

The Path to the Ideal Candidate

Diligence pays off in employee search

You need to hire a new employee for your dental team. What is the best approach? Experts in the field of employment law advise using a methodical process, even if you are anxious to hire someone right away.

“Employers are often under pressure to find someone, and they may hire a new staff member hastily, ending up with the wrong person,” said Diana Ratcliff, an attorney specializing in employment law in Southern California. Ratcliff noted that not allowing sufficient time for an employee search, delegating

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the interview process and not checking references are among the common mistakes employers make when hiring.

Finding and keeping quality employees can be a challenge. TDIC reports that 15 percent of the calls to its Risk Management Advice Line in 2012 were related to employment practices. To build a strong dental team, invest time in the hiring process. Consider using a temporary employment agency to fill immediate needs; this allows you to focus on hiring the right person.

Human resources professionals recommend breaking hiring tasks into manageable steps, including:

- Updating knowledge of employment laws
- Creating (or refining) a description of the job available
- Advertising the job and finding qualified candidates
- Interviewing candidates and evaluating all applicants equally
- Conducting skills assessments
- Checking references and extending an offer
- Documenting terms of employment and I-9 verification

Law and Order

Like all small business owners, practice owners should be aware of the number of the laws — from affirmative action to workers' compensation — related to employment. Legal experts warn against the misconception that dental offices are too small to be sued for employment-related allegations. Dental practices can face allegations of age or race discrimination, sexual harassment and wage and hour violations, to name only a few potential employment-related lawsuits. Knowing current trends and issues related to employment law may help reduce your risk of a lawsuit.

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DIANA RATCLIFF, attorney specializing in employment law in Southern California

For details about various employment laws, the U.S. Department of Labor offers an online tool at dol.gov/elaws/firststep/ called the “FirstStep Employment Law Advisor” that can help determine which federal laws apply to your business. The U.S. Small Business Administration (SBA) provides links to state labor offices for laws pertaining to your specific state at sba.gov/content/employment-and-labor-law. A free online Employment Law Guide on this site describes major employment laws for hands-on information about wage, benefit, safety and nondiscrimination policies. The SBA also has information about employer identification numbers and recordkeeping when hiring your first employee.

A consultation with an employment attorney can help ensure compliance with laws in your state, especially to clarify how to conduct skills assessments and pay that may be required. A call to your insurance carrier will shed light on employment practices liability insurance (EPLI). TDIC’s EPLI provides coverage for defense costs, settlements and civil damages incurred as a result of employee claims for actual or alleged wrongful employment acts. Please call TDIC at 800.733.0633 to discuss the details of this insurance.

Your state dental association and local dental society may also have resources related to employment law.

Defining the Job

An essential tool for finding the right employee is developing a clear

job description. “Assuring that the new employee is fully aware of the expectations of the job and office policies,” is one of the most important things a dentist can do, according to Ratcliff.

Job descriptions typically include:

- Job title
- Job objective
- Reporting structure of key relationships, including supervisor and colleagues (organizational chart)
- Essential job functions
- Secondary duties
- Requirements: License, education and other necessary skills, such as languages or computer programs
- Preferred experience
- Physical requirements: Lifting, bending and abilities, such as manual dexterity
- Other duties as assigned

When listing the essential functions of the job, be as specific as possible. A statement such as “record medical and dental histories and vital signs of each patient” gives more information than “check in patients.”

Most job descriptions include desired experience, especially regarding clinical practice, however, be aware of requirements that could unnecessarily limit the candidate pool. A specific benchmark such as “five years of clinical experience” could discourage recently licensed professionals who might be excellent candidates.

Include the caveat phrase “other duties as assigned” to ensure your ability to allocate additional tasks not listed.

When creating the job description, consider the personality type that would complement your practice. Are you looking for a “people person” to interact positively with patients? Or do you need someone who is focused, detail oriented and able to work with minimal supervision? Focusing on the specific duties and skills required, along with preferred personality traits, enables you to quickly identify candidates who are a good fit.

With a specific job description and a concept of the ideal candidate, you are ready to advertise the available position.

Craft a Savvy Advertisement

When writing a help wanted advertisement, include information about your practice and list the specifics applicants really want to know, such as hours, location, salary range, benefits and why they should apply.

Be careful to avoid language that could be interpreted as discriminatory or imply any long-term employment guarantee. Avoid words and phrases indicating limitations or exclusions on the basis of race, color, national origin, religion, sex, pregnancy, age, marital status, sexual orientation or disability. Avoid phrases such as “young and energetic,” or “perfect for a single person willing to travel.” Instead, choose words such as “enthusiastic” or “travel required.”

Getting the Word Out

Avenues for announcing job openings have expanded with the digital age, and resources such as state dental associations or local dental societies will likely post job openings as will colleges, universities or vocational schools with dental or allied dental programs. These sources are aligned to recruit candidates with the specific skills desired.

There are a number of career-building websites that allow employers to post job openings, as well. Mega job search websites, however, cast a wide net and may yield applicants with skills not matching the job description. If considering posting job announcements on social media sites, choose one geared to professional networking, such as LinkedIn. For more information on social media and employment in general, see the resources listing on page 6.

When advertising a job opening, the goal is to target the best sources to produce the most qualified candidates.

Newspapers and community centers tap into the local population, and posting a job internally encourages current employees to recommend potential applicants they know. Networking is still considered one of the best ways to find a job candidate, according to HRCalifornia Extra newsletter. Tell everyone you know about the job opening, beginning with colleagues and your local dental society. It may be tempting to recruit an employee from another practice, but exercise caution. The other employer could allege interference with a valid contractual relationship, if the employee was not under contract.

Mention your job opening to vendors, professional associates, friends and neighbors; they might know an ideal candidate.

The Art of Interviewing

In the search for the right employee, conducting interviews gives you the chance to accomplish three key things:

- Discuss candidates’ employment and education experience
- Ask open-ended questions that encourage elaboration
- Evaluate candidates’ potential to work with current staff

Before conducting interviews, remember your role as the leader of your

practice, and strive for fairness, respect, equality and consistency.

Once you have applications, immediately narrow the field by discarding incomplete or poorly documented paperwork. Human resources experts recommend screening applicants first via a telephone interview.

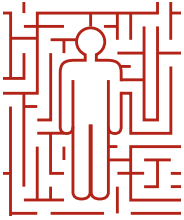
Ask each applicant the same questions. This gives coherence to the interview process, and protects you from potential allegations of discrimination. Be sure all questions are strictly job-related, nondiscriminatory and not an invasion of privacy. Again, avoid questions about race, color, national origin, religion, sex, pregnancy, age, marital status, sexual orientation or disability. See the sidebar on page 5 for sample interview questions that can help determine qualities such as initiative, motivation and attitude.

Once you have identified top candidates through telephone interviews, invite them for in-person interviews. Plan for 30 to 45 minutes per interview to keep the process efficient.

Human resources specialists emphasize that an employer must not exaggerate the job opportunity or promise permanent employment. Lawsuits have been won over mishaps such as misrepresenting what a candidate will earn or promising more money than the candidate’s current employment.

TDIC Risk Management analysts, who have discussed employment and hiring situations with thousands of dentists, say interviewers can be trapped into revealing too much information. For instance saying, “I’m looking for someone who is comfortable asking patients about their health histories. Can you do this?” sets the candidate up for an easy “yes” answer. The better statement is, “Please tell me about your

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If you are unclear about an applicant's responses, ask for clarification. Be aware of any "red-flag warnings" you perceive and trust your instincts. If you think a candidate's answers are questionable, don't ignore the thought. If the applicant is not right for the position, let him or her know at the end of the interview.

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experience recording patient health histories."

Be aware of lapses in employment history. Ask applicants about any periods of unemployment and obtain as much information as possible about their activities during that time.

