

SPECIAL REPORT SERIES

HOW TO FIND AND HIRE THE BEST EMPLOYEES

“If workers are carefully selected, the problems of discipline will be negligible.”

– Johnson & Johnson Co. Employee Relations Manual, 1932

POWERFUL EMPLOYMENT RELATIONSHIPS BEGIN WITH HIRING THE BEST

The beginning of a powerful employer/employee relationship begins with the hiring process. Your goal must be to *hire only the best!* The value of placing your efforts and resources into the hiring process cannot be overstated. Dr. W. Edwards Deming, known for spurring the Total Quality Management movement and the success of Japanese industry, taught that the most important place to put resources in any system is the first 15%. This goes for employee development as well as manufacturing.

By definition, half of all job applicants are below average. And guess what—somebody is hiring them! What’s more, many job applicants will misrepresent to you their true status, background and experience. This is true for both upper and lower entry employees.

One survey reported by *Inc.* magazine (www.inc.com) indicates the following about job applicants:

- 15% of all job applicants falsify academic qualifications.
- 10% falsely upgrade their academic qualifications.
- 35% claim specific achievements or experiences that are untrue.
- 70% indulge in puffery (upgrading the importance of achievements).
- 12% have some kind of criminal record, including serious automobile convictions.

A lot can go wrong when you hire the wrong employee, and remember, by employee we mean everyone from janitor to CEO.

THE WRONG EMPLOYEE IS:

- Under qualified
- Resistant to change
- Prone to error
- Absent, late or lazy
- Untrustworthy
- Selfish
- Addicted
- Violent
- Unethical
- Unhealthy

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THE WRONG EMPLOYEE WILL:

- Create a negative work environment
- Offend customers or vendors
- Sue your company
- Create bad press
- Take business opportunities for his/her own
- Harass or discriminate against co-employees
- Quit at the drop of a hat
- Cause your company to be sued by a third party
- Steal company trade secrets or other confidential information
- File for unemployment or workers compensation

In contrast, a lot can go right when you hire the right employee.

THE RIGHT EMPLOYEE IS:

- Highly qualified
- Anxious to learn
- Responsible, punctual and attentive
- Trustworthy
- Focused
- Healthy
- Ethical
- Loyal
- Innovative

THE RIGHT EMPLOYEE WILL:

- Create a positive work environment
- Empower co-employees
- Create customer loyalty
- Work to add value and attempt advancement within the company
- Create profitability
- Work as a team member
- Act respectfully and responsibly
- Keep company trade secrets confidential
- Create new business opportunities for the company
- Work in a safe and healthful manner, lowering your insurance costs

Bottom Line: Hire the best. They are worth the time, effort and expense. Hire the best—and keep them that way!

WHY WE HIRE THE WRONG EMPLOYEES

You can't have an excellent company without first having excellent people. You can't avoid legal fights if you hire problem employees in the first place. When you hire the wrong employee, you are only asking for trouble. A poor hiring decision is the source of non-productivity as well as employee lawsuits. Most poor hiring decisions are made because of the

failure to follow a sound hiring process. Hiring practices alone have been the subject of many books. However, despite all we know about the hiring process and all that is contained in these materials, we will still continue to hire the wrong people for some very human nature related reasons. These reasons include desperation, laziness, infatuation, baggage, and recommendations.

Because we may be *desperate* for an employee now, we fail to follow a sound hiring process. For example, your secretary quit yesterday, so you hired the first person that said they knew how to type. No test, no sample projects, just blind faith, motivated by a feeling of desperation. Or, your company is growing so fast that you just bring the bodies in and figure out how to manage them later. When we hire out of desperation we very often find ourselves getting into a relationship that made no sense from the start. This happens in our personal lives as well as work. Rather than hire out of desperation we suggest that you use a contingent worker—whether they be from a staffing or leasing agency, or an independent contractor.

The second reason why we make poor hiring decisions is due to *laziness*. It's not that we're lazy people—it's just that we have so little time. Since hiring isn't given the priority it deserves, we are focused on getting it over with as soon as possible, so we can get back to doing our work. If you are too crunched for time or too lazy to go through a sound hiring process, then let someone else do it for you. Use a recruiter, an agency, or someone else within your company. The 15% you may have to pay to convert the employee to a full-time status is well worth it. Use the [Hiring Checklist](#) as a starting point to creating a hiring process.

The next reason is that of *infatuation*. Studies show that most interviewers make an emotional decision to hire someone within the first ten minutes of an interview and then spend the rest of the time justifying that emotional decision. Many of us buy our cars the same way. We make an emotional decision to buy a certain car and then spend days reading *Consumer Reports* to justify the decision. You can avoid infatuation by having more than one person involved in the interviewing process. You can also avoid infatuation by making sure that you meet with the candidate on more than one occasion before extending an offer. See the [Co-Employee Applicant Appraisal Form](#).

The next reason of that is *baggage*. We all have baggage someplace. Our baggage may be that we don't think a woman can make a good forklift operator. Our baggage may be that we don't feel a male could make a good head nurse or that a minority could make a good executive. Whatever our baggage may be, it often gets in the way of making a sound hiring decision. Let me give you a perfect example. For years women complained that the New York Philharmonic Orchestra had discriminatory hiring practices. The women fought for and won the right to "blind auditions," where the musicians sound is qualified while they are behind a curtain. This eliminates any stereotypes in the process. As a result, women were hired at the twice the rate previously. What management came to understand is that while the orchestra may not look like what they thought it should look like—*it sounds a whole lot better!*

The last reason why human nature gets in the way of making a sound hiring decision is because of *recommendations*. Very simply we want to trust someone else's viewpoint about a potential employee. As a result, we never test that employee for skills, character, drug use, etc. If we are desperate, lazy, infatuated, or let our baggage or recommendations get in the way, we will

never go through a sound hiring process—which is the most critical point in building powerful employment relationships.

