

The Legal Do's and Don'ts of Recruiting, Hiring and Retaining Staff

WASBO Spring Conference

May 19, 2022

Sarah E. Hanneman

shanneman@vonbriesen.com

Overview

I. Recruitment

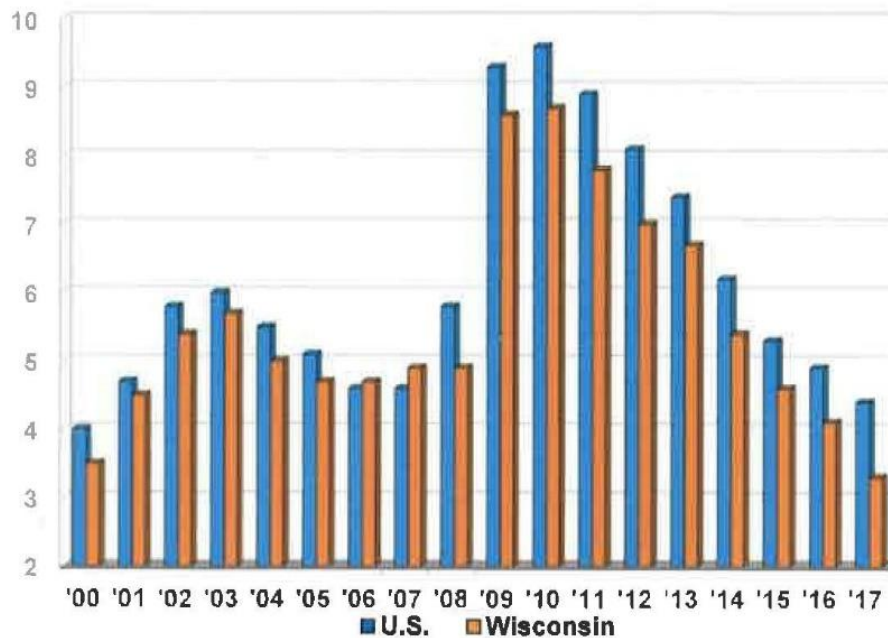
II. Hiring

- I. Discrimination in Hiring: Accessibility, Social Media, Interview Questions
- II. Rejection Notices
- III. Adjusting Hiring Criteria
- IV. Teachers Under Contract with other Districts

III. Retention

Recruiting

US to Wisconsin Unemployment Rates



Dec 2018

US 3.9%

WI 3.0%

Recruitment Marketing

- What is Recruitment Marketing?
 - Using marketing strategies and tactics to promote the value of working for your district
 - Helps districts recruit, hire, and retain talent (including passive job seekers)
- Recruitment Marketing strategies include:
 - Employer branding
 - Digital marketing and advertising
 - Content marketing
 - Social media management
 - Candidate experience and employee engagement

Social Media in Recruiting

- Facebook, Twitter, LinkedIn, blogs, forums, websites like Glassdoor, ZipRecruiter, etc.
 - Integrate sources by “sharing” news, open positions, etc. on different platforms.
- Hashtags:
 - Using hashtags to find and share content and promote job openings, e.g. Starbucks uses #sbuxjobstalk, Disney uses #LifeAtDisney
 - Use existing hashtags, e.g. #jobopening, #careerssearch

Social Media in Recruiting

- Job Finding Apps:
 - Shapr and Switch: (“like Tinder, but for finding your dream job”) allow swiping right or left on jobs and networking contacts.
 - Snagajob: allows you to show your personality to employers by taking a personality quiz, posting a video, etc.
 - Jobaware: “favorite” jobs and receive updates about open positions.

Employer Branding

- Develop good reputation and popularity as an employer
- Candidates, millennials especially, want a “culture fit”
- Positive culture and mission as a district
- Employer “brand” based on your district’s mission

Improve Candidate Experience

- Impress the candidate throughout whole process.
 - Send itinerary prior to interview.
 - Location: impression and convenience.
 - Act like you want to be there: choose right people to interview.
 - Provide prompt follow up (text/email response).

Improve Candidate Experience

- Be Prepared to promote the community:
 - Educate yourself on what the community has to offer.
 - Be able to promote your community to student teachers and other applicants who are not from the area.
 - Support local initiatives that make your community a better place to work and live.

Improve Candidate Experience

- Even rejected candidates should still leave with a positive experience.
 - Increases the likelihood of district's positive “word of mouth” reputation in community.
 - Increases likelihood a qualified candidate will reapply in the future.
- Use Notice of Non-Selection (i.e. “rejection notice”) to inform candidates.
 - Gives closure to applicants, a more positive experience with your district.