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Ask for Reference Check Authorization

Inform all qualified applicants that, should they become a finalist, you will conduct a reference check. Notice how each candidate responds to this request for references. Professional candidates typically have references lined up and are prepared to notify them of the potential phone call.

Ask the top candidates to sign an authorization form allowing former employers to release information about their previous job performance. Without authorization, the chance of receiving accurate information is limited.

Sample Reference Check Consent:

I authorize _____ to contact my former employers for purposes of obtaining validation of experience, qualifications and employment references, including information contained in my personnel file(s). These persons are authorized to disclose such information. I waive any claims against _____ that might result from his or her contact with my former employers.

Signature _____
Date _____

Observation is Key

If you think a candidate may be a good fit for your practice, invite him or her back for a skills assessment. Be clear that the assessment is not an offer of employment, but a chance for you to observe the candidate's skills on the job and interaction with patients and staff. You should be able to assess a candidate's skills within a four to six-hour timeframe. Before conducting a skills assessment, TDIC advises consulting with an employment attorney to ensure compliance with laws in your state.

When interviewing a dentist, verify the candidate's active professional liability coverage with limits equal to your own. Before scheduling a skills assessment, confirm the applicant's current license, if applicable, and plan to spend at least two hours with the candidate.

If you are interviewing for an RDA position, observe skills, including four-handed dentistry, radiographs, chart documentation and instrument sterilization. For a hygienist, assess clinical technique, evaluations on probing and recommendations for periodontal care. Note whether the RDH has a compatible treatment philosophy on topics such as periodontal disease. Listen to how the hygienist educates patients. Review how he or she documents patient interaction, education and treatment recommendations.

For an appointment administrator, observe telephone etiquette, comprehension of scheduling guidelines such as preblocking and overlapping appointments along with reactivating inactive patients. Ask the candidate how he or she would handle a patient who called reporting pain then demanded an appointment that day. If you are looking for a financial coordinator, note the applicant's negotiation of payment arrangements, verbal skills during collection calls and understanding of dental benefits.

Follow Up With References

Once the top candidates are selected, move ahead with reference checks. If a candidate seems especially promising, it can be tempting to skip this step, but experts assert the importance of following through and calling references and previous employers. This maintains the integrity of the hiring process and can prevent allegations of negligent hiring if there is a problem in the future.

When speaking to candidate's previous employers, stick to questions that are directly related to his or her position and duration of employment.

Obtaining Criminal History

The U.S. Equal Opportunity Commission updated guidance in 2012 on the consideration of arrest and conviction records in employment decisions. The guidance is available online at eeoc.gov/laws/guidance/arrest_conviction.cfm. According to this resource, an employer must demonstrate that any criminal history screening is job related and consistent with business necessity. In short, employers should ask about criminal history only when they can demonstrate that it is relevant to a specific job. It also recommends that employers not ask about convictions on job applications. Call TDIC's Risk Management Advice Line at 800.733.0634 for more information about criminal background checks.

Making an Employment Offer

Once references check out, you are ready to make a job offer. Congratulations. Legal experts recommend making the employment offer in a letter as evidence of the agreed upon terms of employment. The employment offer letter should include the job title the

SAMPLE INTERVIEW QUESTIONS

Insightful questions often uncover useful information. Human resources experts recommend interview questions that help reveal candidates' initiative, motivation and attitude. Here are a few examples:

Initiative

- What career accomplishments are you most proud of?
- How do you feel about being supervised?
- What did you dislike about your last job and what did you do to change it?

Motivation

- What are your goals for the next two years? The next five years?

- What continuing education have you taken?

- What do you think is reasonable salary growth?

Attitude

- What workplace values are important to you?
- Describe the best and worst bosses you have had.
- How do you feel about daily, routine work? (Provide an example of what this would consist of.)

- What types of people do you like to work with?

Management/Organizational Skills

- What is your management style?
- Describe a time when you had to deal with a marginal employee.
- How do you feel about hiring and firing employees?

