

## RECRUITMENT AND SELECTION

The effective recruitment and selection of employees is a key ingredient for business success. Organisations that have been successful in recruiting employees with the skills required to achieve their business objectives are in most cases equipped with a strategic recruitment and selection practice.

To achieve this within your own organisation, it is imperative that an up-to-date, clearly written policy and supporting procedures are enforced. This will ensure sound recruitment and selection practices, assist in minimising risks of breaching legal obligations, and ultimately implementing a consistent process across the organisation.

### Equal opportunity in recruitment and selection

Equal Opportunity (EO) legislation applies to every step of the recruitment and selection process from advertising, short-listing, conducting interviews to selecting employees for promotion. It also can be unlawful to ask applicants questions that could be used to discriminate against them during this process. There are various pieces of legislation covering the areas of EO in the workplace.

Discrimination is unlawful if a decision, practice or process treats a person unfavourably based on one of the following attributes: disability/impairment; race/ethnicity; sex; age; political belief/activity; religious belief/activity; pregnancy; breast feeding; parental/carer status; marital status; gender identity or sexual orientation; physical features; industrial activity; or personal association with a person in one of the above categories.

However, there are exceptions to unlawful discrimination. These, though not exhaustive, include:

- > Employing a candidate where the role requires the employee to be of certain sex or age etc. Examples include dramatic performances, or personal care positions.
- > Where the applicant, because of her/his disability, is unable to perform the inherent requirements of the role and you cannot take reasonable steps to facilitate the disability.
- > Certain acts of positive discrimination which address equity issues.
- > Appointments where an exemption has been obtained from the Equal Opportunity Commission.

Penalties and other related costs of breaching the legislation are high and potentially damaging to an employer.

Therefore, it is imperative for employers to know their rights and responsibilities and convey their understanding in their internal policies. Such policies should set out complaints procedures and outline employer and employee responsibilities.

### General protection provisions and discrimination claims

One of the key changes introduced by the *Fair Work Act 2009* (Cth) (FW Act) employers need to be aware of when going through their recruitment and selection process are the General Protections provisions.

The General Protections provisions maintain and build on existing protections within the repealed *Workplace Relations Act* including:

- > unlawful termination
- > freedom of association
- > 'sham arrangements' in relation to independent contractors.

Part 3-1, Division 4 of the FW Act protects a person from adverse action in relation to industrial activities.

In broad terms, the General Protections provisions prevent employers from taking adverse action against someone (including refusing to employ or dismissing someone) because of a person exercising a workplace right or engaging in lawful industrial activities, or on the basis of certain protected grounds (including race, sex, age and disability).

Employers can undertake various measures to reduce the likelihood of adverse action claims. These should include:

- > devising a recruitment process that complies with anti-discrimination laws as prescribed in EEO legislation and the FW Act and ensures merit based selection
- > educating staff that are involved in the process, ensuring they understand their statutory obligations and various grounds upon which it is unlawful to discriminate
- > ensuring managers understand the rights of employees and convey these rights to them before, during and upon termination of employment
- > implementing policies that address procedures to be followed when confronted with grievance and dispute resolution, discrimination, bullying and harassment. Additionally, monitoring the compliance of these procedures and ensure consistency in administering fair processes
- > training managers to keep records of all employee concerns, requests and responses
- > ensuring that the reasons behind workplace decisions are documented. This method of record keeping will substantiate any future actions that may be taken.

## Steps in the recruitment and selection process

The steps in the recruitment and selection process may vary slightly depending on the recruitment method chosen. Generally, the key steps are:

### Step 1: Assess the recruitment need

Prior to commencing the recruitment and selection process, it is important that an assessment of the need to replace the outgoing incumbent be made. A number of questions should be asked to determine whether the position is replaced without any modification. For instance, what is the position; are changes to the job description required; and does the selection criteria require modification.

### Step 2: Review the position description and identify key selection criteria

Job analysis is the objective recording of the current accountabilities and requirements of a role. This analysis will assist with identifying the key selection criteria for the job. It assists the HR manager to identify who to recruit and how and where to recruit them. This will allow candidates to be screened based on pre-determined and objective criteria which will help minimise potentially discriminatory decisions.

