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Mastering the Hiring Process

March 23, 2017

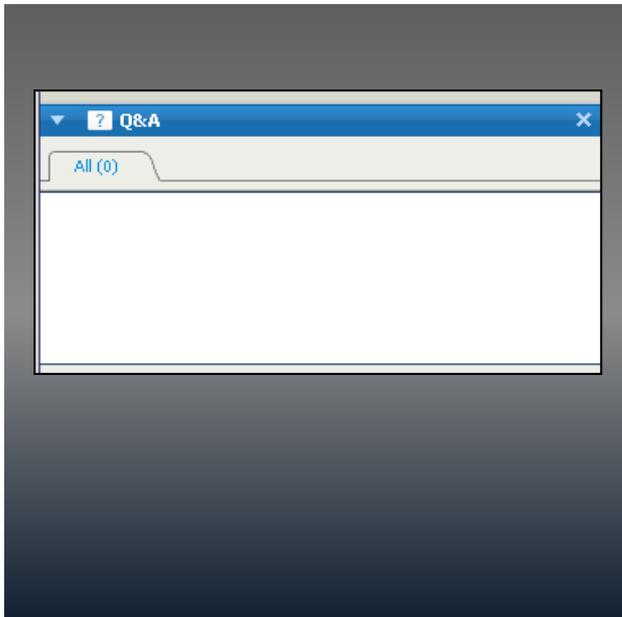
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Webinar Logistics



- 60 minute presentation, followed by a 20 minute Q&A
- Attendees will remain muted during webinar
- Feel free to ask questions via the Q&A box at the right of the WebEx panel

William M. Betley, Esq.

Atkinson, Andelson, Loya, Ruud & Romo



- Senior Partner at Atkinson, Andelson, Loya, Ruud & Romo
- Mr. Betley practices in all areas of employment law, including unlawful harassment, discrimination, wrongful termination, employee classification, and wage and hour. He is a frequent speaker on numerous employment issues, such as unlawful harassment, disability discrimination, leaves of absence workplace violence, employment handbooks and hiring and firing issues
- Chairman of the Inland Valleys Employer Advisory Council and he is the editor of that organization's Employment Newsletter
- Member of the American Bar Association, Defense Research Institute, Inland Valleys Employer Advisory Council, Orange County Employer Advisory Council, California Chamber of Commerce, Society for Human Resources Management, Professionals in Human Resources Association, Orange County Bar Association, Building Industry Association, and Home Builders Council
- Mr. Betley is listed in the National Registry of Who's Who for Attorneys in the United States

Cassandra P. Secord, Esq.

Atkinson, Andelson, Loya, Ruud & Romo



- Senior Associate at Atkinson, Andelson, Loya, Ruud & Romo
- Ms. Secord represents employers in all aspects of employment litigation, including discrimination, harassment, retaliation, failure to accommodate, wrongful termination, single-plaintiff and class action wage and hour disputes, and misappropriation of trade secret claims
- Ms. Secord counsels employers regarding human resources and employee relations matters involving state and federal wage and hour laws, leaves of absence, reasonable accommodations, discrimination, harassment, discipline, termination, reduction-in-force, and employment and severance agreements
- Ms. Secord creates employee manuals and develops human resources policies and procedures to assist employers in complying with federal, state, and local employment laws
- Ms. Secord has successfully defended employers in administrative hearings before the Department of Fair Employment and Housing, Equal Employment Opportunity Commission, and California Division of Labor Standards Enforcement

Laurian C. Rutterbush, Esq.

ePlace Solutions, Inc.



- EPL Practice Manager for ePlace Solutions, Inc., a risk management company currently providing HR services to over 30,000 companies throughout the USA
- As an attorney since 2005, Ms. Rutterbush has focused on labor and employment law
- Prior to joining ePlace in Solutions, Ms. Rutterbush was engaged in the practice of law with a large law firm with offices throughout California
- Ms. Rutterbush has litigated all types of employment claims and regularly provided counseling and advice regarding a wide array of employment issues including wage/hour problems, harassment and discrimination claims, and handling employee leaves of absence
- Active member of the bar in California

Agenda

- Introduction
- Job Descriptions
- Applications & Resumes
- Interviews
- Background Checks
- Social Media
- Testing
- Conclusion



What is a Job Description?