If you want only the best then you must past human nature and insist that a *hiring process* be followed. What follows are insights, strategies and tools you should consider to make sure you hire only the best. They are the most critical factors that must be mastered if you want to have the best company possible.

DETERMINE YOUR REAL NEEDS

The traditional notion of creating a slot in the Organization Chart and filling it with a warm body is going by the way side. Today, savvy employers first ask themselves “What are my specific needs? What are the most important job functions that need to be addressed? What resources do we currently have that could address some or all of these needs? How can we change our workflow so that we are that much more efficient and can meet these needs without having to hire an employee?”

For example, many companies complain they are “under staffed.” However, the analysis may be that they are “over worked.” It is not an issue of the staff, but rather of the workflow. Some of this workflow can be streamlined by eliminating non-profitable clients or customers. In sales jargon this is known as the “C” list. Many companies also make the mistake of perceiving the existence of a long-term need when in fact, it is a short term one and extremely subject to market conditions.

Once you have specifically defined your needs, the next question is, “Who can best meet them?” Assuming you need a person to do some work, would you be better served by hiring an employee, using a temporary employment agency, a leased employee, or an independent contractor? Does the work have to be performed on the premises or can it be done out of the home? For example, hiring employees in extremely volatile marketing conditions makes little sense. Better to hire temps instead.

Many companies prefer employees based on assumption that they will be more loyal and committed to your company. Unfortunately, that is no longer the case. Employees, as with contingent workers, are committed and loyal to their careers, their projects and work teams, but seldom to their companies. Don’t make decisions based on a false set of assumptions.

If you decide to hire a home-based worker, see the [Home Based Worker Checklist](#). If you decide on a contingent worker, see the [Contingent Worker Checklist](#). If you hire an independent contractor, see the [Independent Contractor Agreement](#).

CREATING JOB DESCRIPTIONS

Attorneys and agencies say you should have job descriptions in order to help comply with the Americans with Disabilities Act (ADA) and other laws. Many of today’s management experts, including Tom Peters and Peter Drucker, suggest you destroy job descriptions because

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they create limits on innovation and the development of a learning organization. We believe there is a comfortable middle ground. You should be able to define what the 80/20 is of any employee's day. What three functions will employees perform that generate 80% of their value? These functions should be clearly set forth in a job description or performance agreement. They also should be the focus of interviewing and testing procedures. To create job descriptions go to online.onetcenter.org.

FINDING THE RIGHT EMPLOYEE FROM WITHIN YOUR COMPANY

Look from within but be aware of the pros and cons of doing so. On the pro side, there is the potential for increasing productivity and commitment with the hopes of a promotion. There is also the possibility that a quality employee would like to continue to work for your company, but in a different capacity. On the con side, there is the problem with inbreeding and stagnation. As a result, we recommend at least one-third of all positions be filled by outsiders. There is also the problem with promoting people beyond their competencies, otherwise known as the "Peter Principal." This occurs very frequently with a promotion to a management position. While an employee may be very good at a product or service delivery, that does not mean they have good management or people skills. It is important that when you promote from within, you go through the same hiring process as if you were interviewing an outsider. See the [Notice of Job Opening](#).

HIRE DISABLED EMPLOYEES

According to numerous studies, disabled workers have a higher than average productivity rating, better attendance record, and better safety record. Most accommodations cost nothing and less than 20% of them cost more than \$500.00. Hiring disabled workers is also the law. The ADA protects . . . "an individual with a disability who meets the skill, experience, education and other job-related requirements of the position held or desired and who, with or without reasonable accommodation, can perform the essential functions of the job." There is plenty of free or low cost assistance available to help with the hiring of disabled employees. You can obtain a wealth of information by contacting JAN, the EEOC, or local Disability Support Groups.

ADVERTISING FOR THE BEST

For many businesses, the classified help-wanted ad in the local newspaper or industry publication is the primary source of recruitment. The purpose of a help-wanted ad should be to *attract the highest qualified candidate at the lowest possible cost*. The help-wanted ad should be designed to attract the type of employee you want, not to provide a complete job description, the potential salary or the benefits you intend to offer.

As with any other form of marketing or advertising, the effectiveness of your help-wanted ad is related to the *cost per exposure to obtain qualified job applicants*. There is a simple formula to help you to determine this factor: Cost of advertisement *divided by* circulation of

publication *multiplied* by the percentage of qualified job applicants that read the periodical *equals* the cost per exposure.

Let's pretend you are advertising for an engineer. The paper tells you the ad cost is \$100 for four weekly runs. Its circulation is 10,000. According to the paper, 10% of its readers look at the classifieds and 5% of the readers are engineers. This means you are reaching 50 potentially interested candidates at a cost of \$2 each. If you receive 10 qualified responses, your cost is \$10 per qualified response.

Once you become more effective with your advertising, you will be able to further define and evaluate this equation. The methodologies you used to attract yesterday's employees do not necessarily work for today's employees. You may end up finding that it is cheaper to reach the same audience, for less cost per exposure, by using different media (e.g., local trade journal vs. newspaper classified). Also *calculate the long-term value of the position* in determining how much to spend on an ad.

