HR Best Principles for Grass Roots & Small Nonprofit Success

DCNP Nonprofit Day 2019 | Paul LaLonde, SHRM-CP
Why is HR so evil?

HE WAS JUST TELLING A JOKE

EMAIL HUMAN RESOURCES

CATBERT: EVIL DIRECTOR OF HUMAN RESOURCES

ACCORDING TO THE EMPLOYEE SURVEY, YOU WANT FEWER BENEFITS.

I BELIEVE THAT THE HR DEPARTMENT

IS A BREEDING GROUND FOR MONSTERS.

WORKING DAZE

JOHN ZAKOUR
SCOTT ROBERTS

SO, HOW'S 'GAME OF THRONES' GOING?

THIS GEORGE R.R. MARTIN MAKES YOU REALLY LIKE A CHARACTER THEN - PRESTO - HE KILLS THEM OFF. HE'S INSIDIOUS - ALMOST EVIL.

Zakour-Roberts 6-25

I'M THINKING OF HIRING HIM TO HEAD HUMAN RESOURCES.
What exactly is HR?

• Human resource management is an umbrella term that focuses on a number of major areas, including:

  • Recruiting and staffing
  • Compensation and benefits
  • Training and learning
  • Labor and employee relations
  • Organization development

• Who are HR professionals?

• Good HR v. Bad HR
SHRM BoCK
Today’s Workplace Evolving Rapidly

Significant Changes Affecting Workplace

1. What Affects Workplace
   1. Society
   2. Culture
   3. Technology
   4. Government
   5. Legal landscape
   6. Generational changes

2. Increased Compliance Obligations/Requirements
   1. Laws
   2. Regulations
Risks of Not Doing the Right Thing

Employers Face High Stakes

• Civil fines
• Criminal penalties
• Administrative actions – EEOC charge, unfair labor practice
• Litigation is $$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$$ $$$$$$$$$$$$
• Harm to business reputation and professional image
• Bad publicity/negative press and social media
HR Best Principles for Nonprofits Challenges

- What does this mean for grassroots & small nonprofits?
- Can nonprofits afford HR?
  - 66% have budget < $500,000
- Can nonprofits afford NOT to HR?
  - Tax status not business model!
  - All employees have HR functions

Our Focus Today:
1. Compliance with Gov’t Rules
2. Technical Knowledge
3. Recruiting & Interviewing
4. Documentation

Percent of Nonprofits by Budget Size

Source: National Council on Nonprofits
After this presentation, you should:

1. Better understand why HR is important in your organization.
2. Better understand HR laws, concepts, and trends that affect your organization.
3. Better understand HR’s role in your organization.
4. Better understand how your role fits into HR functions.
5. Better understand how to partner with HR to achieve organizational success.
6. Get some laughs in an otherwise dense presentation…. I kid... maybe.
The information and opinions provided in these slides are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. The opinions expressed in these slides or through this presentation are the opinions of the individual author and may not reflect the opinions of other parties.
Challenge #1: Government Compliance

SO. MANY. LAWS!

- Federal ones. State ones. Local ones.
- Red ones. Blue ones.
- Some are old and some are new.
- Some are sad, and some are glad.
- And some are very, very bad.
- What do nonprofit employers need to do?
- “Do they apply to me?”
- Better Call Saul!

  - Employment Law Toolkit for Illinois Employers 2016 Ed. - Free Download online!
  - Saul Ewing, Arnstein, & Lehr, LLC of Chicago
  - Still consult your local HR Superhero!
## Challenge #1: Government Compliance

