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Employment Law and Hiring Practices
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Sample Job Description Format

- Position
- Fair Labor Standards Act Wage Classification
  - Hourly
  - Salaried non-exempt
  - Salaried exempt
Accountable to: (Supervisor)
Accountable for: (Subordinates)
Purpose and Mission
Education / Experience Requirements:
  ▪ TDFPS child care licensing requirements
  ▪ TDFPS child care licensing training requirements
  ▪ Any additional hours required by the agency or accreditation
Qualifications

- Physical – must be able to lift 50+ pounds, must be on your feet 90% of the day
- Mental – must have good judgment, competency, and patients. Must be able to focus on the children and not distracted by personal issues.
- Professional – must maintain a professional image. Must represent the organization at all times, both on and off the clock
- Interpersonal – must maintain professional relationships. Must maintain the integrity of your agency.
Essential Job Functions

- Educational/curriculum
- Management
- Parent
- Licensing
- Social service related
- Meal/nutrition
- Health/safety
- Playground
- Janitorial/maintenance (classroom, playground, grounds, bathrooms)
Protected Classes

**Race:** There is a difference between this as a biological term or a political one. Not all races are protected; only minority and/or perceived minority groups are protected here. Caucasian groups are not protected here.

**Color:** Many cases of discrimination occur within racial groups and are based upon the darkness and/or lightness of a person's skin. Additionally, assumptions about race and national origin are made based upon skin color.

**National Origin:** This area addresses many issues related to protecting individuals from other Nations. Right now the hot issue is Employment Policies and Practices regarding Language in the Workplace.
Protected Classes

**Creed:** Protection in this area relates to Personal Convictions and Beliefs. Parents choosing not to immunize their children is the most significant place we see this issue in child care.

**Religion:** Accommodations under religious protections must be a mandate of the religion practiced and must be documented. Religious Protection does not give someone the right to preach or proselytize their religious beliefs in the workplace.

**Age:** Begins at age 40 and continues until a person no longer has an age! May discriminate against a person under 40 because they are “too young.”
**Protected Classes**

**Gender:** In child care this is a no win situation...Men can sue because they are the minority in this field, women can sue because they are the generally protected class. Men can not be prohibited from completing particular tasks because of societal suspicion that men in child care are perverts and the employer is trying to protect him from accusations.

**Pregnancy:** An amendment to Title VII: Pregnancy Discrimination Act prohibits discrimination based upon pregnancy, pregnancy related conditions including infertility. Pregnancy related medical conditions must be documented and accommodated.

**Disability:** The Americans with Disabilities Act 1990 outlines the rights afforded to the Disabled, those presumed to be disabled, those associated with the disabled and those with a history of a disease/illness. Protection for Employees is addressed in Title I of the Act. Protection for enrolled children is addressed in Title III of the Act.
Protected Classes

Veteran Status: Employment or Service decisions may not be based on whether or not a potential employee or client has served in the US Military.

Marital Status: Protects Unmarried persons living together, single parents and people without spouses or children.
Topics and Questions to Avoid in an Interview or on Employment Application
The EEOC and HR Commissions at the state level have published many opinions on what may and may not be asked of candidates for employment on a job application and/or in an interview. The over riding guideline is, all questions must be related to the candidates ability to perform and qualifications to hold the position for which they are applying and/or interviewing. The employer must show business necessity when asking questions which tend to exclude or discriminate against a protected group. Included below are various questions and topics that should not be asked because they are directly related to a protected class and others that should be avoided unless there is an absolute business necessity.
DATE OF BIRTH: This question is directly related to Age Discrimination and should not be asked. If there is a requirement for a person to be above 18 to work, the question: Are you over 18 years of age and can you provide proof of your age if required?

RELATIVE/FRIENDS WORKING FOR THE EMPLOYER: It is not recommended that this question be asked because it is not related to the person’s ability to perform the functions of the job. This question tends to discriminate against minority groups if the question is asked to support the employer preference to hire friends or relatives of current employees or if the question would limit employment opportunities for women. This question may be necessary when determining Conflicts of Interest where a BOD or Policy Council are concerned and may be asked only when this concern exists.
MAIDEN NAME: Again, this is not related to the person’s ability to perform the functions of the job, and may be used to surmise information related to other protected classes such as, religion, national origin. This is also an inquiry into Marital Status which is protected in various locations. If the employer has the need to verify previous employment history the question may be asked: “If any of your previous employment experience or education was performed under a different name, please provide those alternate names here.”