The hiring of an employee must be viewed in terms of hiring an *individual profit center*. You won't hire the person capable of giving the best value simply by telling people what it is you are willing to do for them. You get what you ask for. Today's employer should be looking for employees who are concerned with adding value and quality, flexible and innovative, dedicated to self-improvement, willing to invest in your company's future, and who have good health habits. Advertising for employees is no different from advertising for new customers. You must stress your company's *unique value proposition* and let prospective employees know their compensation will be directly related to the amount of *added value* they provide to your company.

CONSIDER USING THESE WORDS AND PHRASES IN YOUR ADVERTISING

(Remember, the fewer words, the cheaper the ad.)

About the Company (only if it's true!)

- "Great environment"
- "Progressive, innovative"
- "Growing, expanding"
- "Excellence, quality"
- "Industry-leading products or services"
- "Value-directed compensation"
- "We value diversity"
- "Equal Employment Opportunity"
- "We are searching for the best possible [position title]"
- Your unique value proposition
- Your company mission or vision
- "Challenging opportunity"

About the Job

- Provide the position, title, essential skills and education required
- Give additional specifics via voice mail, e-mail, fax, or mail.
- “Challenging opportunity for the right person”
- Where it’s located
- If travel is involved
- Team environment vs. independence
- “Work with purpose”
- Non-monetary benefits of the job

About the Applicant

- “Trustworthy”
- “Desire, ambition, motivation, attitude”
- “Personal excellence”
- “Healthy lifestyle”
- “Seeks challenges”
- “Flexible/adaptable to change”
- “Seeks to add value”
- “Computer literate”
- “Communication skills”

Don’t Use These Words or Phrases

- Everything that’s in every other ad
- Passive words
- “Security”
- “Long term”
- “Guaranteed”
- Cute or fancy words
- Any words related to race, age, sex, physical type, etc. unless directly related to a bona fide job requirement (i.e., swimsuit models)
- Don’t stress salary or benefits in your ads unless they exceed your competitors’

SOME ADDITIONAL THINGS TO THINK ABOUT AND DO WHEN ADVERTISING FOR EMPLOYEES

- Try advertising in *different media*. Consider industry journals, graduate schools, adult education programs, newsletters, and job lines.
- Ask for *ad placement* on the upper or lower right hand corner of the right-hand page.

- *Change your ad* content weekly to see which ad draws the *best response*. (Benchmark and test your results.)
- Use an ad headline. Get outrageous!
- **Change your ad headlines!**
- Ask what current employees like about their jobs and put their endorsements in the ad, direct mail or fax piece.
- Have some or all your employees *sign your ad*.
- Review the classified ads and circle what you like best about the different ads. Save these ads and phrases. Incorporate them into your ads.
- *Monitor the source* of all applicant *leads*. Which efforts are providing the best results?
- Unless you fear the loss of an existing employee, *don't use "blind ads."* Take pride in your company.
- Try running long copy ads using weekday rates.
- *Change the print type* in your ad. Use **bold** and *italicized* type.
- Use bullet points.
- Tell applicants they can *obtain more information* from the company by calling a voice-mail message, e-mail message, fax-on-demand service, or by sending a stamped, self-addressed envelope to the company.
- If you don't want in-person responses to your ad, rent a post office box and have responses sent there or to a fax number only.
- Make sure you know where your most fertile *applicant pool* exists. Consider using demographic studies.
- Send a *direct mail piece* to the mailing list of an industry-related publication.
- Let your customer, vendors and other stakeholders know about the job opening.
- Study the effectiveness of your ad based on *lead generation* and *qualified response* rates.
- Ask *what it's worth* to the company to attract the best possible applicant. Then match your advertising budget to the perceived benefit.
- Compare the *rate cards* and circulation figures of the different publications for cost per exposure of the ads and demographics of the readership.
- Set yourself up as an *in-house agency* and get a *15% discount* on ad placements.
- Compare the *effectiveness* of different *advertising methods*. For example, what is the total one-month cost for a two-column ad in the local paper? What can you get for an equivalent cost if you use a two-line ad with a voice-mail and/or fax-on-demand system? Which one gets better results?
- Be careful to place the ad under the *proper job heading* when using classifieds. Are you seeking an "administrative assistant" or a "secretary"?

The following is a sample ad using some of these techniques:

ARE YOU THE BEST IN CSR?

Are you looking for a *challenge*? Are you up to working in a *fast-paced, innovative, diverse environment*? ABC Company, an **Equal Opportunity Employer**, is seeking *self-motivated individuals* to join our team.

We are seeking highly qualified applicants for a position as **Customer Service Representative**. Minimum requirements are 2 years college, excellent oral and written communication skills, ability to handle diverse assignments with minimum of supervision, familiarity with Microsoft Office Suite, and 2 years experience in customer service.

ABC Company is a growing service firm utilizing progressive marketing and management strategies. If you are looking for a job where EXCELLENCE is the goal and you are rewarded based on the VALUE you add, call our fax on demand service at (619) 555-1234 or visit our website at www.anywhere.com/jobs for more information.

When you finish reading this report, take a look at today's classified section of your newspaper. Who has a great ad? How can you improve on it? How are you going to advertise for the best?