### Federal

<table>
<thead>
<tr>
<th>Statute</th>
<th>Coverage</th>
<th>Governs</th>
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<tbody>
<tr>
<td>Age Discrimination in Employment Act (ADEA)</td>
<td>Federal statute that makes it unlawful for an employer to refuse to hire or to discharge, or otherwise discriminate against, an individual who is forty years of age or older.</td>
<td>Employers with 20 or more employees (in 20 or more weeks in the current or prior year).</td>
</tr>
<tr>
<td>Americans with Disabilities Act (ADA)</td>
<td>Federal statute that provides that no employer shall discriminate against an employee with an actual or perceived disability.</td>
<td>Employers with 15 or more employees (in 20 or more weeks in the current or prior year).</td>
</tr>
<tr>
<td>Equal Pay Act</td>
<td>Federal statute that prohibits paying different wages for equal work based on an employee’s sex.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Fair Labor Standards Act (FLSA)</td>
<td>Federal statute that establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.</td>
<td>All employers (some exemptions).</td>
</tr>
<tr>
<td>Family and Medical Leave Act (FMLA)</td>
<td>Federal statute that requires covered employers to grant eligible employees up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons: for the birth and care of the newborn child of the employee; for placement with the employee of a son or daughter for adoption or foster care; to care for an immediate family member (spouse, child, or parent) with a serious health condition; to take medical leave when the employee is unable to work because of a serious health condition; because a “qualifying exigency” arising out of the fact that a covered employee’s spouse, child or parent is on, or has been called to, active duty in the Armed Forces. The FMLA also allows eligible employee’s up to 26 weeks of unpaid leave to care for an injured “service member.”</td>
<td>Employers with 50 or more employees in a 75 mile radius.</td>
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<td>National Labor Relations Act</td>
<td>Federal statute that guarantees workers the right to join unions without fear of reprisal from management and makes it an unfair labor practice for an employer to discourage organizing or to prevent workers from negotiating a union contract.</td>
<td>Most employers in the private sector.</td>
</tr>
<tr>
<td>Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)</td>
<td>Federal statute that prohibits employment discrimination against service men and women on the basis of their military service.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Civil Rights Act of 1964 (Title VII)</td>
<td>Federal statute that makes it unlawful for an employer to discriminate or retaliate against an individual on the basis of such individual’s race, color, religion, sex, or national origin.</td>
<td>Employers with 15 or more employees.</td>
</tr>
<tr>
<td>Immigration Reform and Control Act (IRCA)</td>
<td>Federal statute that requires employers to hire persons who may legally work in the U.S. It further provides guidelines on how the employer must verify the identity and employment eligibility of anyone to be hired.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Consolidated Omnibus Budget Reconciliation Act (COBRA)</td>
<td>Federal statute that allows workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain qualifying circumstances such as a voluntary or involuntary job loss.</td>
<td>Employers with 20 or more employees that sponsor a group health insurance plan.</td>
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<td>Genetic Information Nondiscrimination Act of 2008 (GINA)</td>
<td>Federal statute that prohibits the improper use of “genetic information” when making hiring, firing, job placement or promotion decisions.</td>
<td>Private employers who have 15 or more employees in each of 20 or more calendar weeks in a current or preceding year.</td>
</tr>
<tr>
<td>Consumer Credit Protection Act</td>
<td>Federal statute that prohibits the discharge of an employee due to garnishment/wage deduction for a debt.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Drug-Free Workplace Act</td>
<td>Federal statute that requires covered employees to have a drug free policy and awareness program.</td>
<td>All employers with federal contracts of $100k and over.</td>
</tr>
<tr>
<td>Occupational Safety and Health Act (OSHA)</td>
<td>Federal law that requires employers to keep workplace free from recognized hazards likely to cause harm or death.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Patient Protection and Affordable Care Act (ACA)</td>
<td>Federal law that, among other things, requires most employers to provide health insurance to their employees and to modify their existing health care plans in certain circumstances.</td>
<td>All employers are impacted depending on the specific provision of the Act.</td>
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# Challenge #1: Government Compliance