MARTIAL STATUS: This information is illegal if you are in a location which protects Martial Status. If your state or local government does not protect Martial Status, this question is still not acceptable because it is generally asked only of women and has little or nothing to do with the ability to perform the functions of the job.
MR./MRS./MISS/MS.: This is another way of inferring Martial Status and is irrelevant.

DEPENDENTS: May be asked for payroll with holdings after the person is hired, otherwise this question is irrelevant because it has nothing to do with the person’s ability to perform the functions of the job.

CHILD CARE ARRANGEMENTS: This is a major issue in child care because many of us offer free or reduced tuition to our employee’s children. The employer must structure the policy of offering free or reduced child care so that this is not addressed until after the candidate is hired. This question tends to discriminate against women, since they are generally perceived to be the primary caregiver and is also related to Marital Status discrimination.
**Pre Employment Inquiries**

- **COLOR OF EYES AND HAIR:** These are not related to the person’s ability to perform the functions of the job and may be used to surmise information related to other protected classes such as, race, religion, and/or national origin.

- **HEIGHT AND WEIGHT:** Unless tied directly to the person’s ability to perform the functions of the job this question would be illegal because it tends to discriminate against persons with disabilities.

- **AVAILABILITY TO WORK ON SATURDAY AND/OR SUNDAY:** When Saturday or Sunday hours are required, the employer should indicate that religious accommodations will be attempted for qualified candidates with religious restrictions.
DATE OR LOCATION OF SCHOOL ATTENDANCE: Dates of school attendance have been used to surmise a person’s age and location or name of schools attended may be used to surmise a person’s religion, race, national origin which would be illegal. If the name and location of the college attended is needed to verify a degree attained then this information can be collected. Employers should be careful to use this information only for this purpose. If a High School education is required, the employer may not differentiate between a High School Diploma and a G.E.D.

PREVIOUS ADDRESS: This is not related to the person’s ability to perform the functions of the job and may be used to surmise information related to other protected classes such as, race, religion, and/or national origin. If asked the employer must be able to show business necessity and that the information was not used in a discriminatory manner.
MILITARY SERVICE: Questions related to training received while in the military are permitted if the training is related to the functions of the job for which the candidate is applying. Questions related to the manner of discharge from the military should be avoided because they tend to discriminate against minorities, as a disproportionate number of minorities are given dishonorable, general or medical discharges, unless a business necessity can be documented.

CREDIT RECORD/CHARGE ACCOUNTS/HOME OWNERSHIP: Unless the position for which the candidate is applying involves handling company or client monies, this is not related to the person’s ability to perform the functions of the job and tends to discriminate against minorities.

LANGUAGE PROFICIENCY: Fluency with English and/or other language must be directly related to the performance of functions of the job for which the candidate is applying. Employers may not require language proficiency greater than what the job functions necessitate.
Pre Employment Inquiries

- **ARREST OR CONVICTION RECORD:** Unless related to business necessity, this not related to the person’s ability to perform the functions of the job. In child care this is directly related to a business necessity as it is required by State Licensing Regulations, therefore this question may be asked.

- **LOWEST ACCEPTABLE SALARY:** This is not related to the person’s ability to perform the functions of the job and tends to discriminate against women, as they are often paid less than their male colleagues. It is appropriate to ask if the candidate would be willing to work for a pre-determined hourly rate or salary range, and that all candidates are asked the same question, with the same range.
**LICENSES:** Employers should only be asking for licenses related to the job for which the candidate is applying. Asking is the candidate has a driver’s license should only be asked if the driver’s license is a requirement of the job and can not be reasonably accommodated under the American’s with Disabilities Act.

**TRANSPORTATION TO WORK:** Generally this is not related to the person’s ability to perform the functions of the job and should only be asked when the mode of transportation is related to the functions of the job.
Pre Employment Inquiries

- **U.S. CITIZENSHIP AND RIGHT TO WORK IN U.S.:** Employers are required to verify that all employees are eligible to work in the U.S. Employers should not ask candidates to state their national origin, but rather is they can provide the appropriate documentation required to verify they are eligible to be employed in the U.S. For information on acceptable documentation contact the INS.

- **HEALTH AND DISABILITY:** The American’s with Disabilities Act prohibits discrimination against qualified disabled persons on the basis of the disability. Inquiries into a person’s fitness for duty and/or physical or mental abilities must be related to the functions of the job. Employers may ask: Can you perform the functions of this job with or without reasonable accommodations? The candidate should have a job description listing the functions of the job when answering this question. Specific questions related to specific illnesses, and/or disabilities are not permitted.
Tell me about your experience working in a licensed facility? Why did you choose this type of work?

You mentioned you enjoyed your last job, what did you enjoy best? least?

Why do you think this company should hire you?