EXPAND YOUR HIRING SOURCES

While there is certainly a great deal of benefit in using classified ads, there are many other ways to hire an employee. Also consider industry journals, graduate schools, adult education programs, newsletters, job lines, and Internet based services. The latter is the fastest growing medium for seeking out new employees. The following is a partial list of current job boards:

- www.bestjobsusa.com
- www.careercentral.com
- www.careerexchange.com
- www.careerexposure.com
- www.careermosaic.com
- www.careerpark.com
- www.careerpath.com
- www.careershop.com
- www.careerweb.com
- www.dice.com
- www.hotjobs.com
- www.jobtrak.com
- www.monster.com
- www.thejobmarket.org

As you can imagine there are dozens more. Others can be found by simply typing the words “employment,” “job” or “career” into any of the search engines.

Many companies do a successful job of using highly skilled college and graduate students through their schools work-studies programs. There are also internships available at little or no cost.

A number of companies have successfully used their own employees as a source of job prospects. Offer a bonus to an employee who refers a qualified job applicant as well as an additional bonus if they are hired and remained in the companies’ employ for six months or more.

THE INTERVIEWING PROCESS

As stated earlier, we have to make sure that the interviewing process isn’t dominated by our emotions, but rather that we stick to an objective analysis. What follows are some of the most important points to consider during an interview.

- Engage in a pre-interview screening process—Your hiring process should be focused on interviewing quality candidates only. The process of weeding out inferior candidates should be done without you having to meet with them. You should require every job candidate to complete a pre-interview questionnaire, fax or e-mail you a resume, and fill out a job application. Consider using a voicemail message that encourages the job applicant to listen carefully with no paper and pencil in hand as you will be giving detailed information about your interviewing process and the job opportunity. You may even consider using an outside resource to go through this process for you. With the advent of today’s “virtual human resource systems,” much of the weeding out process can be done on line without your direct interaction. For example, CISCO (www.cisco.com/jobs) reportedly performs 85% of its hiring process through an automated on-line system. While not as high-tech, you can use our pre-employment questionnaire to get an idea about someone’s comfort with change, working in a team environment, working without supervision, etc. (See [Pre-Interview Questionnaire](#) and [Employment Application](#).)
- Choose an appropriate time and place—Now that you have whittled down to 3 to 5 potential job candidates and have forwarded your letters of rejections to those who don’t pre-qualify (See [Sample Rejection Letters](#) under the Hiring Process section), it’s time to begin the interview process. Ideally, you should set aside at least one hour of time per interview. If punctuality is something that you value at your company then make sure to start and end the interview on time. It is also important to have a proper setting. In today’s tight labor market you don’t want to turn off a potential hiree by interviewing them in an appropriate setting such as an overly cluttered office or busy working environment. You should interview in an environment free of distraction including phone calls, interruptions, beeping

paggers, etc. A quiet conference room is most likely the best. If you have a follow-up interview, we suggest that you do it at a different time of day so that you can check interviewee's energy levels. **NOTE:** If you are interviewing a disabled job applicant, make sure you reasonably accommodate your access to your business or interview site.

- The interview—Don't take a "wing it" approach to a job interview. Programs such as the [ZERORISK Hiring System](#) can provide you with a specifically designed interview questionnaire for the job position at hand. There are also packages available for particular occupations, particularly in the sales area, that you can purchase off the shelf. As author Olson states, today's legal mandates require you to "eliminate the small talk." If you have any question as to what constitutes an inappropriate interview question then please see [Questions to Avoid During an Interview](#).
- Establish rapport—Begin the interview by establishing some rapport with the interviewee. Realize that many of them will be nervous and that your job is to put them at ease. You should have already done your homework by reviewing the applicant's resume, pre-interview questionnaire, job application, etc. You may also consider doing background and reference checks prior to the interview.
- Engage in active listening—During the interview process don't be so focused on asking the question that you ignore the answer. Listen to a person's answer and dig deeper. Remember you should be talking only 20% of the time and the interviewee 80% of the time.
- Have they done their homework—It is of course important to ask questions about the applicant's background, education and experience, accomplishments and awards, challenges and defeats, personal and career goals, etc. We also encourage you to find out what the job applicant knows about your company. To the extent that they have done homework and prepared themselves for the interview, chances are they will be a better employee.
- Have you done yours? Be prepared to answer potential candidate questions. See the [Interview Preparation Form](#).
- Get specific—One of the topic predictors of future performance is past performance. Get specific in having a candidate describe a major project, challenge, hurdle, etc. Don't settle for general answers, continue to probe. Questions such as, "Why did you do that?" "What other options did you consider?", "What is the value that resulted from that activity", etc.?
- Challenge the candidate—It is important to resist the temptation to be judgmental or disagreeable with a job candidate. At the same time it is important to see how they respond to some adversity. Challenge them. Disagree with their assumptions and see how they react to the pressure.

- Look into their eyes—There is a strong relationship between eye movement and communication. By observing the direction of a person’s eye movement, you can determine the origin of the message, and according to researchers, whether they are being truthful with you or not.

If the person looks down, they are accessing from their emotions. While they are looking down, stop talking and wait until they look straightforward.

People also have a “natural” eye movement pattern when recalling a memory—it is either looking up and to the right or up and to the left.

Once you have determined the “natural” eye pattern for recall, movement in the opposite direction indicates memory creation or fabrication.