## Illinois

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<tr>
<td>Illinois Wage Payment and Collection Act</td>
<td>Illinois statute that requires employers to pay employees wages and final compensation (upon employment ending) within a prescribed number of days following the pay period in which the wages were earned.</td>
<td>All Illinois employers.</td>
</tr>
<tr>
<td>Illinois Nursing Mothers in the Workplace Act</td>
<td>Illinois statute that requires that employers provide reasonable unpaid break time each day to employees who need to express breast milk. The law also requires employers to make reasonable efforts to provide a room or other location, other than a toilet stall, where an employee can express her milk in privacy.</td>
<td>Illinois employers with more than five employees, not including members of the employer’s immediate family.</td>
</tr>
<tr>
<td>Illinois Victims’ Economic Safety and Security Act (VESSA)</td>
<td>Illinois statute that requires employers to provide up to twelve weeks of unpaid leave within a 12 month period to employees who are victims of domestic or sexual violence, and to a family or household member of a victim of such abuse. The Act further prohibits discrimination against any person because they are suspected of being victims of domestic or sexual violence, or have taken leave in accordance with this Act.</td>
<td>Private sector employers in Illinois with 15 or more employees, and all public sector employers.</td>
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<td>Illinois Abused and Neglected Child Reporting Act</td>
<td>Illinois statute that requires certain Illinois workers, such as Information Technology personnel, to report child pornography that they discover on the job. The law immunizes an individual making a required report.</td>
<td>All Illinois employers.</td>
</tr>
<tr>
<td>Illinois Human Rights Act</td>
<td>Illinois statute that makes it a civil rights violation for any employer to refuse to hire, to segregate, or to discriminate against an employee on the basis of a protected classification (as defined by the Act and which is much more expansive as Title VII), or due to an arrest or criminal history record information ordered expunged, sealed or impounded under Section 5 of the Criminal Identification Act.</td>
<td>Employers with 15 or more employees (unless under a handicap, sexual harassment, pregnancy or retaliation, then 1 employee).</td>
</tr>
<tr>
<td>Illinois Employee Blood Donation Leave Act</td>
<td>Illinois statute that requires an employer to allow an employee one hour of paid leave every 56 days to donate blood.</td>
<td>Illinois employers with 51 or more employees.</td>
</tr>
<tr>
<td>Illinois Health Care Worker Background Check Act</td>
<td>Illinois statute that requires health care employers to conduct a criminal background check of certain applicants for health care positions. The Act prohibits the hiring of any applicant or retaining of any employee involved in direct patient care who has been convicted of any of the enumerated criminal offenses, unless the applicant or employee obtains a waiver.</td>
<td>All health care employers, including hospitals, nursing homes, home health agencies, hospices, nursing agencies, life care and community living facilities and day training programs certified by the Department of Mental Health and Developmental Disabilities.</td>
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**Illinois**

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<td>Illinois Uniform Conviction Information Act</td>
<td>Illinois statute that requires employers who obtain criminal background checks to obtain applicants' written consent.</td>
<td>All employers conducting criminal background checks.</td>
</tr>
<tr>
<td>Minimum Wage Law (Illinois)</td>
<td>Illinois law that currently requires that employees be paid at least $8.25/hour.</td>
<td>Most employers.</td>
</tr>
<tr>
<td>Personnel Records Review Act</td>
<td>Illinois statute that allows employees to inspect their personnel file twice a year and add their own statements or rebuttals.</td>
<td>Employers with 5 or more employees.</td>
</tr>
<tr>
<td>Illinois Family Military Leave Act</td>
<td>Illinois statute that requires employers to provide unpaid leave to an employee who is the spouse or parent of a person called to military service lasting longer than 30 days. Any employee who exercises the right to family military leave under this Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment.</td>
<td>Illinois employers with between 15 and 50 employees must allow up to 15 days leave. Employers with more than 50 employees must allow up to 30 days leave.</td>
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<td>Illinois Equal Pay Act of 2003</td>
<td>Illinois statute that makes it unlawful for an employer to discrimination against employees on the basis of sex by paying wages to an employee at a rate less than the rate at which the employer pays wages to another employee of the opposite sex for the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.</td>
<td>Illinois employers with four or more employees.</td>
</tr>
<tr>
<td>Illinois Whistleblower Act</td>
<td>Illinois statute that provides that an employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.</td>
<td>All employers not including government entities.</td>
</tr>
<tr>
<td>Right to Privacy in Workplace Act</td>
<td>Illinois statute that prohibits employers from discriminating against applicants or employees for their lawful activities outside of working hours.</td>
<td>All employers, excluding some non-profits.</td>
</tr>
<tr>
<td>Illinois Election Code (Time off to Vote)</td>
<td>Illinois law that requires employers to allow employees up to two hours to vote to the extent they can’t vote during non-working hours.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Jury Act</td>
<td>Illinois law that obligates employers to allow employees time off for jury duty.</td>
<td>All employers.</td>
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<td>Unemployment Insurance Act</td>
<td>Illinois law that requires employers to pay unemployment insurance contributions. Also requires quarterly filings of the employer’s Contribution and Wage Report and to report all new hires within 30 days of employment.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Employee Credit Privacy Act</td>
<td>Illinois statute that prohibits obtaining or using of an applicant’s or employee’s “credit history” in making employment decisions.</td>
<td>All employers except banks and lending institutions, insurance or surety businesses, state law enforcement units, state and local governmental agencies and “debt collectors.”</td>
</tr>
<tr>
<td>Illinois Religious Freedom and Marriage Fairness Act</td>
<td>Illinois law that provides same-sex spouses in Illinois all the legal rights and obligations to which opposite-sex spouses are entitled under Illinois law.</td>
<td>All employers.</td>
</tr>
<tr>
<td>Job Opportunities for Qualified Applicants Act</td>
<td>Illinois “ban the box” law that prohibits employers from considering or inquiring into an applicant’s criminal record or history until: (1) the employer has determined the applicant is qualified for the position and has been notified of an interview or (2) if no interview will take place, until after a conditional offer has been made.</td>
<td>Employers with 15 or more employees.</td>
</tr>
<tr>
<td>Pregnant Accommodation Act</td>
<td>Amends the IHRA to provide reasonable accommodations to applicants or employees who are either pregnant or have any medical or common conditions related to pregnancy or childbirth.</td>
<td>All Illinois employers.</td>
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Challenge #1: Government Compliance

