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Devaluing Diversity – Avoiding Mistakes In The Interview Process*

presented by

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Goals

- Hire the most qualified
- Ensure compliance with legal requirements
- Discuss hiring process
- Identify common mistakes
 - ***All while adhering to commitment to diversity***

Reasons for Increasing and Embracing Diversity

- Values
- Creating and maintaining comfortable working environment for all employees
- Diversity among existing and potential organizational customers, clients and business partners
- Better product and service
- Right thing to do

Legal Restrictions on Achieving Diversity

- Cannot:
 - Set quotas
 - Reserve a position for a particular EEO group
 - Consider EEO factors directly in decision-making

Legal Restrictions on Achieving Diversity

- Can (and should):
 - Increase the diversity of the qualified applicant pool
 - Value in decision-making non-EEO diversity in terms of experiences, ideas, contracts, etc.
 - Create a working environment which embraces diverse talent

Whom to Interview

- General rule
- Making and documenting exceptions
- Limiting pool of qualified applicants
- Phone screens
- Respect

The Interview

- Length of the interview
- Who should interview
- Preparing for the interview

Benefits of Uniform Questions

- Legal
- Practical

Application for Employment

- Legal importance
- Practical benefits
- What to look for
- Ban the Box
- Disclaimer/EEO Statement/Restrictive Covenant/etc.
- Everyone completes!

Be Careful Of

- Implied promises
 - Wages
 - Benefits
 - Bonuses
 - Job Security
- Impermissible questions

Impermissible/Problematic Interview Questions

- EEO
 - Age
 - Citizenship
 - Prior claims/charges/lawsuit
 - Disabilities/handicaps/medical conditions
 - Military status/veteran's status

Impermissible/Problematic Interview Questions

- EEO (continued)
 - National origin/ancestry
 - Race/color
 - EEOC Guidance re: Background Checks
 - Religion
 - Sex/pregnancy
 - Sexual orientation

Impermissible/Problematic Interview Questions

- Family
 - Marital status
 - Parental status
 - Personal questions

Permissible Questions

- Past experiences
- Current skills
- Ability to meet essential requirements
- Values and goals
- Situational/behavioral

Responding to Applicant Disclosures

- Inability to work nights/weekends
- Religious beliefs/observances
- Prior physical or emotional condition
- Current physical or emotional condition
- Specific request for an accommodation

Potential EEO/Diversity Danger Zones

- Personal comfort level
- Bad cultural fit
- Overqualified
- Too assertive
- Dislike (with passion)
- Accent
- Appearance
- Customer preference (relative to EEO factor)
- Stereotyping (e.g., women with children)

Valuing Diversity in Decision-Making Process

- Start with uniform questions
- Give weight to differences in experiences, ideas, contacts (non-EEO)
- Diversity in decision-makers

Documentation/Communications

- Guidelines for note taking
- Summary of basis for hiring decision
- Communications to those who are not hired
- Communications with those who are hired

Possible Conditions of Offer

- Criminal background check – FCRA issues
- Pre-employment Drug Test
- Execution of Employment Agreement – timing and content
- I-9 Compliance – within 3 days of employment
- Social Media

THANK YOU!

