

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

When you are seeking staff for an opening at your office it is important to have hiring policies and procedures in place to provide consistency and transparency as well as ensure compliance with any employment laws or regulations.

This article will provide help with the steps involved in hiring, including:

- Establishing the Hiring Policy
- The Job Description
- The Interview
- The Offer
- The Background Checks & Drug Screening
- Formalizing the New Hire

HIRING POLICY

Before you begin the hiring process, you should establish a company-wide policy and procedure for hiring. If you already have one, you should review it to be sure it contains all the necessary parts.

The Society for Human Resource Management provides an online sample you can use to start your template or revise the current policy your company uses.

http://www.shrm.org/templatestools/samples/policies/pages/cms_000582.aspx. Depending on the company size and specific position needs, the policy should set forth specific details for each of the following:

- 1) How to request to hire
- 2) Who can approve new hires
- 3) The process for advertising an opening
- 4) The process for evaluating the applicants
- 5) The process for interviewing
- 6) Reference Checks
- 7) The process of conditionally offering positions based on testing and background checks

As you create your company policy it is important to be sure that all your policies are compliant with the Fair Credit Reporting Act (FCRA) and not discriminatory based on the Equal Employment Opportunity Commission (EEOC).

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

FCRA

The FCRA requires that you notify the applicant and get their consent in writing, that you may use consumer report information in the hiring process. You must also certify that you will comply with the FCRA and that not discriminate or misuse the information. For specific details on FCRA's requirements visit <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-employers-need-know>

EEOC

As you may know, the EEOC is tasked with enforcement of federal laws that outlaw discrimination in employment. The EEOC enforces the Civil Rights Act (discrimination based on race, color, religion, national origin or sex), the Pregnancy Discrimination Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and other similar types of laws. The EEOC has designated best practices to assist you in planning your corporate policy to avoid discrimination based on race and color. <http://www.eeoc.gov/eeoc/initiatives/e-race/bestpractices-employers.cfm> These best practices can be modified to prevent all other types of discrimination as well.

If you have other questions or concerns about compliance with hiring and background checks/testing, check out this free webinar from GoodHire.
<https://content.goodhire.com/webinar/compliance>

THE JOB DESCRIPTION

Every position within your company needs a job description. Each job description should be used to determine if a candidate can fulfill the job duties and the same description can be used to evaluate the employee's performance. The job description needs to set forth specific provisions to protect you from employment claims in the future. For each position within your practice, you should provide:

- 1) **The title of the position**
- 2) **The pay grade/range, hours** (including any overtime/weekend work duty if applicable)
- 3) **The objective of the position.** Each position at your practice should have clearly defined goal for the position that relates not only the general duties (e.g. Increase revenue) but also identifies key tasks (e.g. develop metrics for measuring profitability, evaluate company staff).

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

- 4) **The qualifications necessary for the position.** Use this section to define what skills, education and knowledge your candidate should possess. The qualifications should be necessary for the job so as to prevent unintended discrimination. As an example, do not require qualifications of a high school diploma for a position that may only require manual labor.
- 5) **Any special demands or skills that the position may need.** In this part of the job description you should describe what the job requires physically (e.g. lifting heavy boxes, repetitive movements, etc.) and should ideally identify what percentage of time is involved.
- 6) **The specific duties required for the job.** The job description should include who the employee's supervisor will be (e.g. CEO, practice manager), as well as the position's duties and anticipated activities. This section should describe everything that you will judge the employee on as you review their performance. When delineating the duties, list them by frequency of occurrence (e.g. 50% managing day to day operations, 10% negotiating with insurance companies, 5% managing staff, 5% handling patient complaints, etc.)
- 7) **Notice of any requirements that must be fulfilled to be hired.** Use this section to delineate all the things that must be passed prior to beginning the job, such as reference checks, drug and alcohol testing, credit checks, background checks, driving record reviews, etc. Keep in mind that the description should only include these items where the requirements directly correlate to the position's duties.

