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Effective Hiring Practices

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I. APPLICATION PROCEDURES

A. Policies and Procedures That Should Be in Place

1. Disability nondiscrimination policy;
2. Equal employment opportunity policy;
3. Accommodation policy/procedure;
4. Criminal history background check policy;
5. Alcohol and drug testing policy;
6. Veterans preference policy/procedure; and
7. Hiring protocols/procedures.

B. Updating of Job Description

1. Importance of updating job descriptions.
2. What may need to be updated?

C. Posting

1. Notice of Job Responsibilities/expectations
2. Notice of Qualification Requirements
3. Notice of Deadline for Applications
4. Ensure Compliance with Discrimination Laws

D. Consideration of Contractual and Statutory Requirements

1. Collective Bargaining Agreement Requirements
 - a. Review rights of internal applicants to vacant positions.
 - b. Follow posting and time line requirements.

2. Veterans Preference Requirements

a. State law requires that school districts provide applicants who are veterans with preference in hiring decisions. See Minn. Stat. § 197.455. School districts must adopt a 100-point hiring system to enable the application of veterans preference points. See Hall v. City of Champlin, 463 N.W.2d 502 (Minn. 1990). Assuming an applicant meets the minimum qualifications for a vacant position, the applicant must be afforded the following:

- (1) Veterans are to receive a credit of five points.
- (2) Disabled veterans are to receive credit of ten points.

See Minn. Stat. § 197.455.

b. A “veteran” is defined as “a citizen of the United States or a resident alien who has been separated under honorable conditions from any branch of the armed forces of the United States after having served on active duty for 181 consecutive days or by reason of disability incurred while serving on active duty, or who has met the minimum active duty requirement as defined by the Code of Federal Regulations, title 38, section 3.12a, or who has active military service certified under section 401, Public Law 95-202. The active military service must be certified by the United States secretary of defense as active military service and a discharge under honorable conditions must be issued by the secretary.” Minn. Stat. § 197.447.

c. A “disabled veteran” is defined as “a person who has a compensable service-connected disability as adjudicated by the United States Veterans Administration, or by the retirement board of one of the several branches of the armed forces, which disability is existing at the time preference is claimed. For purposes of the preference to be used in securing appointment from a competitive promotional examination, ‘disabled veteran’ means a person who, at the time of election to use a promotional preference, is entitled to disability compensation under laws administered by the Veterans Administration for a permanent

service-connected disability rated at 50 percent or more.” Minn. Stat. § 197.455, subd. 6.

- d. A surviving spouse may claim veterans preference of a deceased veteran and a disabled veteran who, because of a disability, is unable to qualify for the position.
- e. Veterans must be given preference over non-veterans with the same rating.
- f. Veterans preference does not apply to the position of private secretary, superintendent of schools, or one chief deputy of any elected official or head of a department, or to any person holding a strictly confidential relation to the appointing officer. See Minn. Stat. § 197.46.

II. APPLICATION FORMS

A. Establishment of Rights and Responsibilities

1. Notice of an “At-Will” Relationship, if Applicable

If the employment is “at will” (meaning one who is employed for an unstated or indefinite period), include a statement on the application indicating that the employment relationship may be terminated by either party at any time, with or without notice, and can be changed only by written agreement between the parties to the original agreement.

2. Establishment of Job Expectations
3. Establish an employee’s procedural rights if disciplinary incidents do arise (i.e., veteran status).
4. Establishment of qualifications and requirements for verification of:
 - a. Licenses/certificates/degrees;
 - b. Education/training; and
 - c. Experience.

B. Specific Information That May Be Solicited on Application

1. Educational background;
2. Prior employers and dates of employment;
3. Previous position and duties;
4. Reasons for leaving;
5. Employer contact information;
6. Reference names;
7. An indication of the specific job for which the application is being made;
8. Degrees, licenses or certificates;
9. Veteran status (ask for a record of honorable discharge or separation if applicant has a military history);
10. Ability/documentation required to legally work in the United States; and
11. Criminal arrests and convictions.

C. The application should not require or make inquiry of:

1. Race, color or national origin;
2. Religion;
3. Age;
4. Gender;
5. Status with regard to public assistance;
6. Disability;
7. Marital status;

8. Status with regard to public assistance;
9. Sexual orientation; or
10. Membership in the National Guard or Armed Forces.