II. Hiring



[This Photo](#) by Unknown Author is licensed under [CC BY-NC-ND](#)

Discrimination in Hiring

Employment Discrimination Laws:

- Title VII of the Civil Rights Act of 1964 (Title VII)
- Pregnancy Discrimination Act
- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)
- Genetic Information Nondiscrimination Act (GINA)
- Equal Pay Act (EPA)
- Wisconsin Fair Employment Act (Wis. Stat. § 111.31)

Discrimination in Hiring: Accessibility

- Recent lawsuits alleging discrimination on the basis of disability, specifically addressing accessibility of websites relating to the process of applying for employment.
- 46 percent rated their last experience applying for a job online as “difficult to impossible;” of those, 9 percent were unable to complete the application and 24 percent required assistance.
 - According to a user survey conducted by The Partnership on Employment and Accessible Technology (PEAT)
- If your website isn’t accessible to disabled individuals, you could be losing out on potential job candidates, and exposing yourself to legal risk.

Discrimination in Hiring: Accessibility

Ways to Make the Hiring Process Accessible:

- Screen Reader Compatibility;
- Alt Tagging;
- Video Captions;
- Written materials: large print, braille, audiotape;
- Provide readers, sign language interpreters, modifying equipment;
- Extended time to complete assessments; and
- Color contrasts.

Discrimination in Hiring: Social Media

- **Stored Communications Act and 2013 Wisconsin Act 2013**
 - Prohibits employer from requesting or requiring applicant to disclose access information (user name, password, etc) for personal internet account
 - Also prohibits requiring applicant to allow observation of personal internet account
 - Does NOT prohibit viewing information that is freely available in the public domain
- **But even in public domain → Use Caution**
 - Public domain is fair game - but risk of learning protected information
 - Potential for discrimination claim because applicant can argue you made hiring decision based on protected information

Discrimination in Hiring: Interview Questions

EEOC Guidance on Lawful Hiring Questions

- General Rule: Is the question designed to lead to job-related information about the applicant?
 - If not, is the question reasonably related to a non-discriminatory basis for selection - i.e. a business purpose?
 - Is the job-related criteria you seek listed in the job description or posting?
- Prohibited Questions: Employers are explicitly prohibited from making pre-employment inquiries about disability (under the ADA)
- Questions to Avoid: Employers should avoid questions that may reveal information related to race, color, religion, sex, national origin, age, etc.
 - These topics are irrelevant to hiring process
 - These topics may be used as evidence of discrimination

Discrimination in Hiring: Interview Questions

- Job Interview Questions That You Can't Ask Under the ADA:
 - List any illnesses, conditions or diseases for which you have been treated in the past three years.
 - Have you ever been hospitalized or treated for any mental health condition? Are you taking any prescribed drugs?
 - Do you suffer from any health-related condition that might prevent you from performing this job?
 - Do you have any physical defects that preclude you from doing certain types of things?
 - Have you ever filed a worker's compensation claim?

Discrimination in Hiring: Interview Questions

- Job Interview Questions That You Can Ask Under the ADA:
 - Can you perform all of the job functions?
 - How would you perform the job functions? (If you want to ask any applicant this question, you should ask all applicants this question.)
 - Can you meet my attendance requirements?
 - What are your professional certifications and licenses?
 - Do you currently use illegal drugs?

Discrimination in Hiring: Interview Questions

- Avoid Asking:
 - Do you have young children? What are your childcare arrangements?
- Reason for Concern: Sex discrimination
- Instead Ask:
 - Our normal work hours are 8:00 a.m. to 5:00 p.m. Can you work these hours?

Discrimination in Hiring: Interview Questions

- Avoid Asking:
 - How old are you? When were you born?
 - When did you graduate from high school? From college?
- Reason for Concern: Age discrimination
- Instead Ask: If a conditional offer of employment is made, you will be asked to:
 - Produce documentation that you meet any legal age requirements
 - Identify when you obtained your degrees

Discrimination in Hiring: Interview Questions

- Avoid Asking:
 - How much does your spouse make?
 - How much salary do you need, or what is the lowest salary you will accept?
- Reason for Concern: Sex discrimination; Equal Pay Act
- Instead Say:
 - Depending on experience, the pay scale for this job is as follows...
 - [Note: salary/wages should always be based on pay scales that apply to all applicants, rather than on the lowest amount an applicant will accept]

Discrimination in Hiring: Interview Questions

- Avoid Asking:
 - How many days were you sick last year?
- Reason for Concern: Disability or handicap discrimination
- Instead Ask:
 - How many days were you absent from work last year?

Rejection Notices

- Rejection Notice / Notice of Non-selection
 - Standardized letter informing applicant he/she has not been selected to continue with hiring process
- Ensures standard response is given equally to all applicants
- Reduces risk rejected applicant will be told he/she not hired for some impermissible reason, reducing risk of claim against district
- Reduces number of calls wondering about status of hiring
- Gives closure to applicants, a more positive experience with your district
- Best practice is to send all rejection notices at once, after selected individual has been hired

Sample Rejection Notice

[Name]

[Address]

Re: Notice of Non-selection

Dear Ms. Tracy Teacher,

Thank you for your interest in the 4th grade teacher position with the School District of WASBO. We have decided to focus our attention on other candidates for this position. If you want to seek employment with the School District of WASBO for any other positions, please feel free to apply for those positions.