- Group interviewing—Depending on the type of position involved a group interview may be appropriate. After introducing yourself and the history of your company and what you are looking for in job applicants, have a question and answer session during which you ask applicants what they are looking for, what they think about your company, etc. This will give you an opportunity to see how applicants interact in a group, how assertive they are, and how well they communicate verbally. This is where the cream rises to the top. Usually one or two applicants stand out at this stage. Considering inviting some co-workers to this group interview session and get their opinion as well. After the group interview, you may wish to administer a post-presentation questionnaire to get the applicants opinions. After going through the group hiring process, you can then conduct one-on-one interviews. Note that if you are hiring for a position such as an accountant, this may not be the best setting as many of the best accountants are introverts and will not speak out in a group setting. Likewise, it is particularly valuable when dealing with a customer relationships type position. For example, Southwest Airlines has group interviews and where individual applicants present themselves to the group. As it turns out, Southwest Airlines was just as interested in what the individual had to say as they were how other job applicants acted during the other person’s presentation. Where they focused, supportive, etc. or were they talkative and disruptive?
- Co-employee interviews—We are a great believer in having a pool of future co-workers interview final job candidates. After all, they are the ones who will have to work with them and many times they have insights that you or your managers may lack. To this end, we have provided you with a [Co-Employee Applicant Appraisal Form](#).
- Don’t misrepresent the opportunity—As stated above, it is important not to misrepresent the parameters or benefits of the job. Make sure not to overstate the opportunities, compensation potentials, etc. Instead be very clear as to what can be their expected compensation and benefits, career growth, unique job

requirements, overtime demands, etc. Should you decide to hire the employee, you should make sure you send them an offer letter outlining the specific terms proposed. See [Sample Offer Letter](#).

- Keep accurate notes and assessments of the interview—Psychologists will tell you that the concept of “recency” dictates many a decision. Make sure not to lose the influence of early interviews by not capturing an assessment through a formalized process. We suggest that you use the [Applicant Appraisal Form](#). This will allow you to make an accurate assessment after meeting with a wide pool of candidates.
- Concluding the interview—Before concluding the interview ask if the applicant has any questions of his or her own. Thank them for spending the time to interview. Realize that even if you have already made the decision that they are not a fit for your company, it still makes sense to be courteous as you may run into that employee again, perhaps as an employee for a potential client, supplier or vendor. Let the job applicant know when you will respond back to them either a yes or no and explain what your process will be.
- Skills training—Don’t assume that your managers know how to conduct a job interview. Train them so they know how to properly do so. You may consider going through a mock interview with them, sit in on one of their interviews, or ask the job applicant for permission to record the interview. Many companies will also have “test” applicants involved in the process.

TEST FOR SKILLS

Do not underestimate the value of skill testing. For example, a secretary who types 60 wpm with mistakes has been shown to be half as effective as a secretary who types 90 wpm without mistakes. However, if you don’t test for these typing skills, you’ll never know the employee’s qualifications. You may then find yourself criticizing her for not being productive, when in fact she is giving it her best effort. As we state in our workshops, your number one concern should be to hire trustworthy employees. Trustworthy employees have the skills and character necessary to do the job. This allows you to delegate without fear and be a leader rather than a micro manager.

Almost every job has a skill set that can be tested for. The law only requires that skill tests be “reasonably related to the job” and “validated.” There have been cases where the courts have claimed the tests demanded of job applicants were discriminatory because they had the affect of excluding a particular class of persons from the job (known as disparate impact). In his book *The Excuse Factory*, author Walter Olson spends a chapter entitled “Dropping the Stretcher” ridiculing the efforts of civil rights groups to undermine public sector testing efforts. Despite the fact that the Civil Rights Act and other laws push private and public employers towards objective, on-the-record methods to eliminate bias, it seems that no test could pass the scrutiny of the agencies special interests groups, lawyers or courts. As a result exams for everyone from firefighter, to police officers, to foreign service workers, were either modified or

eliminated entirely. For example, New York City sanitation workers went from having to lift a 60 pound container in the air for a full minute to dragging an empty sanitation basket to and from a truck. Since everyone past the test the City was considering eliminating them entirely. Olson concludes as follows: “For employers, the lesson was simply enough. No method of hiring—subjective, objective or anything in between—could satisfy opponents or avert lawsuits . . . The Courts had begun to suggest that there never was a legally safe occasion before preferring one applicant to another. Plaintiff’s lawyers, Darien McWhirter, knowing the paradox, points out its implication: “Perhaps flipping a coin should be the only legal method of employee selection.”

What is an employer to do with such a paradox? Our advice is to be sensible. Our analysis reveals that very few cases of this sort have been filed against private sector employers and then typically only against those in the Fortune 500. Your legal exposure is a risk management issue. Is the risk of a lawsuit greater or less than the risk of hiring a poor performing employee? Statistical analysis reveals that only a very few hiring claims are filed in a private sector based on testing issues. If it were our company, we would take the risk and test employees to eliminate the risk of hiring poorly qualified workers. The damage an under-qualified work force can cost your company is probably greater than the risk exposure you will face from using objectively based tests.

Having stated the above, with some effort you can probably find a skill test for almost any job position. If you can’t find one, you can work with your employees to create one. Just make sure you follow a sensible process and keep notes of your efforts.

