“Avoiding Bad Hires, And What To Do When It Happens”
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Have You Ever Made a Bad Hire and Wondered How it Happened?
- The costs of a bad hire are significant.
- A recent survey by CareerBuilder.com reports that more than two-thirds of employers say they were affected by a bad hire last year.
- Of nearly 2,700 employers surveyed, 41% estimate a single bad hire cost $25,000.
- 25% estimate that a bad hire cost $50,000 or more.

Strategies To Improve Your Hiring Process
- Profile your ideal candidate
- Know where the candidates are
- Resist the temptation to fill the job quickly
- Prepare for the interview
- Have more than one person interview the candidate
- Sell your company
- Listen and watch for red flags
- Call references
- Gather information from social media

Background Checks: What’s Allowed?
- Consumer Credit Checks
- Criminal Background Checks
- Drug Testing
- Driving Records
- Civil Court Record Checks
- Licensure Verification/Industry Sanctions
- And More ……
Sampling of Background Check Resources

**Credit**
- Experian
  - [www.experian.com](http://www.experian.com)
- Accurate Information Systems
  - [www.accurateinformationsystems.com](http://www.accurateinformationsystems.com)
- Mountain States Employers Council
  - [www.msec.org](http://www.msec.org)

**Criminal**
- Accurate Information Systems
  - [www.accurateinformationsystems.com](http://www.accurateinformationsystems.com)
- Background Information Services
  - [www.bisic.com](http://www.bisic.com)
- HireRight
  - [www.hireright.com](http://www.hireright.com)
- Colorado Bureau of Investigations
  - [www.cbi.state.co.us](http://www.cbi.state.co.us)
- CoCourts.com
  - [www.cocourts.com/index.cfm](http://www.cocourts.com/index.cfm)

**Driving**
- HireRight
  - [www.hireright.com](http://www.hireright.com)
- Department of Motor Vehicle
  - [www.motorvehicle.state.co.us](http://www.motorvehicle.state.co.us)

**Drug and Alcohol**
- Quest Diagnostics
  - [www.questdiagnostics.com](http://www.questdiagnostics.com)
- Concentra, Inc.
  - [www.concentrahealth.com](http://www.concentrahealth.com)
- Centura Center for Occ Medicine
  - [www.cosmoclinic.org](http://www.cosmoclinic.org)

**Civil Courts Records**
- Accurate Information Systems
  - [www.accurateinformationsystems.com](http://www.accurateinformationsystems.com)
- HireRight
  - [www.hireright.com](http://www.hireright.com)
- Mountain States Employers Council
  - [www.msec.org](http://www.msec.org)
- State Laws May Provide Additional Restrictions
  - Laws Vary Significantly By State (some states have no laws, others like CO, have significant restrictions)
    - Example: Colorado’s Employment Opportunity Act, C.R.S. § 8-2-126

Note: Employers can have the candidate complete a form: DR2489 and request the record by mail (approx. 2 week turnaround time).

Consumer Credit Checks
  - Applies to more than just credit reports
  - Covers all “consumer reports”
  - Generated by a third party “credit reporting agency”
  - “Consumer reports” may be used in conjunction with hiring decisions if you have consent to obtain the report
  - Imposes procedural requirements for adverse employment action
  - Consumer reporting agencies often provide the necessary forms

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Criminal Records Check
- If Conducted by a Third-Party, FCRA Applies
  - FCRA requirements:
    - Precludes CRAs from reporting arrests more than 7 years old
    - Convictions may be reported indefinitely
  - State Laws may provide additional restrictions
  - Can run standard criminal background check yourself
  - Check each jurisdiction applicant has lived
  - Is a criminal record alone enough to reject an applicant?
  - EEOC Guidance: “Consideration of Arrest and Conviction Records In Employment Decisions Under Title VII”
    - [www.eeoc.gov/laws/guidance/arrest_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)
Drug Testing

- Federal law places few limits on drug testing, unless in certain industries.
- Many state laws regulate workplace drug testing.
- State drug testing laws vary greatly.
- Develop a written policy.

Other Pre-Hiring Inquiries: What Can You Ask?

**Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101-17**

- Employers may ask about an applicant’s ability to perform specific job functions at any time.
- An employer may ask disability-related questions and require medical examinations only after a conditional job offer has been extended if the questions are asked for all entering employees in that job category.
- Applicants may be rejected because of the disability only if the rejection is ‘job-related and consistent with business necessity.’
- If based on safety, the individual must pose a “direct threat” to himself or others = significant risk of substantial risk of harm that cannot be mitigated by a reasonable accommodation.

Pre-Hiring Inquiries, Continued

- Title VII of the Civil Rights Act of 1964
- The Employment Application Itself
- The Do’s
  - List Prior Employers
  - Eligible For Rehire?
  - Terminated/Asked To Leave or Resign?
  - Reason For Job Separation?
  - Convictions (note: state law restrictions/EOC guidance)
  - Attorney Review

“Uh-Oh”

- What To Do If You Have Made A Bad Hiring Decision
  - Act Quickly
  - Analyze The Problem
    - Talk to the employee
    - Expectations Clear?
    - Lack of Resources?
    - Mismatched skill set?
    - Different communications styles?
  - Provide Useful Feedback
    - Immediate and ongoing
    - Specific: examples to illustrate your point
    - Limited: limit feedback to a few key points that can be absorbed
    - Steps to improvement: tell the employee exactly what needs to be done to remedy deficiencies
    - Buy-in: attempt to get buy in
    - Convey your desire that the person succeeds
"Uh-Oh" Continued

- Document
  - Move from informal coaching to formal documentation, but always document as the manager each step
- Written Performance Improvement Plan?
- Be fair and objective

When You Have To Terminate Employment

- Usually follows a series of well-documented verbal and then written feedback
- Company policies and procedures were followed
- Consideration: Have other employees been treated similarly in similar circumstances?
- Consideration: Are there any legal pitfalls?
- Enlist HR/Legal for guidance
- Consider Offering Severence, With A Release

The Termination Meeting

- Always have a second person in the room.
- Take notes.
- Be succinct.
- This is not the time to debate performance problems.
- Review state statute on payment of wages/vacation.
- Obtain company property.
- Shut down access to sensitive information.
- Advise employee of future communications.

Unemployment Benefits: Colorado

- Earn $2,500 during your base period
- Be unemployed through no fault of your own
- Be Able, Available and Actively Seeking Work

Base Period: