

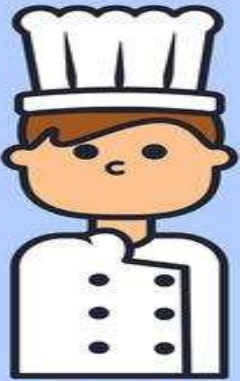


HOSPITALITY LAW

Lecturer: HABUMUREMYI Faustin, MTourMgt.

Week 5: Legally Selecting Employees

HOTEL STAFF



Cook



Security



Doorman



Porter



Maid



Reception



Waiter



Manager



Concierge

Dreamstime

EMPLOYEE SELECTION

- Legally selecting and managing a staff can be a very challenging task in today's complex world of laws and regulations.
- Some managers, especially those with many years of experience, believe that finding, maintaining, and retaining a qualified, **service-oriented staff is every manager's most difficult task**

- **It is true that the challenges of managing people are generally greater than those involved in managing technologies or products.**
- People are complex and are affected by so many **nonwork-related issues** that you will find it both difficult and rewarding to be a leader to your staff

- The law is very specific regarding what you, as an employer, **can and cannot do as you secure your workforce.**
- Both you and your workers have **rights** that affect the employment relationship

- One **tool** that managers use to make good hiring decisions is the **job description**, which they then use as a basis for establishing a list of **job qualifications** that each candidate should possess

Job Descriptions



Hotel Staff Vector Illustration Tatiana Kriuchenkova (2022),
<https://previews.123rf.com/images/seahorsevector/seahorsevector2008/seahorsevector200800018/154004659-hotel-staff-people-vector-illustration-set-cartoon-flat-hospitality-service-collection-with-maid.jpg>

- **Before** an employee can be selected to fill a vacant position, management must have a thorough understanding of the essential **functions** that the employee will need to perform
- These are contained in the job description

- **Legally**, only those tasks that are necessary to effectively **carry out the responsibilities and perform the tasks required** in the job should be used in the description.
- The job description serves a **dual role**. It is important from **an operational perspective** in that it helps supervisors and the human resources department keep track of the changing responsibilities of workers.

- However, it is also important from a legal perspective in that it may need to be produced in court to demonstrate that an employer fairly established the requirements of a job prior to selecting the candidates to fill those jobs.



Screenshot: Example of job description

Position Title: Executive Chef

Reports To: Food and Beverage Director

Position Summary: The department head responsible for any and all kitchens in a foodservice establishment. Ensures that all kitchens provide nutritious, safe, eye-appealing, properly flavored food. Maintains a safe and sanitary preparation environment.

Tasks:

1. Interviews, hires, evaluates, rewards, and disciplines kitchen personnel as appropriate.
2. Orients and trains kitchen personnel in property and department rules, policies, and procedures.
3. Trains kitchen personnel in food production principles and practices. Establishes quality standards for all menu items and for food production practices.

4. Plans and prices menus. Establishes portion sizes and standards of service for all menu items.
5. Schedules kitchen employees in conjunction with business forecasts and predetermined budget. Maintains payroll records for submission to payroll department.
6. Controls food costs by establishing purchasing specifications, storeroom requisition systems, product storage requirements, standardization recipes, and waste control procedures.

7. Trains kitchen personnel in safe operating procedures of all equipment, utensils, and machinery. Establishes maintenance schedules in conjunction with manufacturer instructions for all equipment. Provides safety training in lifting, carrying, hazardous material control, chemical control, first aid, and CPR.
8. Trains kitchen personnel in sanitation practices and establishes cleaning schedules, stock rotation schedules, refrigeration temperature control points, and other sanitary controls.

STEPHEN BARTH (2009), Hospitality Law: Managing Legal Issues in the Hospitality Industry , p 168, 7.1 Sample job description,
<https://www.pdfdrive.com/hospitalty-law-managing-legal-issues-in-the-hospitality-industry-e157128399.html>

Job Qualifications

- Once you know exactly **what kinds of tasks employees** must perform in a given job, it is possible to create **a list of the skills or knowledge** they must possess in order to successfully perform those tasks
- These **skills should be written down and attached to the job description.**

- Job qualifications can consist **of both physical and mental requirements.**
- It is important to remember that the job qualifications list must **not violate** the law nor include any characteristics that would unfairly prevent a class of workers from successfully competing for the position

Example of some requirements:

- Physical attributes
- Education
- Certifications
- Registrations
- Licensing

- Language skills
- Knowledge of equipment operation
- Previous experience
- Minimum age requirements

Bona fide occupational qualification (BFOQ)

- A job qualification, established in **good faith and fairness**, that is necessary to safely or adequately perform the job.

ANALYZE THE SITUATION 5.1

- **Cruz Villaraigosa** owns and manages **The Cruz Cantina**, a lively bar and dance club that serves **Cuban and other Caribbean-style cuisine**. The club has a dance floor, has small tables, and serves outstanding food.

- Cruz's clientele consists mainly of **20- to 40-year-old males**, who frequent the Cantina for its good food, as well as the extremely low-cut, Spanish-style blouses worn by the young female servers who bring the food and drinks to the tables.

- The Cruz Cantina advertises to women and families, as well as to young men, but the **reputation of the facility** is predicated upon the physical attractiveness of the women whom Cruz has hired to serve the guests, and the uniforms these servers wear.

- Cruz employs women and men of all races and nationalities, but all food and drink servers are **female**. When Cruz elects not to hire a young man for a job as a server, Cruz is contacted by the **young man's attorney**.

- The attorney alleges the young man has been **illegally denied a server's job at the Cantina because of his gender, and that sex cannot be a bona fide occupational qualification for a food and beverage server position**

- Cruz replies that her operation employs both men and women, but that one necessary job qualification for all servers is that they be **“attractive to men,”** and that the qualification of **“attractiveness to men”** is a legitimate one, give the importance of maintaining the successful image, atmosphere, and resulting business the Cantina enjoys.

- She maintains that the servers not only serve food and beverages, but also play **a role in advertising and marketing the unique features of the Cantina.** Cruz also maintains that attractiveness is indeed an occupational characteristic that she can use to promote her facility, **citing modeling agencies and TV casting agents** as examples of employers who routinely use attractiveness as a means of selecting employees

- Cruz states that her right to choose employees she feels will best benefit her business is **unconditional**, as long as she does not **unfairly discriminate** against a protected class of workers.

Your comments:.....!

1. Do you think that the requirement that servers be “attractive to males” is a **bona fide occupational requirement**, and “necessary” for the continued successful operation of The Cruz Cantina?
2. If you were on a **jury**, would you allow Cruz to hire female servers exclusively, if she so desired?
Why or why not?

3. What damages, if any, do you feel the male job applicant not selected for employment at the Cantina would be entitled to?

Applicant Screening

- 1. Applications
- 2. Interviews
- 3. Testing
- 4. Background checks
- 5. References

ANALYZE THE SITUATION 5.2

- Jetta Wong is the owner and manager of the Golden Dragon oriental restaurant. The restaurant is large, inexpensive, and enjoys an excellent reputation. Business is good, and the restaurant serves a diverse clientele.

- Ms. Wong places a classified ad for the table busser in the employment section of her local newspaper. The response is good and Ms. Wong narrows the field of potential candidates for two.

- One is rest the same ethnic background as Ms. Wong and the of the staff.
- The second candidate is Danielle Hidalgo, the daughter of a Mexican citizen and an American citizen.
- Ms. Hidalgo was born and raised in the United States.

- **While both candidates are pleasant,** Ms. Wong offers the position to the candidate who matches the background of the restaurant and Ms. Wong. Her rationale is that, since both candidates are equal in ability, she has a right to select the candidate she feels will best suit her business.

- Because it is an oriental restaurant, Ms. Wong feels diners will expect to see oriental servers and bussers. No one was discriminated against, she maintains, because Ms. Hidalgo was not denied a job on **the basis of race**, but rather on the basis of **what was best for business**. Ms. Wong simply selected her preference from among two equal candidates. Ms. Wong relates her decision to Ms. Hidalgo.

- Ms. Hidalgo maintains that she was not selected because of her **Hispanic ethnic background**.
- She threatens to file a charge with the EEOC unless she is offered employment.

Your comments:.....!

- 1. Do you think Ms. Hidalgo was denied the position because of her ethnicity?
- 2. In the situation described here, does Ms. Wong have the right to consider race as a bona fide occupational qualification?
- 3. How should Ms. Wong advertise jobs in the future to avoid charges of discrimination

References

- [1] STEPHEN BARTH (2009), Hospitality Law: Managing Legal Issues in the Hospitality Industry , p 165-195 ,<https://www.pdfdrive.com/hospitalty-law-managing-legal-issues-in-the-hospitality-industry-e157128399.html>
- [2] Kay Biga (2015), Smart Hiring in the Hospitality Industry: Legal and Business Perspectives
http://www.m.www.nabusinesspress.com/AJM/SpottP_Web15_4_.pdf

Thank you!

Next lecture: Legally Managing Employees

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