TESTING FOR CHARACTER

Testing for an employee’s character traits brings the issues of reasonableness and validation further into focus. There have of course been a number of lawsuits filed related to companies using psychological exams in the hiring process. Again, author Olson points out that years of studies by the military as well as industrial psychologists and others, have further perfected the science of such an analysis. There is a wide range of character assessment tools on the market today. Some are clearly not appropriate for making hiring decisions, but are excellent when used as communication facilitation tools. The later can help you determine whether someone is dominant in their personality, controlling in their personality, an influencer, etc. As indicated in the [**Special Report: Powerful Communication with Employees, Customers and Other Company Stakeholders**](#), someone’s communication style can greater facilitate the process of dialogue.

Other assessment tools have been specifically designed to help in the hiring process. One such tool is the [**ZERORISK Hiring System**](#) produced by the International Risk Management Institute. As stated in the program “the risks arising from hiring the wrong person for a job are enormous—lost productivity, reduced moral, missed opportunities. On the other hand, the rewards of placing the right person in the right position can be equally great—increased profits, high productivity and improved moral. Indeed, employee selection may be the manager’s most important function.” The science behind the **ZERORISK** system includes thinking by more than 30 doctors in philosophy, psychology, psychiatry, medicine, axiology and business. One U.S. company spent \$2 million testing more than 50,000 candidates to confirm its accuracy, reliability

and validity. It has been validated using benchmark psychological tests (MMPI and 16PF) and medical blood tests (for predictable changes in chemical components). More than six studies of doctoral teams in different regions of the United States and four continents, have proven its usefulness, reliability, and validity. As cautioned, the candidates' scores should not be used as a screen to make a hire/don't hire decision unless your company has established predictive validity for the particular position under consideration. Otherwise, it should only be used as one of many sources of information about a candidate, not as a gatekeeper. The strength of this program and others of its kind, are the job candidate profile and interview guidelines, which can provide you with uncanny insight into the areas to be probed. The use of careful questioning and attention to responses helps you decide how to proceed in the interview and afterwards during reference checks.

Lastly, as further explored in the [Special Report: Building Powerful Employment Relationships](#), the strength of any employer/employee relationship is based on the factors of trust, shared direction, communication and commitment. Make sure the employee has the skills and character necessary to be trustworthy. Make sure their personal and professional goals are in alignment with your company's vision, mission, values and goals. Make sure the job applicant shows an ability to communicate through dialog. Are they a good listener, do they have preconceptions without basis, do they know how to solve problems and think in terms of win/win resolutions? And lastly, what is their definition of commitment? What personal or workplace experiences can they share with you to help define their version of commitment? Are they the type that engage in only "sunshine commitment" and flee at the first sign of difficulty or trouble? Or, are they the type of person who is deeply committed and willing to stick to their word long after the mood they said it in has past?

As you can imagine, we could go on discussing the concept of testing for skills and character for many more pages. Hopefully we have brought home the points that 1) there are strategies and tools available for testing for skills and character, 2) as with any management at management decision, there is a risk factor associated and 3) do not be blinded by all or nothing thinking. Eliminating your exposure to hiring claims by eliminating testing procedures may have the unattended consequence of business failure. You must balance your tolerance for risk with your desire for excellence so that you can make a well-informed decision about what your hiring process will be.

Please contact us if you would like more information about the [ZERORISK Hiring System](#).

REFERENCE AND BACKGROUND CHECKS

One cannot underestimate the importance of properly checking references and backgrounds. Hours of wasted resources and many lawsuits could have been avoided simply by checking references and backgrounds. All applicants should be required to sign a FCRA disclosure allowing the company to conduct complete reference and background checks.

Some companies simply under-appreciate the "bad employee" risk because they have yet to feel its pains. They have yet to have an employee attack a co-worker. They have yet to have

their CPA embezzle money. They have yet to have the warehouse supervisor dealing drugs. They have yet to be hit with a million dollar sexual harassment lawsuit. Remember: it only take one felon to ruin a day! Don't be one of those companies "comfortable" with the way they manage employees. There are times when you don't want to learn from a painful experience. The risk is real; hopefully your appreciation of it is real too.

Possible reference and background checks include:

- *Credit Check:* Indicates an employee's stability, if employee balances his/her life, and if employee should work with financial information or finances. Various federal and state laws place limitations on the use of credit references. The Federal Fair Credit Reporting Act (FCRA) requires an employer to notify employees when an investigative credit check is being performed. They then must sign a separate permission statement. See the [Checklist for Compliance With Consumer Credit Laws](#) and [Pre-Employment Information Disclosure Notice and Acknowledgement](#). The Act allows the employee, upon request, to receive a copy of the report. These checks should be limited to those in a position dealing with finance or security, either yours or others'.
- *Police Check:* Indicates employee's ability to work in a situation where she/he is unsupervised and where security or finance is involved. We recommend you do a nationwide criminal background check on all hires. You may not directly inquire into non-felonious arrests unless specifically job related. A few years ago a fellow attorney worked on a case where a documented felon kidnapped, raped and murdered a convalescent home resident. Despite complete dependency on staff for safety, no background check was ever done at the time he was hired. Unfortunately, the courthouses of the country are filled with thousands of such cases. The FCRA also requires a consent form for this check. Consider using our partner www.infolinkscreening.com.
- *Previous Employer Check:* Check at least three references. If you get one bad reference, and the employee warned you that the employer might give a bad reference, take all factors into consideration. Ask previous employers "Is this employee eligible for rehire?" If an employer says no, there has probably been a problem with this candidate. If the past employer wishes to limit the reference, offer a release signed by your company and the applicant. That is one reason why it is important to use a [Sample Offer Letter](#) and employee contracts (See the **Contract Builder**).
- Make sure not to limit your references to those provided by the candidate and only seek out other names. One of the favorite questions of professional recruiters when conducting a reference check is to ask a person to rate the quality of the job candidate on a scale of 1 to 10. If the answer is below a 9, ask why isn't it higher? It is also important to ask if the employee is eligible for rehire. The mere hesitation on the part of someone providing a reference is an important clue in and of itself.

