

Ten Practical Tips for Hiring Employees

By Brian J. Mills and Anne E. Dwyer

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You have decided the applicant is a good fit for your company and now it is time to begin the onboarding process. Here are some of the more important documents and procedures to keep in mind when hiring employees in California:

#1: Application

The employment application is likely the first document an applicant will complete. In 2018, California limited the information that can be requested on an application: 1) employers cannot ask whether an applicant was convicted of a crime; and 2) employers cannot ask for an applicant's salary history.

#2: Harassment, Discrimination and Retaliation Prevention Policy

With the #MeToo movement at the forefront of employers' concerns, this document is more than a requirement, it is a necessity. California employers are required to provide a written harassment, discrimination and retaliation prevention policy. This policy must describe the prohibited conduct, explain the complaint and investigation process and discuss their protection against retaliation.

#3: Arbitration Agreements

Employers can require employees to sign arbitration agreements as a condition of employment. Arbitration agreements can provide a more streamlined forum to litigate disputes, but more importantly, they can require employees to litigate claims on an individual rather than a class-wide basis. The United States Supreme Court recently ruled that class action waivers are valid and enforceable under the Federal Arbitration Act. Accordingly, arbitration agreements that comply with certain procedural and substantive requirements are enforceable.

#4: Confidential Information and Trade Secret Agreement

If the employee will have access to confidential company information or trade secrets, then the employer should provide a written agreement describing the obligations to protect and not disclose this information. This agreement should also make clear that the employee should refrain from using the confidential or trade secret information of any prior employer. Depending on the employee's duties, it should also discuss any rights to inventions developed during employment to ensure that the company protects its rights.

#5: Notice to Employee (Labor Code § 2810.5)

An employer must provide a new employee written notice containing specific information related to the employee's pay, the employer's workers' compensation insurance and the employee's entitlement to paid sick leave. Employers can download a form from the Labor Commissioner.

#6: Pamphlets

Several pamphlets must be provided to new employees, including:

- Workers' Compensation Time of Hire pamphlet
- Form DE 2515: Disability Insurance pamphlet
- Form DE 2511: California Paid Family Leave pamphlet
- New Health Insurance Marketplace Coverage Options and Your Health Coverage
- DFEH Sexual Harassment Information Sheet

- Rights of Victims of Domestic Violence, Sexual Assault and Stalking Notice
- General Notice of COBRA Continuation Coverage Rights

#7: Employment Eligibility Verification (Form I-9)

Employers are required by federal law to confirm whether an employee is authorized to work in the United States. Employers who fail to properly complete this document expose themselves to significant penalties. By following the instructions and using the newest version of the form (last updated on July 17, 2017), these penalties can be avoided.

#8: Background Checks

If the company conducts background checks, there are a number of state, federal and local regulations that must be followed. Failing to comply with any of these rules can result in significant fines, penalties and/or litigation. Companies should work with experienced third party background check vendors and/or counsel to make sure they are in compliance.

#9: Drug Tests

Pre-employment drug screening is permissible as long as it is applied neutrally to all applicants for a particular position. Further, though marijuana is now legal in California, under the current law employers are permitted to enforce workplace policies against the use of marijuana, including screening applicants for marijuana. Before performing any drug screen, employers should provide applicants notice and obtain their informed written consent.

#10: Commission Agreements

If an employee will be paid commission, the employer must provide a written commission agreement. The agreement must explain how the commissions will be earned, calculated and paid. The employee must also receive a signed copy of this agreement including a signed receipt from the employee acknowledging that they received a copy.

Conclusion

Ensuring that employees are provided with and complete the required paperwork reduces exposure to penalties and helps protect the company during litigation.

For more information about Employment Law please visit: www.swlaw.com/services/labor-and-employment



Brian J. Mills
714.427.7484
bmills@swlaw.com

Brian J. Mills is a partner in the Orange County office of Snell & Wilmer. He has over 15 years' experience defending claims from disgruntled employees and providing advice to employers on how to best navigate California's ever-changing employment laws. He provides clients with ongoing advice on matters related to employment agreements, harassment, discrimination, accommodations, leaves, drug testing, wage and hour, non-competition and trade secrets. Reach Brian at bmills@swlaw.com or 714.427.7484.



Anne E. Dwyer
714.427.7433
adwyer@swlaw.com

Anne E. Dwyer is an associate in the Orange County office of Snell & Wilmer whose practice is concentrated in employment litigation and counseling. She provides clients with counseling on a wide range of employment matters including wage and hour issues, employee medical leave, termination decisions and policy drafting. Reach Anne at adwyer@swlaw.com or 714.427.7433.