

SAMPLE POLICY

Interviewing – Considerations & Best Practices

DISCLAIMER

This sample policy is not legal advice or a substitute for consultation with knowledgeable and qualified legal counsel.

Baker McKenzie assumes no responsibility or liability for the contents of this generic policy, the only purpose of which is to illustrate some of the considerations pertaining to the interviewing of employee candidates in the U.S.

The laws applicable to the interviewing of employee candidates may vary based on jurisdiction. Federal, state, and/or local law may apply depending on the location of the company, its operations, and its employees. While these laws are often similar, their differences can be material. The following sample considerations do not account for the differences in applicable federal, state, and/or local law. These sample considerations and best practices also do not account for changes in legislation, judicial and administrative precedent, or other developments and/or interpretations of applicable law.

Additionally, what are considered "best practices" for Company A may not be "best practices" for Company B. To be effective, an interviewing policy and procedure should not be a "cookie cutter" or a "one size fits all" policy. It should be tailored to the organization, and account for the company's specific workforce, operations, and industry.

THIS SAMPLE POLICY SHOULD NOT BE RELIED ON OR IMPLEMENTED AS A LEGALLY-COMPLIANT POLICY WITHOUT CONSULTATION FROM LEGAL COUNSEL.

INTERVIEWING - CONSIDERATIONS AND BEST PRACTICES

There is no exact procedure for interviewing candidates for employment. However, the following provides several considerations and best practices the Company may want to adopt when interviewing and selecting candidates for employment.

Before the Interview

- » **Determine Interview Format and Process.** The interviewing process can be handled in a number of different ways. The Company may want to conduct multiple rounds of interviews, with for instance, the first round conducted over the phone and the second round conducted in-person. For each round and type of interview, the Company should consider the format, process, and procedure, including who will conduct each interview, the length of each interview, and the number of candidates to progress to the next round. The Company may also want to establish time frames to conduct and conclude each round of interviews.
- » **Determine Interview Committee.** The Company may want to consider forming an interview committee. By including multiple individuals in the interview and hiring process, the Company may be able to obtain different perspectives on the candidates and guard against any one person's individual biases or preferences. Depending on the position, and the number of candidates, the Company may adjust the size and composition of the interview committee.

- » **Understand the Job Requirements for the Position.** Representatives of the Company who will be interviewing candidates and/or making hiring decisions should be familiar with the open position, its duties and requirements, and otherwise understand the essential functions and responsibilities of the open position.
- » **Formulate Interview Evaluation Form.** The Company may want to formulate a standardized evaluation form that documents the skills and proficiencies of the candidate. Having a standardized evaluation form better enables the Company to later review and compare the various candidates. The evaluation form may include a rating system for the various skills, proficiencies, and/or job functions. The evaluation form may also include a section for comments and/or examples demonstrating the candidate's skills.
- » **Formulate Standard Interview Questions.** To better ensure the interview covers certain topics critical in the hiring decision, the Company may want to develop a list of standard interview questions. Having a list of standard interview questions also better enables the Company to compare candidates based on their responses to the same topics and questions. The Company also may allow for additional questions outside of the standard list.

During the Interview

- » **Focus on Job-Related Questions.** Interview questions should focus on the job duties and requirements and the candidate's qualifications.
- » **Avoid Illegal and Inappropriate Questions.** Interviews should avoid questions that may reveal information about the candidate's membership in a legally-protected class, such as race, color, religion, national origin, sexual orientation, disability, age, family status, etc. In addition to avoiding direct questions regarding these topics, Company representatives should also avoid questions which indirectly may elicit information about a candidate's membership in a legally-protected class, such as:
 - Asking for dates of college attendance or graduation (could reveal age);
 - Asking about where the candidate was born (could reveal national origin);
 - Asking about a candidate's marital status or children (could reveal family status and/or sexual orientation);
 - Asking whether a candidate is in good health or asking how many sick days the candidate used the previous year (could reveal disability).
- » **Comply with Pay Equity Laws.** Company representatives should avoid questions regarding the candidate's salary at his or her previous job. Multiple jurisdictions have laws that prohibit the inquiry into salary history information. Although it may be acceptable to discuss salary expectations, various laws prohibit employers from screening candidates based on their salary history and/or formulating the salary offered to a candidate based on their previous salary history.
- » **Avoid Promises of Employment.** Company representatives should be careful to not promise, or otherwise provide a statement or job description that could be interpreted as a promise of a job offer, job security, permanent employment, a modification to the at-will nature of the job position, future promotion, etc.
- » **Explain Next Steps.** At the end of the interview, the Company representative should explain to the candidate what he/she should expect next in the interviewing process. This may include the possibility of a call-back and/or additional interviews, tentative timing, and/or who the candidate should contact at the Company with any follow-up questions.

After the Interview

- » **Candidate Selection.** After completing the interview process, the Company representatives responsible for hiring should identify the candidates to which to offer employment. To help avoid any potential discriminatory bias, the selection should be done by a committee of multiple Company representatives, including the persons who conducted the interviews and representatives who are knowledgeable about the position's requirements and duties. The selection process should be based on considerations and criteria pertinent to the job position, and involve the consultation of any evaluation forms used during the interview process.
- » **Documentation of Hiring Decision.** The final hiring decision and the reasons for selecting the successful candidates should be documented and maintained in the event the decision is later challenged as unlawful. The Company should focus on the objective skills, experience, and proficiencies of the selected candidate.
- » **Extend Verbal Offer.** Once the Company has selected the successful candidate, a Company representative should contact the candidate and make a verbal offer of employment. This can be done by telephone. To the extent appropriate, and that it has not already been discussed, the Company may choose to inform the candidate of his/her start date, salary, benefits, and other aspects of the job. The Company representative should be careful to avoid any promises of permanent employment or any statements that could modify the at-will nature of the position. The Company representative should also inform the candidate as to any next steps, including that he/she can expect to receive a conditional offer letter, which further outlines the Company's offer of employment.
- » **Present Conditional Offer Letter.** If the candidate verbally accepts the Company's verbal offer of employment, the Company should send the candidate a written offer letter. The written offer letter may outline the basic terms of employment, start date, reporting structure, salary, benefits, and any other general employment information. The Company should also make the offer of employment contingent on the candidate's satisfactory completion of all applicable pre-employment inquiries and requirements, including demonstrating the right to work in the United States, successful background check, drug test, etc.
- » **Notify Unsuccessful Candidates.** After the Company has selected the successful candidate and the offer of employment has been accepted, the Company should notify the applicants who were not selected. This can usually be accomplished by a short rejection letter or other communication that thanks the candidate for their interest in the position and informs him/her that the Company has made the decision to not offer employment to the candidate at this time.

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