### Step 3: Deciding to engage a professional recruitment or executive search agency

Recruiting employees can be an expensive process whether an external consultant is engaged or the process is undertaken internally. The situation needs to be analysed in terms of the cost-benefit to the organisation. Organisations need to consider the direct and indirect costs associated with the recruitment process; if other parts of the business suffer (e.g. reduced productivity or focus) engaging an external consultant may be more economical in the long term. Also, engaging a professional recruiter can be more cost effective, due to their skills, training and practice, and they will have more experience in handling problems that may arise.

### Step 4: Source internal and external applicants

The company policy in relation to internal recruitment must be checked and adhered to. Many organisations have a policy of advertising all positions internally, either prior to or at the same time, as advertising externally.

### Step 5: Advertising

Advertising is the key method of creating awareness of the vacancy in the organisation. It is important to adopt a marketing strategy to attract candidates to the position within the organisation. The style used in the advertisement can significantly impact on the effectiveness of the advertisement in attracting appropriate candidates.

## Step 6: Screen and short-list applicants

Most initial contact regarding the position you have advertised will be by email and/or phone, in writing or in person. Your next task is to deal with the phone enquiries and resumes you will receive in the mail or via email.

Telephone screening is an effective tool where a large number of applications are expected. It is important to keep a written record of the key information from the phone interview. The same EO principles apply to telephone screening as to face-to-face interviews.

Application forms can be used instead of, or in addition to, resumes. Application forms must comply with EO legislation, as outlined in previous sections.

Part of the job of reviewing resumes is to identify fact, opinions and inferences. Using the key selection criteria, sort the resumes into three groups: A) those that appear suitable; B) those that may be suitable; and C) those that are unsuitable. Once you have completed this process, it is important to contact each group separately either informing them that their application was unsuccessful or informing them that you will be contacting them soon regarding their applications.

## Step 7: Conduct the interview

It should take no longer than 10 days between advertising the position and interviewing people in depth. Being slow to respond may mean that you lose the candidate.

The aim of the interview is to match the key selection criteria developed for this position with the skills, knowledge and experience of the candidate. An interview needs to follow a format, yet be flexible enough to allow for the particular experiences and style of each applicant. It will allow for valid comparisons between applicants, and minimises the risk of laws and regulations that govern the selection process being broken or overlooked. Immediately after the interview, write down the candidate's strengths and gaps.

## Step 8: Undertake reference (and medical) checks

The purpose of reference checking is to validate your selection decision and should be conducted prior to making a job offer. Use key selection criteria and interview questions to form the basis of the reference check. This will ensure you focus on the important factors in making your decision, and gather the most relevant information from referees. It is not appropriate to check references without the applicant's consent. Organisations should also take reasonable steps to ensure that prior to contacting referees; those referees have consented to the use of their personal information. To do otherwise may constitute a breach of privacy legislation.

Some organisations will require a medical examination before an appointment is made for some positions. Where the position requires such an examination, this is to be stated at the interview. Pre-employment tests must only be used in circumstances where they are justified. It is important to have a clear understanding of why a medical check is needed and ensure that the check relates back to the requirements of the role.

Additionally when conducting medical checks employers must ensure they comply with privacy laws. In Victoria there are potentially three pieces of privacy legislation that will apply to employers including: the *Privacy Act 1998* (Cth) (as amended by the *Privacy Amendment (Private Sector) Act 2000*; the *Information Privacy Act 2000* (Vic) and the *Health Records Act 2000* (Vic). Each of these Acts set out the obligations of organisations whenever collecting, using, disclosing, storing and destroying personal and/or health information.

## Step 9: Offer the job

Once acceptance of the offer of employment has been received from the successful applicant, you should notify remaining unsuccessful applicants. If an employer makes an offer and a candidate accepts that offer, there is deemed to be a legally binding contract formed. Retraction of the accepted offer is technically a termination of the employment contract that may result in legal recourse by the candidate. When an offer has been made and accepted, all other applicants interviewed should be notified.

## Useful Tools and Templates

For further information, please click on the hyperlinks below to access the listed templates and quick guides on our website:

### Equal Employment Opportunity

- > Equal Opportunity Harassment Discrimination
- > Equal Opportunity Policy
- > General Protections and Discrimination claims

### Human Resources

- > Equal Opportunity Policy
- > Recruitment Policy
- > Privacy Policy
- > Record Keeping Requirements
- > Training and Development Policy

and all relevant templates on 'recruitment' and 'selection'

## Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on **(03) 8662 5222**.

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