- *DMV Check:* Should be used with all those who drive for the company, whether they use your vehicle or their own. Note that some insurance policies and regulations may require proof of driving record. Please ask us for consent forms you should use when conducting these background checks.

NOTE: *Don't assume that Executives and Managers aren't a risk. Do the words Convair, Dalkon Shield, DES, Enron, Lockheed, Love Canal, Johns Manville, Mitsubishi, Nestle, PCB, Pinto, Three Mile Island, Texaco, Tobacco, or Tyco mean anything to you? One of the biggest mistakes we see companies make is thinking that "bad employee" issues only relate to rank and file workers. We never hear of postal executives going berserk, only "workers." We don't think that executives have drug and drinking problems—we somehow fantasize these are only rank-and-file problems. We don't have checks and balances with our executives because of their perceived integrity.*

We have seen plenty of “million dollar executives” and it’s not because of what they’re paid. In many of these situations they “signs were there,” but the company failed to thoroughly investigate their background. The fact is, losses from executives gone bad cost American business 16 times as much as those generated by rank and file workers! Remember, the higher the position on the company organization chart, the greater the risk exposure.

A CAUTIONARY NOTE ABOUT NEGLIGENT HIRING

Not only does a company risk business failure, but it may also be subject to a lawsuit if it does not give the proper attention to the hiring process. During the past few years, “negligent hiring,” claims have taken off. While the popularity of this tort is approximately 20 years old, its parameters are still not completely understood. In general, for an employer to be liable for negligent hiring, the employer “must have known” or “should have known” that the employee posed a *reasonable risk of harm* to others. The duty to investigate employees’ backgrounds is balanced against their privacy rights and varies according to an employee’s position. Where security or safety responsibilities or the use of weapons is involved, the courts have held to a higher standard of investigation. Generally, the more a consumer, client or customer relies on the trustworthiness or safety of the services provided, the greater the duty owed to third parties when hiring employees.

WATCH WHAT YOU SAY

Watch what you say when hiring an employee! Misrepresentation claims have been filed where an employer promises too much or is not forthright and honest about either the position being offered or the health of the company. Companies who promise too much during the hiring process may find them bound to oral or implied promises, thereby losing the protection of an “at-will” employment relationship. They may also be sued for misrepresentation. That’s one reason why we suggest the use of offer letters, employment contracts and “at will” language.

SETTING COMPENSATION AND BENEFITS

Before beginning the hiring process you should have a clear idea on how you expect to compensate your future employee. In today’s rapidly changing economy, where its historically low unemployment levels, yesterday’s salary, compensation and benefits structure means little in today’s hiring process. Begin by obtaining competitive salary information from the Department of Labor Statistics (www.dol.gov) or from a private on-line search (i.e. www.salary.com). You should also research local statistics maintained by your chamber of commerce or local organizations. Lastly, look online as well in the classified section of your newspaper and find out what competitors are paying for their new employees. For more information please see the [**White Paper: Powerful Compensation Strategies.**](#)

ESTABLISH SYSTEMS FOR HOME BASED WORKERS

As a result of technology and mobility, today’s workplace is undergoing an incredible amount of change. One of those changes is the ability to have *home based* and *remote site workers*. Your employees could be working in their suburban community, in another state or even in another country. As we tell the CEOs, consultants and HR professionals that attend our seminars and workshops, the *law is a catch-up system*. With today’s rapid rate of change, it is actually *falling behind* the times—and it is doing so at an *accelerated rate*.

The advent of home based or remote workers has created far more legal questions than can be answered. Questions such as “what is my responsibility for providing a safe home based work environment?” “What is my responsibility for preventing harassment and discrimination that may occur at a remote work site?” “Can I demand that an employee show childcare coverage during the day?” “What are my responsibilities for personal equipment used by the employee?” By the time we figure out the answers to even half these questions, we’ll be faced with a dozen new legal issues created by today’s rapidly changing business environment.

Your company needs a *system* for managing home based and remote site workers. For example, it’s a good idea to have home-based workers *check in* on a regular basis. You must establish a powerful communication system so that the quality of the work relationship does not fall victim to the distance between it. The [**Home Based Worker Checklist**](#) and [**Telecommuting Agreement**](#) cover the essential areas of concern such as safety, wage issues and communication. For example, you should find out if there is day care available to the employee, is company equipment being maintained in a safe area, and are home visits allowed by other employees or

HOW TO FIND AND HIRE THE BEST EMPLOYEES

customers? By following this checklist you will avoid many of the traps faced with managing home-based workers.

Cautionary note: Resist the temptation to turn home based workers into *independent contractors*. This will only work where they have their own business, other clientele, and are not an integral part of your business. Also, remember that you *cannot control* how independent contractors do their job.

USE ONLY ESTABLISHED AGENCIES WHEN HIRING LEASED OR TEMPORARY EMPLOYEES

The contingent workforce has been growing at anywhere from ten to twenty percent per year over the last five years. The nation's largest agency, Manpower, replaced General Motors as America's largest employer many years ago. The contingent worker has evolved from being a part-time secretary to a full-time nurse, engineer or even CEO. Today's contingent workers include temporary, leased and borrowed employees as well as independent contractors.