What are two things you wish to avoid in your next job?

What will your last supervisor tell me are your two weakest areas?
Appropriate Interview Questions

- If you were hiring someone for this job, what qualities would you look for?
- What are your goals 3 years from now?
- Describe for me the perfect supervisor who could help you achieve your potential?
- If you could change any one thing about the management at your last job what would it be?
- Who at your last job did you get along with least? What did you do to improve the situation?
- Why did you leave your last job?
In the past year, what have you done on your own time and with your own money to make yourself more valuable to us?

Review with me the schedule of a typical workday for you?

What was the last position you held?

Have you held the same job throughout your employment with the last company? If no, describe the various jobs you had, how long, and your duties.
Appropriate Interview Questions

- What did you like most about that job?
- Why are you thinking of leaving? Why now?
- What will your last supervisor tell me about you and your job performance?
New Hire Orientation and Training

- New Hire Orientation
- Preservice
- Annual Training Requirements
  - SIDS/Shaken Baby
  - Vehicle Safety
  - Bloodborne Pathogens
I own a small child-care center, so I don’t have to pay minimum wages and overtime. 

*Answer True or False*

*False.* Child-care programs are subject to the FLSA, often called the minimum wage and overtime law. If you have two or more employees, regardless of sales volume, you must comply with the law.
The FLSA does not apply to nonprofit child-care centers.

**False.** The law applies to nonprofit as well as for-profit facilities. Whether a facility is operated by a private employer, church, hospital, or factory makes no difference.
Texas Wage and Hour Issues

- I own a small child-care center, so I don’t have to pay minimum wages and overtime.

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Texas Wage and Hour Issues

- I pay overtime after 80 hours on the job each pay period, and that’s OK.
- *False.* Overtime must be figured according to a fixed seven-day period. Most child-care center directors believe their workers should receive at least the minimum wage, $6.55 an hour, and some form of compensation if they work more than 40 hours a week. Many employers, however, don’t know how to comply with the law in calculating hours worked and overtime.
I pay the tuition expenses for state-mandated training for all my employees, so I don’t owe them additional money for their time.

**False.** The hours an employee spends in state-mandated training must be counted as work time, even though the employer pays the cost of training.
Texas Wage and Hour Issues

- My employees often volunteer their time for events outside regular business hours, and they often stay late on their own time when parents are delayed in picking up their children. I don’t have to pay them for this extra time.
- *False*. If you allow an employee to work, you must pay for the time. Employees are working when they offer to lead field trips, stay late to wait for parents, care for children during parents’ meetings or “Parents’ Night Out,” host an open house or holiday party, participate in a fundraiser, or take home poster board to make a room decoration.
Texas Wage and Hour Issues

- Because my employees are salaried, they are exempt from overtime regulations.
- *False*. A salary alone exempts no one from overtime regulations.
Texas Wage and Hour Issues

- It’s OK to let my employees accrue compensatory time when they have to work longer hours.
- *False.* Accruing compensatory time and averaging hours across the pay period is illegal.
I pay employees a lower wage rate for training hours, and it’s OK to pay any overtime—whether regular work or training—at this lower rate.

*False.* Computing overtime at the lower rate is not allowed. Overtime must be figured at the average between the two wages at time and a half.
Texas Wage and Hour Issues

- I pay my employees a bonus at the end of the year to compensate them for all mandated training and volunteer time, which is all right under federal law.

- *False.* Paying a bonus at year’s end as compensation for training and volunteer time during the year cannot be done to avoid paying overtime.
Texas Wage and Hour Issues

- Since my employees are salaried, I don’t have to keep a record of their hours on the job.
- **False.** You do need to keep records on salaried employees.
Last summer I hired a 12-year-old. The parent begged me, and because the parent gave written authorization, it was OK to hire this child.

**False.** No one younger than 14 is allowed to work for you, regardless of parental permission. Refer to minimum standards on age qualifications for child care centers.
I really don’t have to worry about violating the law.

*False.* Violations can result in your having to pay back wages, deal with penalties, and respond to lawsuits filed by employees.
I pay overtime after 80 hours on the job each pay period, and that’s OK.

*False*. Overtime must be figured according to a fixed seven-day period. Most child-care center directors believe their workers should receive at least the minimum wage, $7.25 an hour, and some form of compensation if they work more than 40 hours a week. Many employers, however, don’t know how to comply with the law in calculating hours worked and overtime.
Texas Wage and Hour Issues

- I pay the tuition expenses for state-mandated training for all my employees, so I don’t owe them additional money for their time.
- **False.** The hours an employee spends in state-mandated training must be counted as work time, even though the employer pays the cost of training.
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