D. Teacher Applications

The application form must require the individual seeking employment as a teacher to provide information regarding all current and previous disciplinary actions in Minnesota and other states taken against the individual's teaching license and indicate to the applicant that intentionally submitting false or incomplete information is a ground for dismissal. See Minn. Stat. § 123B.03, subd.1(a). "Disciplinary action" does not include an action based on court-ordered child support or maintenance payment arrearage delinquent state taxes. Id.

E. Bus Driver Applications

Federal regulations require that applications of most bus drivers (i.e., occasional, intermittent drivers excluded) must complete an application form that contains the specific employment history of the applicant for ten (10) years preceding the application. The information includes information such as the applicant's license, prior accidents, violation of motor vehicle laws and reasons for leaving prior employment, etc. See 49 C.F.R. 383.35.

F. Authorizations/Releases

1. If applicable, include a statement in the application that the applicant agrees to provide an authorization for any preemployment drug screens, medical examinations, investigative reports or previous employment references on which the employment is conditioned.
2. Include an authorization for release of information which unconditionally releases any employer or reference who provides information about the applicant.

G. Acknowledgment of Information

1. Include an acknowledgment that providing false information on the application is cause for rejection of the application or discharge, even if discovered after hiring.

2. Include an acknowledgment that if the applicant is subject to a background check, pre-employment drug screening, and/or medical examination, an offer of employment is conditional upon the results of those checks, screenings or examinations.

III. BACKGROUND CHECKS

A. Criminal Background Check (Minn. Stat. § 123B.03)

1. Required criminal history background check from the BCA.
 - a. A school district must request a criminal history background check from the Bureau of Criminal Apprehension (“BCA”).
 - b. If a non-state resident is offered employment, the school district must request a criminal history background check from the BCA *and* from the government agency performing the same function in the resident state or, if none, from the Federal Bureau of Investigation.
 - c. A school district must request a criminal history background check from the BCA for all individuals, except enrolled student volunteers, who are offered the opportunity to provide athletic coaching services or other extracurricular academic coaching services, regardless of whether compensation is paid.
2. Discretionary Criminal History Background Check
 - a. A school district, in its discretion, may request a criminal history background check from the BCA for any individual who seeks to enter a school or its grounds for the purpose of serving as a school volunteer or working as an independent contractor or a student employee.
 - b. A school district may, in its discretion, obtain a criminal history background check from the BCA for an individual who holds an initial entrance license issued by the State Board of Teaching or the Department of Education within the twelve (12) months preceding an offer of employment.

3. In lieu of obtaining its own criminal history background check, a school district authority may use the results of a criminal background check conducted by another school hiring authority under the following circumstances:
 - a. The results of the criminal background check are on file with the other school hiring authority or otherwise accessible;
 - b. The other criminal background check was conducted within the previous twelve (12) months;
 - c. The subject of the criminal background check executes a written consent form giving the school hiring authority access to the results of the check; and
 - d. There is no reason to believe that the individual has committed an act subsequent to the prior check that would disqualify the individual for employment.
4. Conditional Hiring and Discharge
 - a. An individual may be hired or otherwise be allowed to provide service to a school district pending completion of a criminal history background check, but the school district shall notify the individual that the individual's employment or service may be terminated based on the result of the background check.
 - b. A school district is not liable for failing to hire or for terminating an individual's employment based on the result of a background check.
 - c. Factors to consider when reviewing a background check.

B. Board of Teaching Background Check

1. School districts are required to verify through the Minnesota Department of Education licensing system, available on the Department Website, that a person is a qualified teacher prior to contracting with the person for teaching services. See Minn. Stat. § 122A.22.

2. At the time a school board or other hiring authority conducts the criminal history background check on an individual offered employment as a teacher, the school board or other hiring authority must contact the Board of Teaching to determine whether the board has taken disciplinary action against the teacher. The school board or other hiring authority must obtain access to data, that are public under Minnesota Statutes Section 13.41, subdivision 5, from the Board of Teaching that relate to the substance of the disciplinary action. See Minn. Stat. § 123B.03, subd.1(a). “Disciplinary action” does not include an action based on court-ordered child support or maintenance payment arrearage delinquent state taxes. Id.