Trending and Emerging Issues in Illinois

1. Illinois Human Rights Act Amendment (effective Jan. 1, 2020)
   • Amends the bill from 15 employee requirement to 1 employee!
2. Minimum wage increases – IL $15.00/hour by 2025.
   • $9.25 on Jan. 1, 2020, jump to $10 on July 1, 2020, and then increases $1 each Jan. 1 until 2025
3. The Healthy Workplace Act
   • Paid sick leave (aimed at PT and low-income workers)
4. Legalization of Cannabis (marijuana)
   • Illinois legalization takes effect January 1, 2020
   • Harassment protections increased (i.e., CA, DE, MD, NY, NYC)
5. Predictable/predictive scheduling (CA, OR, WA, VT, NY, NV)
Challenge #1: Government Compliance

   • Mandatory yearly training on sexual harassment! (ALL EMPLOYERS)
   • Employers with adverse judgments must report to ILDHR effective 7/1/20

7. Salary history ban (Amendment to IL Equal Pay Act)
   • Ban on job applications, interview questions, etc.
   • Effective 60 days after governor signs

8. Nursing Mothers in the Workplace Act Amendment (July 1, 2018)
   • Breastfeeding/pregnancy accommodations

9. Gun laws/weapons in the workplace
   • IL “No Firearms” sticker on all entrances, including vehicles!!

10. VESSA Amendment
    • Domestic violence leave extended to workplace sexual harassment

11. Ban the Box laws – IL is a Ban the Box state since 2015
Challenge #2 Technical Knowledge

Technical Knowledge: Implementing and/or administering the HR functions

1. Employee Handbook
2. Employee Leave
3. Employment Notices
4. Employee Records
5. Employee Classification Under FLSA: Exempt v. Nonexempt
   - Employees Volunteering, independent contractors
Challenge #2 Technical Knowledge

1. Employee Handbooks:

• Not legally required, BUT HIGHLY RECOMMEND YOU HAVE ONE!
  • Key reference tool for staff, protects against legal claims
  • Help with consistency applying policies

a) Getting started:
  • Company History – Let your staff know WHY you do what you do.
  • Mission, Vision, and Values – These encompass the WHY you are doing what you are doing and the key things you look to do each and every day.

b) Rules of the Game – Legal Obligations
  • Wage and Hour Laws, such as FLSA or minimum wage
  • Family and Medical Leave (50+ Federal)
  • Equal Employment Opportunity Policies
  • American with Disabilities Act
  • Worker’s Compensation
  • Local laws (such as sick leave)
  • At-Will employment
Challenge #2 Technical Knowledge