Along with the contingent worker comes incredible *flexibility, exposure* and *responsibility*. With the financial explosion of this sector also come many opportunists who give good agencies a bad name. An agency is only as good as the employees it hires and the training they are provided. Make a point to find out *how they are hired*, their *length of employment*, the *training* they receive, what *they are paid*, and what it would *cost you to hire them* on to your payroll.

Because the contingent workforce is such a new phenomena, comparatively little has been written on how to manage these relationships from either a human resources or legal standpoint. Many agencies tout the fact that they can insulate clients from legal, managerial and administrative needs associated with having employees. However, that is very often not the case. Very often a company will be held responsible for the acts of a contingent worker under an "agency," "dual capacity" or "borrowed servant" theory. This is why it's so important to clearly *define the parties' rights and responsibilities*.

In the last two years, there have been a number of cases clearly indicating that companies that hire contingent workers *remain responsible* for complying with *the Civil Rights Act, ADA, Family and Medical Leave Act, OSHA* and *other employment laws*. For example, what would be your obligation if you hired a contingent worker who then sexually harassed one of your employees? Is that contingent worker subject to your harassment and discrimination policies? Who should investigate the employee's complaint of sexual harassment? Do you have the ability to fire or discipline the contingent worker for their conduct? And ultimately, if your employee sues, will you be responsible to that employee for the acts of the contingent worker, and if you are, will the agency or it's insurance company *indemnify* you against the legal fees and other costs associated with the claim?

The IRS and other agencies have plenty of incentive to define any worker as your employee. The IRS alone estimates that there is approximately *\$10 billion* in unpaid taxes every year due to misclassification of employees. As a result, your company could be responsible for

the wages and employment taxes of a contingent worker who is not paid by his or her agency. For that reason and many others, you should not walk blindly into contingent employment relationships. There are other factors to consider when working with contingent workers including loyalty factors, their exposure to trade secrets and the difficulty of controlling their conduct.

You need to also consider Workers' Compensation Insurance, General Liability Insurance, Employment Practices Liability Insurance and indemnity obligations surrounding the hiring of contingent workers. It is important to determine whether an agency will *indemnify* your company for any wrongful acts on the part of a contingent worker. Also make sure that they meet the various *state financial and registration requirements* of your state. If you don't work with an established agency, you risk increased exposure to wage claims, sex harassment and discrimination claims, tax claims, unemployment claims, workers' compensation claims—the list goes on.

A [Contingent Worker Checklist](#) has been provided with the program. Use it before hiring your next contingent worker. If you are interested in an in-depth discussion in this area, please see the [Special Report: Contingent Workers: New Rules and Strategies For Profit and Protection](#).

WATCH FOR NON-COMPETITION, NON-SOLICITATION AND CONFIDENTIALITY AGREEMENTS

Depending on the particular state you are in, there is either a bias to open competition or strict enforcement of these agreements. Even if it appears that the employee is not being hired in a competitive arena, there is a doctrine known as “inevitable disclosure” which implies an obligation where the potential for disclosure is foreseeable. This logic also implicates parent agreements, work for hire and copyright agreements, and release agreements. Make sure you are not having someone who already has their “hands tied.”

NOW THAT YOU'VE HIRED THE BEST—KEEP THEM THAT WAY

According to Dr. Deming, nine out of ten employee failures are due to the management system, not because the employee does not want to do a good job. If you have made a focused effort to hire only the best, you should then focus on keeping them that way. Let's just touch on three ways of doing that.

1. Orientation—It is important to have a formalized orientation process. This doesn't have to be boring or tedious—it can actually be fun. We know of companies that use a “scavenger hunt” game to make the process enjoyable. Others try to reinforce the learning through yet another game, Jeopardy. We also recommend that after 60 days you distribute a survey asking for new employee input. What can they see about your company that you can't see for yourself? See the [60 Day New Hire Survey](#).

2. Continuous training—With the cycle of change revolving ever faster, the need for training grows ever more important. Place your valuable employees in an ongoing training effort and you will reap significant benefits. As Tom Peters states, “training lavishly”.
3. Engage in a performance improvement process—Whether you use one of our forms (see [Performance Improvement Form—Employee Self Evaluation](#) and [Performance Improvement Form—Manager's Evaluation](#)) or one of your own, it is important to spend time giving employees feedback on their performance which leads them to yet greater productivity. As a leader, you will help them to identify their challenges, opportunities and solutions to any problems. Help develop performance benchmarks that they can “own” and then be a leader, not a micromanager.

CONCLUSION

These are the most important strategies you can use to find and hire the best. The biggest problems we see employers make when it comes to hiring are 1) the failure to properly define the “need”; and 2) the failure to take the time to follow a process, including the interview of numerous candidates, co-employee interviews, a rating process, background and reference checks. You must be vigilant in fighting the very human tendencies that result in poor hiring decisions discussed earlier in this report.

One last note before we conclude: We always encourage our clients to take a snap shot of their current condition before they start the improvement process. This serves not only as a source of insight, but also as a benchmark for progress. What are you doing right today? What do you have to do better tomorrow? Where are you vulnerable? If you look at your turnover, poor performing employees, and employee lawsuits, you will see that many of them trace back to poor hiring practices.

To see a diagram of a proper hiring process, [click here](#).