EVALUATING THE CANDIDATES

When evaluating candidates, you should establish a scoring system based solely on the candidate's paper application or resume. Give each factor (duty, experience, training, skill, etc.) a numeric score (such as minimum met equals a 1, everything met equals a 5 and then have a break down in between). It is important that the same person rank each candidate, if possible, to be sure that the scoring is consistent. The EEOC should be in your mind as this is done; keeping your evaluation objective can help prevent discrimination claims.

If you have several candidates that are tied for a position, you should consider interviewing them all. Another alternative is to send them an application or questionnaire that requests specific written answers with examples of how they have historically met select requirements of the job to further assist you in breaking the tie. (e.g. Please describe a circumstance when you were able to successfully handle a difficult patient.)

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

THE INTERVIEW

Once you have determined the top candidates based on the scoring, you should decide whether you want to begin with phone or in-person interviews. Both have their advantages and disadvantages to consider. Phone interviews tend to be faster and can be useful to narrow the pool of candidates but the process can often leave you with just as many candidates as you had prior to the interviews plus you will need twice the number questions to assess the candidate because an in-person interview will eventually need to be conducted. In-person interviews tend to be time consuming but are often the best way to really assess the candidate and determine if they would be a fit for the position. For more ideas on the pros and cons of these types of interviews see this article from a UK source: <https://www.coburgbanks.co.uk/blog/assessing-applicants/6-different-types-of-interview/>

When conducting an interview it is important to consider what you are NOT permitted to ask in an interview. While many of these questions seem harmless, they could lead to potential legal issues down the road. The simplest way to think about it is that questions you ask need to be related to the job duties and responsibilities. The following chart demonstrates the topics of concern and sample questions that are compliant.

Topic	Concern and Sample Question
Age	Guessing a candidate's age is illegal. You can however ask how long they have worked in a particular field or industry.
Children	You can ask if the candidate is able to fulfill the position duties without concern – ask about – what work hours are you available? If the position involves travel – ask about that availability.
Citizenship	You cannot ask where they are from, but you can ask if they are legally able to work in the U.S.
Criminal Record	Avoid asking questions about criminal records until you know the law specific to your state. You can notify the candidate of company policies on passing criminal background checks prior to hiring. See more for your state here -- https://www.goodhire.com/background-check-laws-by-state
Disability	You cannot ask about specific disabilities but you can ask if the employee would be able to fulfill detailed job duties.
Drinking (Alcohol)	Do not ask questions about alcohol use. You can advise the candidate of any company policies against alcohol consumption and any testing for alcohol use.
Driver's License	For positions that will require any employee to drive, you are permitted to ask if they have a valid driver's license. You can also advise them of any company policies that would require their driving records to be

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

Topic	Concern and Sample Question
	verified/considered.
Drug Use	You can ask if the person uses illegal drugs. It would also be appropriate to advise the candidate of the company's policies on drug use and any testing for drugs set forth in those policies.
Education	You are permitted to ask about a candidate's educational experience, certificates and training for positions requiring the same. However, those questions should not be asked for entry level/remedial positions.
Financial Status	You cannot inquire about their financial status or property ownership. However, for positions involving sensitive data, you can advise the applicant that the position will require them to undergo a credit history check.
Language	You cannot ask if their first language is English but you can ask what languages the candidates is able to read, write or speak fluently.
Marital Status	Avoid this question until after the person is hired. After hiring, the question can be asked for purposes of emergency contact and insurance purposes.
Military Status	You cannot ask about discharge status, but you can ask about experiences in the military that can relate to the position available.
Physical Data	You cannot ask a candidate's height, weight, etc. However, you can relate the job's physical requirements and even demonstrate them to allow the candidate the opportunity to understand what the physical demands are for the job.
Race	You cannot ask question relating to race but may notice distinguishing characteristics used for identification purposes
Religion	Ask if the employee is available to work the schedule for the position – days, nights, weekends, holidays, etc.? – do NOT ask what their religion is.
Sex	You cannot ask about gender but may notice general appearance. If the position requires that the position be filled with one gender or another, the question of gender may be permissible.
Social Security	You cannot ask if an applicant is on or receiving Social Security benefits.
Union Affiliation	You cannot ask if candidate has ever been associated with any employee union but you may advise of the company's status relating to similar organizations.