1. Employee Handbooks:

c) Organizational Policies – Perks, benefits, other items part of your culture.
   - Extended Care Leave Policy
   - Casual Friday
   - Remote Work Policy
   - Reinstatement Policy
   - Dress Code
   - Confidentiality
   - Harassment and Bullying Policies

d) Housekeeping
   - Always get a signature!
   - Train managers /supervisors in applying.
   - Update regularly!
Challenge #2 Technical Knowledge

2. Employee Leave
   • Various types of expanding, overlapping, and confusing leave laws
   • Federal
     • FMLA
     • ADA (Employee leave as a reasonable accommodation)
     • USERRA
   • State (Illinois)
     • Victims' Economic Security and Safety Act (VESSA) (Domestic violence)
     • ISERRA
     • Volunteer Emergency Worker Job Protection Act
     • Organ Donor Leave Act
     • Child Bereavement Leave Act
     • School Visitation Rights Act
     • Paid sick leave coming this fall?? (copy of Cook County law)
       • Illinois Employee Sick Leave Act (2017)
   • Managing their complex interrelationship
   • Consider leave as a benefit/perk
Challenge #2 Technical Knowledge

3. Employment Notices

• Numerous required employment posters
• Must be posted in a conspicuous area
• Illinois:
  • Unemployment Notification
  • Workers Compensation Notification
  • Equal Pay is the Law
  • Minimum Wage Notification
  • Pay Day Notice
  • Pregnancy Rights Notification
  • VESSA Notice
  • Illinois No Smoking Notice
  • Illinois Firearms Concealed Carry Notice
  • Others required… grants?
Challenge #2 Technical Knowledge

3. Employment Notices

- Federal:
  - USERRA
  - Equal Employment it the Law
  - GINA Notice (Coupled with the EEO notice)
  - OSHA
  - FMLA (Only if eligible)
  - FLSA (includes federal minimum wage)
  - Employee Polygraph Protection Act
  - Notice for Employees under the NLRA (federal contractors and subcontractors)
  - Others required... grants? Example: Drug Free Workplace Notice
- Federal notices that require postings for job applicants to see, too!
  - Equal Employment is the Law, The Employee Polygraph Protection Act (EPPA), FLMA (if applicable)
- Can print for free from US DOL or IL DOL websites
- Recommend purchase of the All-In-One posters
Challenge #2 Technical Knowledge

4. Employee Records

• Best principle: Maintain three distinct record files/employee! Limits exposure!

a) Personnel Records
   • Job description (signed)
   • Job application materials & acceptance offer documentation
   • Any policy acknowledgement documents (signed)
   • Any performance management records including, reviews and discipline records
   • Benefits records, tax documentation (W4s)
   • Any other written notices of agreement
   • Termination notices

b) Medical Records (HIPPA Requirement!)
   • Anything related to medical documentation
   • Physicals, doctor’s notes, FMLA paperwork, ADA paperwork

c) I9 Records (Legal proof to work in USA)
   • Use more recent form! (Expires 8/31/2019)
   • Ensure you DO NOT tell employees what documentation to bring
   • Must be filled out within 3 days of first day on the job
Challenge #2 Technical Knowledge

4. Employee Records

• **Lock and key**! Ensure STRICT confidentiality and access to only those with legitimate business need to see the records.

• Check retention laws and other best practices or recommendations
  • Vary depending on regulations, government grants, etc.
  • I9s for example are either up to 3 years or at least 1 year – depends!
  • Other files 3, 7, or 15 years!

• Employees have a right to access said files – make sure you have a policy/procedure drafted for such requests.

• Audit regularly!

ONE DOES NOT SIMPLY
DISPOSE OF RECORDS WITHOUT A LEGALLY APPROVED RETENTION SCHEDULE
Challenge #2 Technical Knowledge

5. Employee Classification Under FLSA

• Fair Labor Standards Act (FLSA) (1938)
  • Set a minimum wage (federal rate)
  • Set 40 hour work week
  • Set overtime (“time-and-a-half rate)
  • Prohibits most employment of minors (Child Labor Laws)

• Exempt v. Nonexempt Classifications
  • Exempt – Compensated a set weekly amount. Does not receive OT rate.
  • Nonexempt – Compensated on an hourly rate. Does receive OT rate.
  • “Salaried” is NOT synonymous with ineligibility for overtime.
  • There is such a thing as “salaried nonexempt.”
Challenge #2 Technical Knowledge

5. Employee Classification Under FLSA

- How to Classify an Employee?
  a) Salary Test
  b) Duties Test
    - Executive
    - Administrative

- Other considerations:
  - Employees who volunteer
  - Independent contractors
    - A true independent contractor controls how the work is done.
    - Is the contractor using their own or your equipment?
    - Do you control the workflow, or do they?