- A Job Description typically consists of:
 - A description of where the position falls within the company's organization chart
 - Essential job functions
 - Knowledge and critical skills
 - Physical demands
 - Environmental factors
 - Any explanatory information that may be necessary to clarify job duties or responsibilities



Avoiding Discrimination – Title VII/FEHA

- **Verify that selection criteria does not unlawfully discriminate against applicants**
 - Protected classes
 - Educational requirements
 - Physical fitness
 - Poor credit or criminal history
 - Citizenship or English fluency
 - Other factors

Applications & Resumes

- **Carefully Review Applications and Resumes**
- **Prohibited Inquiries**
- **Criminal Convictions**
 - Juvenile convictions
 - Ban-the-Box Statutes
 - City of Los Angeles
 - City of San Francisco
 - Other Counties & Cities
- **Electronic Applications**

Pre-Employment Interviews

- Valuable tool
- Avoid questions such as:
 - Do you have your own car?
 - Do you have childcare?
 - Are you planning to retire soon?
 - Have you ever been sick or injured on the job?
 - Are you a member of any social clubs or political organizations?



Pre-Employment - References

- Legal Risks
- Verify dates of employment, job titles, and perhaps compensation
- Listen to tone of conversation for insights

Pre-Employment – Background Checks

- **Governing Law**
 - FCRA
 - ICRRA
 - CCRAA
- **Procedural Requirements**
 - Written Disclosure
 - Employer Obligation to Provide Copy of Report
 - Authorization
 - Pre- and Post-Adverse Action Notice

Pre-Employment – Background Checks

- **Penalties**

- Monetary Penalties
- Punitive Damages
- Attorneys' Fees and Costs

- **Recent Class Action Settlements**

- Reardon v. Closet Maid Corp. (Case No. 2:08-cv-01730)
- Knights v. Publix Super Markets, Inc. (Case No. 3:14-cv-00720)
- Singleton v. Domino's Pizza, LLC (Case No. 8:11-cv-01823-DKC)

Tips for Compliance

- 1. Be aware of employer's obligations under the FCRA, CCRAA, ICRAA, and any other applicable state law**
- 2. Do not combine FCRA, CCRAA, and ICRAA disclosures.**
- 3. Do not combine disclosures and/or authorizations with employment applications, at-will acknowledgments, liability waivers, or other employment documents.**
- 4. Prepare a separate authorization form to conduct a background check under the CCRAA and ICRAA.**
- 5. Only conduct credit checks when allowed by state law.**
- 6. Follow proper procedures for taking adverse actions based on information obtained in background investigations, including pre-adverse action notice, statement of rights, copy of report, and post-adverse action notice.**

Social Media Searches



Exercise caution in conducting social media searches, employers run significant risk of uncovering protected information



Avoid Discrimination and Other Claims

1. Never request an applicant's password or require an applicant to disclose a personal social media page (prohibited under many state laws).
2. Delay viewing an applicant's social media profile until after an interview is conducted.
3. Refrain from singling out applicants for social media screening, and use the same criteria when researching each applicant on social media.
4. Separate the social media researcher from the decision-maker, shield the decision-maker from information that references a protected characteristic or activity.
5. Consider the source of the information when making a decision based on information contained in a social media profile —the social media profile may be outdated or not the applicant's posting.
6. Document the legitimate, non-discriminatory reasons to either offer or not offer employment.
7. Comply with background check laws.

Drug Testing Applicants

Ensure procedural
safeguards

**Provide adequate
notice**

No obligation to
accommodate
employees use of
marijuana

In CA, employers may require applicants to
undergo post-offer, pre-employment drug
testing

Medical/Psychological Exams



- ADA/many state laws prohibit tests or selection criteria that screen out individuals with disabilities.
- After offer, employer can request testing if job-related and consistent with business necessity.
- Physical agility tests are not considered medical examinations.
- Personality tests come with potential legal problems.

Putting it All Together

- Job Description
- Application (no criminal question if in a ban-the-box jurisdiction)
- Pre-Employment Interview
- Reference Checks (employment reference checks other than current employer, unless allowed by applicant)
- Credit Check (if allowed under applicable state law) and/or Background Check (not including criminal if in ban-the-box jurisdiction)
- Conditional Offer upon passage of background check (if conducted after offer), criminal check, drug test, and/or medical exam

Putting it All Together

- Criminal Check (in ban-the-box jurisdictions)
- Drug/Alcohol Test
- Medical Exam (if job-related, consistent with business necessity, and applied to all employees in the same job classification)
- Hire
- I-9 (within 72 hours of start date)

Disclaimer

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Questions & Answers



Call us at 800-387-4468

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Thank You for Attending!

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