C. Other Background Checks

1. Driver’s License Check
2. Credit Check
3. Other

IV. PRE-EMPLOYMENT TESTING/EXAMINATION

A. Drug and Alcohol Testing

1. Commercial Motor Vehicle Drivers
 - a. Federal law requires school districts to conduct pre-employment testing for controlled substances for all bus drivers before the first time the driver performs safety-sensitive functions for the school district, unless the driver is excepted from this requirement (i.e., participated in a controlled substance testing program within the previous 30 days). See 49 C.F.R. 382.301(a) and (b).
 - b. A school district may, but is not required to, conduct pre-employment alcohol testing of bus drivers under federal law. If a school district chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

- (1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
- (2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).
- (3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
- (4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 C.F.R. part 40.
- (5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

See 49 C.F.R. 382.301(d).

- c. Alcohol and drug tests shall be conducted only after the applicant has received a conditional offer of employment.

2. Other Employees

- a. A school district may, but is not required to, test job applicants whose position does not require a commercial driver's license to undergo drug or alcohol testing.
- b. A school district may request or require any job applicant whose position does not require a commercial driver's license to undergo drug and alcohol testing, provided:
 - (1) a job offer has been made to the applicant; and
 - (2) the same test is requested or required of all job applicants conditionally offered employment for that position.

- c. If a job applicant has received a job offer which is contingent on the applicant's passing drug and alcohol testing, the school district may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test.
- d. In the event the job offer is subsequently withdrawn, the school district shall notify the job applicant of the reason for its action.

See Minn. Stat. § 181.951.

B. Physical Examination

1. An employer may require a medical examination after making an offer of employment that is conditional on the satisfactory outcome of the examination if it is required of all new hires within the same job category. See 42 U.S.C.A. 12112(d)(3)(A); 29 C.F.R. 11630.14(b); Minn. Stat. § 363A.20, subd. 8(a)(1)(i).
2. The examination must test only for essential job-related capabilities. See Minn. Stat. § 363A.20, subd. 8(a)(1)(ii).
3. The test cannot consist of a polygraph, voice stress analysis or any test purporting to test the honesty of any employee or prospective employee. See Minn. Stat. § 181.75.
4. An employer cannot require an employee to pay for the cost of the medical examination. See Minn. Stat. § 181.61.

V. CONFIRMATION OF PREVIOUS EMPLOYMENT AND CREDENTIALS

A. Information That May Be Obtained from a Private Employer

A private employer is not subject to any statutory restrictions or obligations to release personnel data about an employee. Private employers may, however, be restricted from releasing personnel data pursuant to a collective bargaining agreement, other employment agreement or policy. In addition, absent statutory immunity, as described below, private employers may be subject to common law claims for the release of personnel data (i.e., interference with a business relationship, defamation, etc.).

B. Information That May Be Obtained From a Public Employer

The following personnel data on current and former employees, volunteers and independent contractors of a government entity is public and must be disclosed upon request:

1. Name; employee identification number, which must not be the employee's Social Security number; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer-paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;
2. Job title and bargaining unit; job description; education and training background; and previous work experience;
3. Date of first and last employment;
4. The existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;
5. The final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;
6. The terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in Minnesota Statutes Section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money;
7. Work location; a work telephone number; badge number; and honors and awards received; and
8. Payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data.

C. Information That School Districts Must Disclose

Minnesota Statutes Section 13.43, subdivision 16, imposes upon school districts to disclose certain employee information to other schools. The statute provides:

The superintendent of a school district or the superintendent's designee, or a person having administrative control of a charter school, must release to a requesting school district or charter school private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student, if an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to release and the investigation resulted in the resignation of the subject of the data.

D. Employer Immunity for Disclosure of Personnel Information

1. Minnesota Statutes Section 181.967 (Employment References) provides immunity for both public and private employers for the release of certain personnel data as long as the procedures required by law are followed. More specifically, Minnesota Statutes Section 181.967, subdivision 2 provides:

No action may be maintained against an employer by an employee or former employee for the disclosure of information listed in Minn. Stat. § 181.967, subs. 3 to 5 about the employee to a prospective employer or employment agency as provided under this section, unless the employee or former employee demonstrates by clear and convincing evidence that:

- (a) the information was false and defamatory; and
- (b) the employer knew or should have known the information was false and acted with malicious intent to injure the current or former employee.

2. Ability of Private Employers to Disclose Personnel Information Without Liability

a. A private employer may disclose the following information in response to a request *without* a written authorization from the employee:

- (1) Dates of employment;
- (2) Compensation and wage history;
- (3) Job description and duties;
- (4) Training and education provided by the employer; and
- (5) Acts of violence, theft, harassment, or illegal conduct documented in the personnel record that resulted in disciplinary action or resignation and the employee's written response, if any, contained in the employee's personnel record (a disclosure of information about violence, theft, harassment or illegal conduct must be in writing with a copy sent contemporaneously by regular mail to the employee's last known address).

