DEVALUING DIVERSITY:
Avoiding Mistakes In The Interview Process*
presented by
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Goals

1. Hire the most qualified
2. Ensure compliance with legal requirements
3. Discuss hiring process
4. Identify common mistakes
   — *All while adhering to commitment to diversity*
Reasons For Increasing And Embracing Diversity

1. Values
2. Creating and maintaining comfortable working environment for all employees
3. Diversity among existing and potential organizational customers, clients and business partners
4. Better product and service
5. Right thing to do
Legal Restrictions On Achieving Diversity

a. Cannot:
   a) Set quotas
   b) Reserve a position for a particular EEO group
   c) Consider EEO factors directly in decision-making
Legal Restrictions On Achieving Diversity

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

a. General rule
b. Making and documenting exceptions
c. Limiting pool of qualified applicants
d. Phone screens
e. Respect
The Interview

a. Length of the interview
b. Who should interview
c. Preparing for the interview
Benefits Of Uniform Questions

a. Legal
b. Practical
Application For Employment

a. Legal importance/practical benefits
b. Things that don’t make sense
c. Disclaimer/EEO Statement/Restrictive Covenant/etc.
d. Ban the Box
   a) Baltimore: After conditional offer
   b) Montgomery County: After first interview
   c) Prince George’s County: After first interview
e. Everyone completes!
Impermissible/Problematic Interview Questions

a. EEO
   a) Age
   b) Citizenship
   c) Prior claims/charges/lawsuit
   d) Disabilities/handicaps/medical conditions
   e) Military status/veteran’s status
Impermissible/Problematic Interview Questions

a. EEO (continued)

f) National origin/ancestry

g) Race/color

i. EEOC Guidance re: Background Checks

ii. Individualized assessment

h) Religion

i) Sex/pregnancy

j) Sexual orientation
Impermissible/Problematic Interview Questions

a. Family
   a) Marital status
   b) Parental status
   c) Personal questions
Permissible Questions

a. Past experiences
b. Current skills
c. Ability to meet essential requirements
d. Values and goals
e. Situational/behavioral
Responding To Applicant Disclosures

a. Inability to work nights/weekends
b. Religious beliefs/observances
c. Prior physical or emotional condition
d. Current physical or emotional condition
e. Specific request for an accommodation
Potential EEO/Diversity Danger Zones

a. Personal comfort level
b. Bad cultural fit
c. Overqualified
d. Too assertive
e. Dislike (with passion)
f. Accent
g. Appearance
h. Customer preference (relative to EEO factor)
i. Stereotyping (e.g., women with children)
Valuing Diversity In Decision-Making Process

a. Start with uniform questions
b. Give weight to differences in experiences, ideas, contacts (non-EEO)
c. Diversity in decision-makers
Documentation/Communications

a. Guidelines for note taking
b. Summary of basis for hiring decision
c. Communications to those who are not hired
d. Communications with those who are hired
Thank You!

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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.


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
9. Selected Speaking Engagements
   e. Speaker, "Human Resources 101," Association of Legal Administrators Annual Conference, Toronto, Ontario Canada, April 20, 2014
   g. Speaker, "Background Checks – Criminal, Credit and Social Media," SHRM National Legislative and Employment Law Conference, Washington, DC, March 17, 2014
   h. 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
   j. Speaker, "Background Checks-Criminal, Credit and Social Media," SHRM Employment Law and Legislative Conference, Washington, D.C., March 17, 2014
   m. 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
   o. 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)