We wish you success in your pursuit of employment.

Sincerely,

Henrietta HR Director

Answering Questions from Rejected Applicants

- What if rejected applicant still calls?
 - “Why wasn’t I your top pick? What can I do differently at my next interview to improve my chances of getting hired? I feel like I keep getting rejected and just want to know what I’m doing wrong.”
- Natural/Human to want to help or answer their question
- But - Use Caution
 - Stick to standard information given in rejection letter
 - Give the same response to any/all applicants who call

Answering Questions from Rejected Applicants

- What NOT to say to rejected applicant:
 - “We were really looking for someone with a reading certification, which you didn’t have.”
 - Answer seems fine, but potential to cause problems
- What you *could* say to rejected applicant:
 - “I’m sorry, but it is HR’s practice not to speak further about interviews once rejection notices have been mailed.”
 - -Refer applicant back to rejection letter

Adjusting Hiring Criteria

- Consider lowering or eliminating qualification standards to expand applicant pool
- Review job descriptions to consider what are the core requirements that truly make someone “qualified” for the position
- Plan to train underqualified candidates
- Remember that adjusting hiring criteria is not permanent - you can adjust criteria up or down as needed to expand your applicant pool, based on the needs of your district

Adjusting Hiring Criteria

- “Ban the Box” - The movement where some employers are removing the check box that asks applicants if they have a criminal record
 - Still perform CBC, but idea is to enable offenders to demonstrate aptitude for job prior to making criminal record known
- Most WI school districts still include the box and require applicants to disclose any convictions on application
- Benefit to keeping the box: Gives another non-discriminatory reason to not hire for falsification of job application

Teachers Under Contract with Another District

- Law prohibits entering into contract with a teacher who is currently under contract with another district
- Teacher must be released from contract with District A before entering into contract with District B
- Offering to pay teacher's Liquidated Damages?
 - Best practice: pay the amount directly to teacher, then teacher responsible for paying district directly for breaking contract
 - Otherwise: run the risk of tortious interference with contract claim if you directly pay the other district

III. Retention



[This Photo](#) by Unknown Author is licensed under [CC BY-SA](#)

Retention

- Low unemployment rates mean that even if employers successfully recruit an employee, they are challenged with retaining that employee.
- High employee turnover rates because employees can afford to shop around for best opportunities.

Retention

Compensation and Benefits:

- Have a transparent compensation system
- Consider non-salary benefits that are valued by employees:
 - Student loan reimbursement
 - Wellness benefits: health challenges, gym membership reimbursement, time-off for mental health
 - Relaxed dress code
 - Additional PTO days

Retention

Other ways to show staff they are valued:

- Increase employee appreciation and recognition
- Invest in updates to technology and office space
- Set up ways for employees to weigh in on the work environment so they feel they have a voice
- Train your administrators to be good managers
- Establish Employee Resource Groups (ERGs)

Retention

Create Learning and Growth Opportunities:

- Pathways for advancement - look for ways to help staff advance within your district
 - Helps attract applicants, who value employers with opportunities for advancement
 - Helps retain your current employees, reducing some of your hiring needs
- Be specific, set up paths for upward mobility
- Examples
 - Programs to help classroom aids and paraprofessionals become teachers
 - Programs to help building and grounds staff gain new skills and certifications

Retention

Educational Reimbursement:

- Can take many forms:
 - General Student Loan Reimbursement
 - Pay for continued schooling in specialized areas
 - Pay for conferences and seminars
 - Pay for training, apprenticeships, licensure, etc.

Retention

Educational Reimbursement:

- Separate contractual agreement and corresponding policy.
- Needs to clearly and succinctly set forth terms of reimbursement.
- Employee must be put on notice.
- Consider limiting what District will pay for
 - Districts often limit education reimbursement to degrees or certifications that are relevant to the employee's job and/or area of need for district
- Still need to protect the employer:
 - Spell out clearly how the reimbursement gets paid (Stipend? Direct Payment?)
 - If employee quits within a certain time frame, they must pay back

Retention

Consider Flexible Work Arrangements:

- WFH is a benefit many employers are allowing post-pandemic
- Important to have WFH/Telework Agreement in place:
 - Term of Agreement
 - Employee's schedule and work hours
 - Work location
 - Any other terms specific to the employee's job duties
 - Termination provision allowing district to terminate agreement
- Although not realistic for many school-based staff
 - Be mindful of the precedent you create
 - Impact on employee morale

Questions??

Sarah E. Hanneman

sarah.hanneman@vonbriesen.com