See Minn. Stat. § 181.967, subd. 3(a).

b. A private employer may disclose the following information in response to a request *with* a written authorization from the employee:

- (1) Written evaluations and the employee's response, if any, contained in the personnel file;
- (2) Written disciplinary warnings and actions in the five years before the date of the authorization, and the employee's written response, if any, contained in the personnel file; and
- (3) Written reasons for separation from employment.

The employer must contemporaneously provide the employee or former employee with a copy of the information disclosed under

this paragraph and to whom it was disclosed by mailing the information to the employee or former employee.

See Minn. Stat. § 181.967, subd. 3(b).

3. Ability of Public Employers to Disclose Personnel Information Without Liability

The following data may be disclosed by a public employer:

- a. All *public* personnel data; and
- b. The following *private* personnel data under section 13.43 *if the current or former employee gives written consent to the release of the private data*:
 - (a) Written employee evaluations conducted before the employee's separation from the employer and the employee's written response, if any, contained in the employee's personnel record; and
 - (b) Written reasons for separation from employment.

See Minn. Stat. § 181.967, subd. 4.

4. Ability of Schools to Release Personnel Data Without Liability

A school district or charter school may disclose the following data to another school district or charter school without liability if the disclosure is in writing with a copy sent contemporaneously by regular mail to the employee's last known address:

- a. Public personnel data (i.e., final disposition of disciplinary action) relating to acts of violence toward or inappropriate sexual contact with a student that resulted in disciplinary action; and
- b. Private personnel data on a current or former employee related to acts of violence toward or sexual contact with a student if an investigation conducted by or on behalf of the school district or law enforcement affirmed the allegations in writing prior to

release and the investigation resulted in the resignation of the subject of the data.

See Minn. Stat. § 181.967, subd. 5.

VI. PRE-EMPLOYMENT INTERVIEWS

A. Establish Interview Procedures

1. Determine who is on the interview team.
2. Select standards as to who will be interviewed.
3. Determine interview questions.
4. Follow collective bargaining requirements.
5. Implement a consistent procedure.
6. Apply pre-designed evaluation criteria equally.

B. Acceptable Interview Questions

1. Why are you interested in this job?
2. Describe your education.
3. What experience have you had that will qualify you for the job?
4. Do you have other abilities that will help you perform the job?
5. Do you have all licenses and certifications necessary to do the job?
6. Are you willing to travel as required?
7. What, if any, are your reservations about taking the job?
8. What are your salary expectations?
9. Who can I talk to for more information about your past job performance?

10. Have you ever been fired or disciplined by past employers? For teachers, inquire as to the reasons for nonrenewal.
11. Review information on the application and questions raised, for example:
 - a. Gaps in employment;
 - b. Whether presently employed and reasons for leaving employment;
 - c. Why particular references are listed and what relationship they have to the applicant;
 - d. Questions raised about criminal convictions, family relationships, etc.
12. Applicant's willingness to sign a release of information for personnel data from past employers.
13. Review the requirements of the job and whether the applicant can perform them with or without accommodations.

C. Avoid Improper Questions

D. Obtain All Necessary Documentation

1. Copies of transcripts, degrees, licenses, certificates, etc.
2. Documentation regarding veteran status, if claimed.
3. Documentation verifying ability to work in the United States.
4. Authorizations for release of personnel data.
5. Authorizations for criminal history background check.

VII. CONTRACTS FOR EMPLOYMENT

A. Employment at Will

1. An “at-will” employee is one who is employed for an unstated or indefinite period of time.
2. Basic employment at will doctrine allows for the termination of an employee for any reason as long as there is no contract or statutory restriction upon the right to discharge.
3. Minnesota remains an “at-will” state. See Ruud v. Great Plains Supply, Inc., 526 N.W.2d 369 (Minn. 1995); Cederstrand v. Lutheran Bhd., 263 Minn. 520, 117 N.W.2d 213 (1962).

B. Limitations on Employment At Will

1. Employees with Continuing Rights to Employment Pursuant to Statute
2. Employees with rights created by policy manuals/employee handbooks. See Pine River State Bank v. Mettille, 333 N.W.2d 622 (Minn. 1983).
3. Employees with rights created by collective bargaining agreements.
4. Employees who have individualized employment contracts.