- Consequences for Misclassification!
  - Result in back overtime, fines, and damages!
Challenge #3: Recruiting & Interviewing

- Economy over the last several years:
  - Best jobs market in a generation
  - More jobs than workers
  - Historically low unemployment

- Challenges for nonprofits:
  - Dynamic shift in how people search for jobs
  - Compensation and retention
  - Generational considerations!

- When recruiting think about the CANDIDATE EXPERIENCE:
  1. Develop a sense of belonging – BRANDING!
  2. Be authentic – live your BRAND!
  3. Engage your candidates through IMMERSION!
Challenge #3: Recruiting & Interviewing

• Title VII of the Civil Rights Act of 1964
  • Prohibits discrimination in employment scenarios based on an individual’s race, color, religion, sex, or national origin.
  • Persons with criminal records (Civil Rights Act of 1964)

• Later legislation prohibits discrimination based on:
  • Age (ADEA of 1967)
  • Pregnancy (PDA of 1978)
  • Disability (ADA of 1991)
  • Military Status (USERRA of 1994)

• 30 Illegal Interview Questions by Compare Business Products
Challenge #3: Recruiting & Interviewing

Single worst interview question of all time:
“So, tell me about yourself!”

- Lazy, uninspired, canned, opens yourself up!

What to ask instead:
What are you most proud of professionally?
What inspired you to apply for the position?
Why did you choose the school you attended?
What motivates you to come to work every day?
Challenge #3: Recruiting & Interviewing

*Remember:* All interview questions MUST be related to the job!

**Nationality:**

- **What you can't ask:** Are you a U.S. citizen?
- **What to ask instead:** Are you authorized to work in the U.S.?
- **What you can't ask:** What is your native tongue?
- **What to ask instead:** What languages do you read, speak, or write fluently?
- **What you can't ask:** How long have you lived here?
- **What to ask instead:** What is your current address and phone number? Do you have any alternative locations where you can be reached?
Challenge #3: Recruiting & Interviewing

Religion
• **What you can't ask:** What religion do you practice?
• **What to ask instead:** What days are you available to work?
• **What you can't ask:** Which religious holidays do you observe?
• **What to ask instead:** Are you able to work with our required schedule?
• **What you can't ask:** Do you belong to a club or social organization?
• **What to ask instead:** Are you a member of a professional or trade group that is relevant to our industry?

Age
• **What you can't ask:** How old are you?
• **What to ask instead:** Are you over the age of 18 (or 21, if applicable)?
• **What you can't ask:** How much longer do you plan to work before you retire?
• **What to ask instead:** What are your long-term career goals?
Challenge #3: Recruiting & Interviewing

Marital & Family Status

- **What you can't ask:** Is this your maiden name?
- **What to ask instead:** Have you worked or earned a degree under another name?
- **What you can't ask:** Do you have or plan to have children?
- **What to ask instead:** Are you available to work overtime on occasion? Can you travel?
- **What you can't ask:** Can you get a babysitter on short notice for overtime or travel?
- **What to ask instead:** You'll be required to travel or work overtime on short notice. Is this a problem for you?
- **What you can't ask:** Do you have kids?
- **What to ask instead:** What is your experience with "x" age group?
- **What you can't ask:** Who is your closest relative to notify in case of an emergency?
- **What to ask instead:** In case of emergency, who should we notify?
- **What you can't ask:** If you get pregnant, will you continue to work, and will you come back after maternity leave?
- **What to ask instead:** What are your long-term career goals?
Challenge #3: Recruiting & Interviewing

