



# INTERVIEWING DO'S AND DISASTERS

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One of the first critical steps in building your business is hiring employees. Yet interviewing job candidates is often ineffective and, worse, presents abundant potential for costly mistakes and missed opportunities. Interviewing itself is far from foolproof. I work with numerous businesses on their employment matters, have led executive searches and conducted literally hundreds of interviews for many companies. Interviewing is not enough. Just like some people test well, others give great interviews and then fail miserably at their jobs. You need to do more than interview.

## **Weeding Do's and Don'ts**

Think of interviewing as one part of the hiring process. A good process increases successful hiring and weeds out candidates who are not suitable for the position. This process might start earlier than you think. For example, if your job posting includes a request for both a resume and a cover letter and someone only sends in a resume, then that person failed the first test. If providing a cover letter was too hard, imagine what you're facing once he or she is sitting behind one of your desks. Simply put, the failure to follow reasonable instructions is a disqualifier. Bottom line: don't even start the interview process with someone who is obviously inappropriate for the job.

Next, weed out bad candidates in the interview itself. As a case in point, one client had gone through many seemingly successful interviews only to end up with employees who didn't work out. This company required, above all else, extremely detail-oriented employees, the kinds of people who would follow instructions exactly. We revamped the hiring process so that each job candidate was given a list of instructions with very basic, but specific, requests. For example, we asked that interviewees show up at the company office within a narrow band of time on the interview day, because the reception area was small and we didn't want it too crowded. Also, we requested that each candidate bring three copies of his or her resume. Candidates were given several other similar, specific instructions. Based on whether the candidate followed these instructions, by the time each candidate sat down in front of us for the interview, we knew whether he or she was a good candidate for the job. We gave the good candidates a thorough interview. The ones who didn't follow instructions got a polite, but short, meeting. With this new process, employee quality and retention soared.

## Legal Do's and Don'ts

The hiring, and especially interview, process also presents many potential pitfalls. You wouldn't believe the inappropriate questions some employers ask during interviews. When it comes to employers without special training, you might as well lock up half of them and sue the other half. Some interviewers ask whether the job candidate plans to have children. Others inquire what holidays the interviewee celebrates. Still, others ask if the potential employee has any disability that will affect his or her job performance. All of these questions potentially break the law.

Technically speaking, there are a "bazillion" laws out there that regulate what you can do as an employer. Federal laws, which apply to virtually all businesses, prohibit discrimination based on pregnancy, disability, race, religion, national origin, age and dozens of other characteristics. State and local laws add to the list and reach even further, often prohibiting discrimination based on other criteria, including things you might not expect, like sexual orientation, transgender status and whether an employee is a cigarette smoker. When these requirements apply, you can't ask questions that are likely to reveal these characteristics. So, for example, if you ask a female candidate if she plans on having a family, you might as well dare her to sue you for violating the federal Pregnancy Discrimination Act.

Similarly, there are other traps for the unwary employer. For example, certain employers impose tests as a condition of hiring that have been found to produce discriminatory results. These tests are illegal and can expose your company to liability.

The potential for exposure in vetting job candidates is only growing. Special rules apply to how credit scores of candidates can be used. Even searching the Internet for background information can expose you to liability if it reveals information that you are not supposed to consider in the hiring process. On the bleeding edge, new laws regulate your consideration of new types of information, such as genetic test results. So get the advice of a good employment lawyer to create your hiring process and to determine the information you may gather from job candidates.

## Practical Do's and Don'ts

Aside from the legalities of the hiring process, there are practical considerations:

**It Never Gets Better:** Whatever flaws you see in a prospective employee during an interview will only be worse once that person is hired. Candidates are on their best behavior and rein in their flaws during the hiring process. I had one interviewee who was late for two consecutive interviews but she had the best, most believable excuses I've ever heard and was otherwise supremely qualified. I hired her, and guess what happened next. She was late for work every day for six months. It only stopped when I fired her. To her credit, the excuses continued to be excellent until the bitter end.

**Background Checks:** Do carefully check the background of your prospective employees. But make sure to comply with applicable law. Also, be wary of references. Most former employers are so afraid of lawsuits that they won't give a bad reference.

Verify Credibility: Ask job candidates the same question in different ways at different times. If you get the same answer, you are likely getting an honest answer.

Conduct Multiple Interviews: There is a strange phenomenon where some people excel in their first interview and then fall apart in their second interview. No matter how good that first interview goes, always conduct at least one more.

Trial Periods: When feasible, employ people on a trial basis. That is, hire someone for a fixed time period with the understanding that if all goes well, there may be a permanent position available. The best way to see if someone can do the job is to actually see if someone can do the job. Hiring a great employee is difficult but produces tremendous rewards for all involved. Hiring quick and sloppy is easy, but hurts your business and often leads to nasty and disruptive departures. If you hire with care, you'll build a talented team.

Jack Garson is the author of *How To Build a Business and Sell It for Millions* (St. Martin's Press) and writes a business law column called *The Legal Edge* for *SmartCEO Magazine*. As founder of the law firm Garson Law LLC, he leads the business and real estate practice groups. Jack serves as a legal advisor for numerous local, regional and national companies, focusing on business transactions, commercial real estate and construction law. In addition to providing legal counsel, he services as a strategic advisor and negotiator for many clients, providing guidance on issues such as the growth and sale of businesses, liability and risk reduction, the hiring and retention of key personnel, and protecting and enhancing profitability, as well as negotiating the resolution of complex commercial disputes. Jack has been selected to be included in *The Best Lawyers of America* and he has repeatedly received the Super Lawyer designation. He has been recognized as a DC region Legal Elite and has received a Martindale-Hubbell Peer Review Rating of "AV" since 1995, representing the highest possible ratings for legal ability and ethical standards.

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