

# TOOLS FOR GROWTH: EMPLOYMENT

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## Agenda

- Hiring Principles
- Managing the Employment Relationship
- Termination of Employment

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## Hiring Principles

- When conducting a pre-employment interview:
  - Focus on job-related questions
  - Do not ask questions that reflect bias based on race, sex, age, or other protected categories

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## Hiring Principles

- Examples of questions that may reflect bias include:
  - How many children do you have?
  - When did you graduate from high school/college?
  - What church do you go to?
  - Can you travel even though you have children?
  - You aren't interested in an entry level job at your age, are you?

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## Hiring Principles

- Do not ask any medical questions during the interview process, or at any time before an offer is made
  - An employer may not conduct medical exams or ask medical questions prior to giving a conditional offer of employment
  - Employers can ask applicants whether they can perform specific job tasks, but they cannot ask if they have medical conditions that prevent them from performing a job task

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## Hiring Principles

- Be careful about background checks
  - Compliance with the Fair Credit Reporting Act
  - Laws prohibiting discrimination based on arrest or conviction record
  - Laws prohibiting discrimination based on race
- Check to see if the applicant is covered by a covenant not to compete

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## Hiring Principles

- Most importantly, select the best candidate!
  - Be able to articulate the objective reasons for your decision

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## Hiring Principles

- Once an offer has been made, have the new hire sign:
  - Acknowledgement of no harassment policy
  - Confidentiality agreement
  - Covenant not to compete
  - Assignment of rights to inventions and works of authorship
  - Receipt of employee handbook (if applicable)

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## Managing the Employment Relationship

- Establish uniform policies applicable to the workplace and apply those policies consistently
  - Required: no harassment, equal employment opportunity, FMLA leave, disability accommodation, pay-related policy
  - Optional: attendance, discipline, workplace violence, drug and alcohol abuse, etc.
  - If changes in policies or work conditions are necessary, provide employees with advance notice of the changes prior to implementation

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## Managing the Employment Relationship

- Establish regular channels of communication between employees and management
- Remember that numerous employment law issues arise from the use and misuse of computers and email
  - Defamation
  - Harassment
  - Invasion of privacy
  - Protected concerted activity

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## Managing the Employment Relationship

- Create email, voicemail and internet use policies designed to address these problems. Policies should include:
  - A statement that computers, telephones, and other systems belong to the Company
  - Notice that employees have no expectation of privacy with regard to their use of company computers, telephone or other systems
  - Reference to the company's no harassment/no discrimination policies
  - A statement indicating that the company has the right, but not the duty, to monitor employee use of company systems

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## Managing the Employment Relationship

- Regularly assess employee performance
  - Do reviews on time
  - Be truthful – if there are problems, discuss and document them
  - Evaluate performance based upon a limited number of categories
  - Be objective and avoid speculating about the reasons for performance problems.
  - Have the employee sign and date the evaluation
  - Counsel the employee on areas where improved performance is needed and give positive feedback where warranted

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## Termination of Employment

- Evaluate the risk associated with the termination
  - High risk categories include individuals with: protected characteristics, employment contracts, and long service records
- Unless absolutely necessary, do not terminate an employee without proper documentation and prior performance counseling

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## Termination of Employment

- In the event of termination, discuss the termination decision only with persons who have a legitimate need to know
- Arrange for the return of all company property in the employee's possession and reiterate the employee's obligations under any confidentiality, non-compete, or assignment of invention agreements signed at the time of hire

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## Termination of Employment

- In high risk cases, consider having the terminated individual sign a severance agreement waiving and releasing his or her claims against the company
- If an employment reference is requested, consider limiting the reference to job title and dates of employment

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