REFERENCE CHECKS

Prior to any offer, you should contact employers both on and off the resume of your preferred candidate. You must notify the candidate that you intend to call their listed references and you can ask for a specific supervisor's name and a contact number for positions that they have previously held. Do not contact the current employer without consent of the candidate.

You should be prepared to do your homework for the reference call based on the interview. If the candidate indicates that they handled that task in a past position, ask in the reference call. Be prepared to ask questions from any provided reference letters. Always ask if the candidate would be eligible to rehire. For more information consider this site <http://recruitloop.com/blog/9-things-you-must-never-do-during-backdoor-reference-checks/>. They even have a free e-book with a Reference Check Template and Guided Framework.

After you have satisfactory information from the references, you should draft the offer letter.

THE OFFER

The offer letter should provide the candidate with the details of the position: the position name, the salary/pay rate, any benefits or other company offerings. The letter will need to be signed by the hiring supervisor, head of human resources or another corporate representative.

The key part of the letter should contain a clear provision with the contingent requirement for any applicable testing, background checks or reporting. The language will need to include that the candidate understands that this offer is contingent upon the successful results and completion of [drug/alcohol testing, driving record report, credit report, criminal background report, etc.]. The letter should contain instructions on what action will be necessary to complete the conditional requirements (e.g. formal application, copy of driver's license, consent form for all background checks, etc.) You should make it clear that the offer will expire if the tests/reports are not completed by a specific date. You should provide a space for the letter to be signed and dated by the candidate and instructions to return it to the office before the expiration date.

You should be prepared to discuss all the details that may go with the position. It is also a good idea for key provisions of the employee handbook to be reviewed with the candidate.

THE TESTING, BACKGROUND CHECKS & REPORTS

Your practice should have clear requirements for certain positions regarding background checks, credit reports and driving record reports. Background checks when used in the hiring process must be compliant with the Fair Credit Reporting Act. To verify what your obligations are for background screenings based on your state laws, check out this site <https://www.goodhire.com/fcra-background-check-compliance-guidelines>

Driving Record

Anyone whose position requires them to drive their personal or company vehicle for work should be required to undergo a driving record review. The record will need to show that the person has an active and valid driver's license for your state. Beware of too many moving violations within a twelve month period. You should also review the record for suspensions, DUIs, leaving the scene of an accident (LSOA or LSA), reckless driving. In addition, your company policy should require that any employee required to drive for work also undergo periodic checks to be sure that you are aware of any concerning developments that may occur after employment.

Background Checks

Your candidate's background will be extremely important to your evaluation of the candidate because of the sensitive nature of so many parts of the day-to-day practice of medicine. As you know, employees will have access to patient records containing personal health information (PHI) and most staff will be in situations involving physical contact with your patients. Based on this sensitive situation, your staff's background check will need to be thorough to demonstrate the corporation's safety efforts.

Before establishing your company policy on criminal background checks, you should review state and local laws because they may restrict whether you can ask about convictions in an application or interview. For information on your state's laws regarding using criminal background checks in the hiring process visit <http://www.nelp.org/publication/the-fair-chance-ban-the-box-toolkit/>. For more information on rules about criminal background checks download this whitepaper by our friends at GoodHire -- <https://www.goodhire.com/ban-the-box-laws> -- click on the blue link "download the whitepaper."

Once you have a clear understanding of your state and local rules, if possible, the background should check criminal history (applicable counties, states and federal based on candidate's history, sex offender registries, terrorist watch list (OFAC)), social security (to validate applicant's

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

number, date of birth and former addresses), educational history (verifying completion, degrees/certificates awarded), and professional licensure.

Credit Report

Any candidate for a position within your practice that involves handling banking, accounting, credit card transactions, or acceptance of payments should be required to undergo credit report screening. As a reminder, consideration of this credit/financial information needs to comply with the FCRA, the EEOC and applicable state law. Candidates with what is traditionally defined as "bad debt" should be evaluated to determine suitability for the position. After the reports are returned, you should give the candidate the opportunity to review the report for accuracy and be sure that anything that is incorrect is remedied. The increase in frequency of identity theft means that entries may be inaccurate and the candidate should be re-considered if the inaccuracies are verified.