Please follow me on Twitter
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1. **Michael S. Cohen** concentrates his practice in the areas of employment law training and counseling. Mr. Cohen has trained and counseled employers throughout the country on subjects including harassment prevention; workplace diversity; discipline and discharge; hiring and recruiting practices; performance evaluations; FMLA, ADA and FLSA compliance; leave of absence policies; performance management; workplace privacy; sexual orientation and gender identity in the workplace; substance abuse testing; workplace violence; records retention; conducting background checks; teens in the workplace and managing attendance problems. He has conducted trainings for executives, directors, managers, supervisors and employees in many industries, including financial services, healthcare, pharmaceutical, manufacturing, retail, real estate development, law firms and human services. Mr. Cohen also has conducted trainings for executives, deans and faculty in several institutions of higher education and secondary education. He has conducted more than 150 trainings in the last year.
2. Mr. Cohen has conducted investigations into claims of harassment and discrimination and has drafted employee handbooks, employment agreements, non-compete agreements and post-termination agreements. He has represented clients throughout the country in EEO and other administrative proceedings.
3. Mr. Cohen has been cited as a national authority on employment issues by The New York Times, The Associated Press, USA Today, MSNBC.com, The New York Daily News, New York Newsday, The San Francisco Chronicle, Law National, Law.com, HR Magazine, HR Executive Magazine, HR Executive Online, SHRM On-Line, Employment Law 360, Inside Counsel Magazine, What's Working in Human Resources, Workforce Management Magazine, Human Rights Campaign On-Line, Yahoo! Sports, The Sporting News, The Newark Star-Ledger, The Houston Chronicle, The New Orleans Times-Picayune, The Pittsburgh Tribune-Review, The Syracuse Post-Standard, The Ann Arbor News, The Harrisburg Patriot News, The Mobile Press Register, The Flint Journal, The Desert Sun, The Courier-Post, The Honolulu Advertiser, The Stamford Advocate, The Huntsville Times, AM New York, The Workplace Substance Abuse Advisor, Legal Issues in Collegiate Athletics, Talent Management, BusinessInsurance.com, AZcentral.com, Fort Worth Star Telegram, Honolulu Star-Bulletin, The Columbus Dispatch, The Myrtle Beach Sun News, Richmond Times Dispatch, Detroit News and Business & Legal Reports, Inc. He has been a regular guest lecturer on human resources issues at Temple University and West Chester University for its Masters of Science in Administration program.
4. Mr. Cohen is a 1997 magna cum laude graduate of Temple University Beasley School of Law and a cum laude graduate of the University of Pennsylvania.
5. **Areas of Practice** - Employment Law
6. **Professional Activities** - Pennsylvania Bar Association; Philadelphia Bar Association
7. **Admissions** - Pennsylvania; New Jersey
8. **Education**
 - a. Temple University Beasley School of Law, J.D., magna cum laude, 1997
 - b. University of Pennsylvania, B.A., cum laude, 1993
9. **Selected Speaking Engagements**
 - a. Speaker, "Dear Helga Returns (Again) With New And More Complicated HR Problems," SHRM Annual Conference, Las Vegas, Nevada, June 29, 2015
 - b. Speaker, "Documenting Performance," Human Resources Association of Southern Maryland (HRASM) Meeting, California, Maryland, April 15, 2015
 - c. Speaker, "Human Resources 101," Association of Legal Administrators Annual Conference, Toronto, Ontario Canada, April 20, 2014
 - d. Speaker, "Motivating Employees in the New Economy," Association of Legal Administrators Annual Conference, Toronto, Ontario Canada, April 20, 2014
 - e. Speaker, "Background Checks – Criminal, Credit and Social Media," SHRM National Legislative and Employment Law Conference, Washington, DC, March 17, 2014
 - f. Speaker, "Helga's Back And You're Never Going To Believe What Her Employees Did This Time," and "Creating on LGBT-Friendly Workplace," SHRM Annual Conference, Orlando, Florida, June 24-25, 2014
 - g. Speaker, "HR 101: Basic Training," "HR 201: Inspire, Motivate and Achieve Results," and "HR 301: Mission Possible – Conducting Internal Investigations," Association of Legal Administrators Annual Conference, Toronto, Ontario, May 20-21, 2014
 - h. Speaker, "Background Checks-Criminal, Credit and Social Media," SHRM Employment Law and Legislative Conference, Washington, D.C., March 17, 2014
 - i. Speaker, "Dear Helga: You're Never Going To Believe What My Employee Did" and "Time To Go Back To School – Updating Your Employee Handbook," SHRM Annual Conference, June 16-17, 2013, Chicago, Illinois
 - j. Speaker, "What's Your Site – Social Media in Hiring" and "Documenting Performance – Yes It Does Matter," SHRM Talent Management Conference, May 16-17, 2012, Las Vegas, Nevada
 - k. Speaker, "Out of the Closet and Into Your Workplace – Sexual Orientation and Gender Identity" and "Background Checks – The Law Has Changed," Lehigh Valley SHRM Annual Conference, October 5-6, 2012, Bethlehem, Pennsylvania
 - l. Speaker, "Time to Go Back to School – Updating Your Employee Handbook" and "The ABCs of the FMLA and ADA" Association of Legal Administrators National Conference, May 24-25, 2011, Orlando, Florida (#1 Rated Speaker at Conference)
 - m. Speaker, "Get Ready to Hire Again" and "Diversity and the Law," Association of Legal Administrators National Conference, May 4-5, 2012, Boston, Massachusetts (#1 Rated Speaker at Conference)
 - n. Speaker, "Hiring and Interviewing" and "It's Not Just a Game: Examining Employment Law Subjects Through the World of Sports," SHRM National Staffing Conference, Las Vegas, Nevada, April 29-30, 2009
 - o. Speaker, "Sexual Orientation and Gender Identity Issues In The Workplace," SHRM National Employment Law and Legislative Conference, Washington D.C., March 9, 2009