures have decided to provide protection for individuals with criminal histories in the context of job application. For example, in Minnesota it is illegal to ask a job applicant about a criminal background until an interview has been granted or a conditional job offer been made to the applicant.<sup>74</sup> These laws are typically referred to as "ban the box" statutes, as they prohibit an employment application that has a box to be checked if the applicant has ever been convicted of a crime. Federal law prohibits disparate impact on a Title VII protected class through criminal history inquiries.<sup>75</sup>

### **Disability and Drug and Alcohol Testing**

Often hospitality industry positions have a significant physical component. Federal law prohibits discrimination on the basis of disability.<sup>76</sup> Generally, questions about physical capacity or physicals cannot occur until after a conditional offer of employment has been made by the employer.<sup>77</sup>

Yet, an employer can ask how or whether the employee can do specific things required by the job.<sup>78</sup> For example, the employee can be asked if they can stock a cooler and possibly to demonstrate how they would do such work. In any case, the employer cannot ask about a possible disability, nor can the employer inquire in the severity of the disability; the enquiry must be limited to the physical requirements of the job itself.<sup>79</sup>

It may seem like common sense to hire someone without an illegal drug or alcohol problem, but inquiring into this area may suggest prohibited discrimination on the basis of disability. Additionally, requiring drug and alcohol testing pre-employment in the hospitality industry may be problematic as well.

There is no federal statute regulating drug or alcohol testing in the hospitality industry, but there are several states which limit an employer's ability to so test. Drug testing employees should only be

---

<sup>72</sup> Society for Human Resource Management (SHRM) and the Tanenbaum Center for Interreligious Understanding, *Religion in the Workplace Survey*, at 6 (Society for Human Resource Management, 2001)

<sup>73</sup> Section 702(a) of Title VII, 42 U.S.C. § 2000e-1(a), provides: "This subchapter shall not apply to . . . a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." Section 703(e)(2) of Title VII, 42 U.S.C. § 2000e-2(e)(2) provides: "it shall not be an unlawful employment practice for a school, college, university, or educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion."

<sup>74</sup> See e.g. Minn. Stat. Sec. 364.921.

<sup>75</sup> EEOC, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964.

<sup>76</sup> See Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sec. 12101 et seq.

<sup>77</sup> 29 C.F.R. Sec. 1630.13(a).

<sup>78</sup> 29 C.F.R. Sec. 1630.14(a).

<sup>79</sup> See Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sec. 12101 et seq.

undertaken if absolutely necessary as it is an area with ever changing and complicated laws.<sup>80</sup> For example, the Minnesota Drug and Alcohol Testing in the Workplace Act strictly regulates drug and alcohol testing by employers. In the context of hiring, employers may only require a drug or alcohol test after a conditional job offer has been made and only if the employer has a written drug and alcohol testing policy in place conforming with the state statute.<sup>81</sup>

In Minnesota the requirements are extensive. Among other requirements, this written policy must provide that the employee does not have to pay for the testing, the worker must be provided with written notice of the test, the worker must receive and acknowledge receipt of a written copy of the policy, the worker must receive a copy of the results within three days of the test. There are posting requirements and other requirements regarding the qualification of the testing lab.<sup>82</sup>

### **Nationality and Citizenship**

There has been a renewed emphasis on citizenship in employment with the requirement that citizenship information be provided to the federal government on an I-9 form. One might logically assume initial questions about citizenship would be appropriate, but this is not the case. Federal law prohibits discrimination on the basis of national origin.<sup>83</sup> An employer may ask if the worker is prevented from being lawfully employed because of their immigration status, but the I-9 citizenship information is collected only after the worker has been hired.<sup>84</sup>

### **CONCLUSION**

The object of a business in the hospitality industry is to provide service to its customers such that they are willing to pay and will return for more service. It is not enough to not break the law and operate legally.

There are many businesses without extensive resources to deploy in hiring. For these businesses there are common sense experiential approaches that can be employed to make hiring more effect. These methods can be utilized by the current personnel in their own setting to great success. The best available workers can be hired without additional cost to the small business by utilizing this approach, enhancing the customer and employee experience at the same time, all the while improving the business bottom line.

---

<sup>80</sup> Hardy Caldwell, *The Agile Manager's Guide to Hiring Excellence* 31 (1998)

<sup>81</sup> See Minn. Stat. Sec. 181.951, Subd. 1.

<sup>82</sup> See Minn. Stat. Sec. 181.951, Subd. 1.

<sup>83</sup> See The Immigration Reform and Control Act of 1986 (IRCA), 8 USC 1101 et seq. See also Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.

<sup>84</sup> See The Immigration Reform and Control Act of 1986 (IRCA), 8 USC 1101 et seq.