Drug Testing

Because of the nature of the healthcare industry, workplace drug testing seems like it should be mandated by law, but for most private employers drug testing is optional. As an employer you have the right to test your team. To help you with developing a Drug Free Workplace program the US Department of Labor has a free tool to help you build your corporate policy. Visit their site through this link: <http://webapps.dol.gov/elaws/asp/drugfree/menu.htm>.

After you have made yourself familiar with the applicable federal rules and laws, you should review the laws for your state. For more information on state laws visit <https://www.shrm.org/LegalIssues/StateandLocalResources/StateandLocalStatutesandRegulations/Documents/State%20Drug%20Testing%20Laws.pdf> or this site with a simplified listing of state laws: <http://www.ohsinc.com/info/state-drug-testing-laws/>

Drug Free Workplace program will help protect your practice, your patients and your staff. It should be present in every medical practice across the country. Establishing the parameters for drug testing will protect the practice when drug testing becomes necessary. Your patients are protected from errors that may be caused by impairment. Fellow staff are also protected by eliminating circumstances that can place their jobs in jeopardy and emergency situations with the using employee or patients.

You drug testing policy should define what is being tested, when candidates and employees can be tested. Most laws require an advance notice of this policy prior to the start of any testing for

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

current employees. New candidates need to be notified that it is part of the requirements to be hired so they can make the decision to apply or not.

DECIDING NOT TO HIRE

If your decision not to hire is based on results of the background screening, there are very specific steps you must take to notify the employee of the rationale for your decision. This process requires you to notify the applicant in writing and provide the candidate with a copy of the report and a summary of rights. You must then allow the employee time to resolve the issue if it is inaccurate, normally it is a 5 day waiting period, if the issue is not resolve you should provide specific notice in writing of the decision not to hire, and then you should destroy any unnecessary paperwork related to the same. For more information visit <https://www.goodhire.com/adverse-action>. You can also learn more about this process in the GoodHire webinar on compliance. <https://content.goodhire.com/webinar/compliance>

FORMALIZING THE NEW HIRE

Once your new candidate has completed all the testing and background reporting to your satisfaction, it is important that you run through a new hire checklist to be sure that you obtain all the information that you need for record keeping purposes and to be sure that the new employee is educated about the company's policies and procedures.

You should have your legal counsel review anything you create to ensure compliance in your state. This article is not legal advice and is only intend to assist you in understanding your potential and actual obligations under the law.

Trisha D. Bowles, JD, LHRM is the Vice President of Claims & Risk Management at MedMal Direct Insurance Company. Prior to working with MedMal Direct, Mrs. Bowles worked in medical malpractice insurance defense in private practice and was a healthcare prosecutor for the Florida Department of Health. Mrs. Bowles earned a B.S. from the University of Florida, her J.D. from the University of Denver and is a Florida licensed healthcare risk manager.

For questions or more information about this article or to request future articles on specific topics please contact her at RiskManagement@MedMalDirect.com.

Policy & Procedure: Physician's Office Team Hiring

By: Trisha D. Bowles, JD, LHRM

SOURCES & RESOURCES

- http://www.shrm.org/templatestools/samples/policies/pages/cms_000582.aspx#sthash.qRjdMunX.dpuf
- <http://hrdailyadvisor.blr.com/2012/02/15/5-critical-components-every-job-description-must-contain/>
- <http://quickbooks.intuit.com/r/hiring-and-recruiting/checklist-evaluating-job-candidates>
- <http://www.businessinsider.com/11-illegal-interview-questions-2013-7?op=1>
- <http://hiring.monster.com/hr/hr-best-practices/small-business/conducting-an-interview/common-interview-questions.aspx>
- <http://www.insidecounsel.com/2013/02/18/labor-the-new-frontier-of-bankruptcy-discriminatio>
- <http://www.employmentlegalblawg.com/2009/11/refusing-to-hire-based-on-bank.html>