



# *I never should have hired him, but...*

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In a highly competitive job market, employers are more likely to make hasty hiring decisions. Often, individuals who would ordinarily never be considered for a position are hired because an employer is trying to manage crushing staff shortages. Choosing the “lesser evil” of the quick hire, however, can lead to significant issues for companies. Some common problems include unqualified employees who experience more work injuries, underperforming employees who cause productivity issues, employees who cause internal conflict that disrupts the entire workplace, and even litigation. By taking small steps of intentionality in hiring, employers can more effectively manage the increasingly difficult staffing situations presented by the current job market while reducing problems, including the risk of future litigation.

## **HIRING QUESTIONABLY QUALIFIED APPLICANTS**

Even when faced with severe staffing shortages, it is very important to word job postings carefully. Postings should explain the level of skill, experience and education an employee must possess on day one. The more forthright a company is about its expectations and requirements, the more

likely it is to find a good fit during the hiring process.

Importantly, employers should review resumes and job applications thoroughly before selecting candidates to interview or hire. Oftentimes, applicants give fairly obvious clues about potential problems when first applying for a job. If a position requires certain skills, experience or formal education, employers should make sure the candidate’s application or resume indicates that he or she actually possesses the same. Employers should not just assume that all applicants for a job are qualified.

After screening applicants and selecting only those who truly appear qualified, an employer should prepare for an interview by drafting a list of general and job-specific questions. During the interview, ask for examples of previous experience that would show the implementation of the skills required for the vacant position. Listing skills and qualifications on an application or resume is easy. Through the interview process, employers should be able to determine whether a candidate actually has the necessary skills, experience and personality to perform a job safely and effectively.

When interviewing a job candidate, it is vital to listen carefully and pay atten-

tion. Make sure the potential hire does most of the talking. It can be tempting for interviewers to talk at length during an interview, but it is important to remember that the purpose of an interview is to learn as much about the potential employee as possible. Pay attention to body language and observe how forthright the candidate seems to be in responding to questions. If the candidate never makes eye contact, that may be an indication of dishonesty or an attempt to avoid answering a question. If the applicant makes negative statements about multiple previous employers, it may be an indication of someone who has difficulty getting along well with others. An interview affords employers an opportunity to make an initial determination of whether someone would be a good fit and, as such, is an invaluable part of the hiring process. No matter how desperate employers are to hire, they should focus on listening and observing during an interview more than talking. Only after an employer determines the candidate will be a good fit should it discuss company history or benefits or make an offer for employment.

Another important tool in the hiring process is the ability to check job candidates’ presence on social media quickly

and easily. Social media posts can provide employers with invaluable insight about potential employees. Are they excessively argumentative? Do they make posts during work hours or make negative or inappropriate comments about coworkers? Do they post sensitive and/or personal information? Is the content of posts highly controversial and in conflict with the company's mission? Social media accounts provide an excellent opportunity for potential employers to get an inside look into whether a potential hire will fit well within the company.

### THE "JOB-HOPPING" APPLICANT

Job hopping has historically been viewed as a red flag on a resume. Many employers believe that multiple jobs within a relatively short period of time can be indicative of issues such as an unwillingness to work as a team player or terminations for poor attendance or poor job performance. There is, however, a generational gap in perceptions about job hopping. More and more younger employees are entering the job market with the expectation of obtaining positions with flexibility, and they anticipate changing jobs multiple times throughout their careers. Also, in our post-pandemic tight labor market, one of the most efficient ways for younger employees to obtain significantly higher salaries is to change companies. This experience is very different from that of older generations, for whom loyalty to a company was the primary method of obtaining an increase in salary.

With this in mind, consider a longer list of past employers on a resume as a yellow flag rather than a red flag. If a potential employee has a long list of previous employers, take a close look at the job titles. Was the applicant making a series of lateral moves or were they instead moving upward in their career? Also, ask the candidate about reasons for job changes during the interview. Job changes to earn more money or for increased opportunities should be viewed more favorably than job changes because an employee was unable to get along with others or was terminated for poor job performance or attendance issues.

### CRIMINAL HISTORY

Most employers ask about criminal history on job applications. While some use this as a method to screen out potentially unsuitable candidates, in a tight labor market, that practice may be a bit shortsighted. Instead, employers may want to pay attention to the content of the criminal history. For example, if a job candidate was

convicted for possession of marijuana in a state in which the use of marijuana has since been legalized, perhaps an employer should not let the conviction take the employee out of consideration. On the other hand, employers should always carefully consider crimes involving "moral turpitude." Convictions involving dishonesty, like theft or forgery, and convictions for violent behavior should be considered very thoughtfully before an offer of employment is made.

### ATTENDANCE ISSUES AND PRODUCTIVITY CONCERNS

In a pre-pandemic world, documentation of absences from the workplace was a fairly standard method of assessing employee productivity. This has changed drastically with the rise in work-from-home positions. According to the U.S. Census Bureau, between 2019 and 2022, the number of American employees who work from home tripled from roughly 9 million to 26.7 million people. For many employers, allowing employees to work from home has proven feasible, and oftentimes much more cost effective, than requiring physical presence at a workplace.

Employers who require an employee's physical presence at work should carefully explain the attendance policy to job candidates. Hiring a warm body to combat staff shortages is not very helpful if that warm body rarely shows up. Further, disciplining and terminating employees can be a bit complicated. Ensuring that job candidates are well aware of attendance requirements before they are hired can help prevent problems and potentially reduce employment-related lawsuits.

### RISE IN DISCRIMINATION CLAIMS

Concerns about possible employment discrimination claims should be at the forefront of every employer's mind. Discrimination, harassment and retaliation lawsuits are on the rise, and juries have shown an increased willingness to issue huge verdicts against employers. However, there are some steps employers can take from the very start of employment to help reduce such claims.

First, employers should have an up-to-date employee handbook that addresses important employment issues. Employees should be provided with clear options for submitting a concern or complaint, and those options should be communicated to all new employees upon hire. When a complaint is received, employers should immediately begin an investigation and maintain

documentation regarding the same. If a lawsuit is subsequently filed, that documentation can help establish that appropriate action was taken, which will help avoid liability.

### WORKPLACE INJURIES

Finally, the practice of hiring all warm bodies who apply can lead to a significantly increased number of workplace injuries. Employees who are not engaged in their job and who do not respect work rules, including safety rules, are much more likely to be injured than those who are diligent and aware of their surroundings. Workplace injuries often occur when employees ignore hazards or believe they are invincible and will not be caught, or at least not be injured when performing a task in an unsafe manner. Hiring individuals who seem genuinely interested in a job can help reduce the number of workplace injuries that occur.

### CONCLUSION

Realistically, in a tight job market, it can be very difficult to find a sufficient number of qualified individuals to fill vacant positions. However, the difficulties employers face from hiring people who are not qualified or are otherwise unsuited for a position can be much more significant than the difficulties that result from staffing shortages. Following the recommendations above will help employers make better hiring decisions which will lead to more productive and profitable business operations despite the current labor shortage.



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