Health & Physical Abilities

- **What you can't ask:** Do you smoke or drink?
- **What to ask instead:** In the past, have you been disciplined for violating company policies forbidding the use of alcohol or tobacco products?
- **What you can't ask:** Do you take drugs?
- **What to ask instead:** Do you use illegal drugs?
- **What you can't ask:** How tall are you?
- **What to ask instead:** Are you able to reach items on a shelf that's five feet tall?
- **What you can't ask:** How much do you weigh?
- **What to ask instead:** Are you able to lift boxes weighing up to 50 pounds?
- **What you can't ask:** How many sick days did you take last year?
- **What to ask instead:** How many days of work did you miss last year?
- **What you can't ask:** Do you have any disabilities?
- **What to ask instead:** Are you able to perform the specific duties of this position?
- **What you can't ask:** Have you had any recent or past illnesses or operations?
- **What to ask instead:** Are you able to perform the essential functions of this job with or without reasonable accommodations?
Challenge #3: Recruiting & Interviewing

Miscellaneous

- **What you can't ask**: How far is your commute? Do you live nearby?
- **What to ask instead**: Are you able to start work at 8 a.m.?
- **What you can't ask**: Have you ever been arrested?
- **What to ask instead**: Have you ever been convicted of "x" (fraud, theft, etc)?
- **What you can't ask**: Were you honorably discharged from the military?
- **What to ask instead**: Tell me how your experience in the military can benefit the company.
- **What you can't ask**: Are you a member of the National Guard or Reserves?
- **What to ask instead**: Do you have any upcoming events that would require extensive time away from work?
Challenge #4: Documenting

Has this ever happened to you?

**Supervisor:** Jeff is such a bad employee! He’s late for work, doesn’t do his pre-trip inspections, yells at clients!

**Boss:** How long has this been going on?

**Supervisor:** At least several months.

**Boss:** Have you discussed the issues with him?

**Supervisor:** Well, no.

**Boss:** OK. Have you documented the performance issues?

**Supervisor:** No, I haven’t.

**Boss:** Welp....
Challenge #4: Documenting

Risks of no documenting properly:

1. The number one reason employees quit, turn to unions, file grievances, or turn to the government and/or lawyers is because of their immediate supervisor.
2. Judges and Jurors generally don’t like employers.
3. Employers are subject to liability for harassment or discrimination if they knew or should have known about it. What a Manager or Supervisor... Says, Does or Fails to Do will be held against the Company.
4. Even if you win a lawsuit...Are you really winning? i.e. at what Cost?
Challenge #4: Documenting

Why is documentation important?

1. **ONLY** way to successfully defend against legal challenges!
2. Establishes what you knew, and when you knew it.
3. Helps you recall details.
4. Provides credibility – Jurors don’t like “he said-she said”
5. Can be used to limit claims and/or impact credibility of Employee – establishes what he/she complained of and when he/she complained.

When to document?

1. May affect the terms and conditions of an employee’s job;
2. Could reasonably impact the employee’s job (good or bad); or
3. Could lead to a claim of discrimination, harassment or retaliation.
Challenge #4: Documenting

Tips for good documentation:

1. Describe the organization’s expectations – critical!
   - Write it as if a judge, juror, or public will be reading it.
   - Ensure it will hold up over time – easy to understand months later.
2. Describe the behavior or performance that must change.
   - Cite the policy, rule, behavior, or procedure that was broken.
   - Facts only, no emotion or subjectivity.
3. Include the employee’s explanation, too!
   - Have them sign the document.
   - Unwillingness to sign doesn’t negate the action.
4. Detail the action plan and goals.
5. Include time expectations for correcting behavior or performance.
6. FOLLOW UP! – Give the employee a copy.
7. Lay out the consequences for failure to correct the issue(s).

Based on “Seven Steps to Creating Bulletproof Documentation” by Allison West
Challenge #4: Documenting

Know When To Ask For Help:

If discipline is not routine, or you are not sure what to do, ask an HR professional for help. For example, if an employee has filed a discrimination lawsuit, much care is needed in correctly documenting any disciplinary problems.
Key Takeaways

Most everyone in your organization has some HR functions in their roles! Cultivate that!

“Nonprofit” is a tax status, not a business model! Neglect key HR business functions of your nonprofit, and your mission suffers!

Questions? (AKA, Value-Added on-the-spot consulting)
Shameless Self Promotion (aka, Contact Info)

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