Asking the right questions of a prospective employee is important. So is avoiding inappropriate questions. Do NOT ask questions about marital status, children, age or religious preferences. It is not appropriate to ask about an applicant's citizenship, but it is advised to ask all candidates "If you are hired, can you provide evidence that you are legally able to work in the United States?"

Do not ask candidates if they have their own car. Instead, ask if they have transportation to work.

If you take notes during an interview, be certain to write complete, legible and objective comments.

At-will employment means that an employee is hired in an at-will status and either party, with or without cause, can terminate the employment relationship at any time as long as the termination does not violate a specific law or is not based on discrimination.

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employee is accepting, work hours and the agreed salary.

It is advisable to include a sentence in the employment offer letter stating that the letter serves as official notification of the employer's job offer, but does not represent an employment contract.

Terms of Employment

At-will employment means that an employee is hired in an at-will status and either party, with or without cause, can terminate the employment relationship at any time as long as the termination does not violate a specific law or is not based on discrimination. Regular employment or employment for a specific term is not guaranteed or promised. With the exception of Montana, all states recognize at-will employment.

In states where TDIC writes insurance (Alaska, Arizona, California, Hawaii, Illinois, Minnesota, Nevada, New Jersey, North Dakota and Pennsylvania), employment is presumed

to be at-will in the absence of an agreement to the contrary. However, never assume that at-will employment is agreed upon by discussion. State the at-will status clearly in your employee manual, and have each employee sign that this policy is understood and accepted.

Employee Eligibility Verification

Federal law requires employers to verify an employee's eligibility to work in the United States. As an employer, you must complete employment eligibility verification, known as Form I-9, within three days of hiring your new employee. Form I-9 requires employers to examine documents such as driver's license, Social Security card, U.S. passport or permanent resident card to confirm the employee's identity and eligibility to work in the U.S. Request only documentation specified on the Form I-9. Keep Form I-9s on file for all employees. The U.S. Immigration and Customs Enforcement agency website at uscis.gov has Form I-9s and includes electronic verification of employment eligibility.

KEY RESOURCES FOR EMPLOYMENT INFORMATION

American Dental

Association: For information on social media and employment, the American Dental Association has a free online guide available at ada.org/7943.aspx#social-media-policy. The guide covers social media policy, pre-employment, relevant laws and recent case histories.

State Dental Asso-

ciations: Your state dental association will likely have a number of resources related to employment and hiring practices.

The Dentists Insurance

Company: TDIC's website at thedentists.com/risk_management/employment has an employment FAQ, articles and sample forms and office policies. Professional analysts are available to answer hiring and employment-related questions. Call TDIC's Risk Management Advice Line at 800.733.0634.

U.S. Citizenship and Immigration Services: Download Form I-9s and electronic verification of employment eligibility online at uscis.gov/portal/site/uscis.

U.S. Department of La-

bor: The U.S. Department of Labor offers an online tool at dol.gov/elaws/firststep/ called the "FirstStep Employment Law Advisor" that can help you determine which federal laws apply to your business.

U.S. Small Business

Administration: The U.S. Small Business Administration provides links to state labor offices for laws pertaining to your specific state at SBA.gov/content/employment-and-labor-law and a free online Employment Law Guide describes major employment

laws for hands-on information about wage, benefit, safety and nondiscrimination policies. The SBA also includes information about employer identification numbers and recordkeeping if hiring your first employee.

U.S. Equal Employment Opportunity Commis-

sion: A concise list of prohibited employment practices and polices is available online at eeoc.gov/laws/practices/index.cfm, as well as other resources, including guidance on criminal background checks.

Questions and Answers

Q: I had a medical situation with a patient during an appointment. The patient lost consciousness. I called 911 for medical transport. Thankfully, the patient was ultimately OK. Several weeks later, the patient arrived at the office with the hospital bill in hand. He was angry that he was receiving bills for these services. He is stating that he should not be responsible because he did not authorize the ambulance ride. How should I respond to him?

A: You did the right thing. Never allow a patient to make the determination as to whether he or she needs medical assistance. Given the circumstances, it was appropriate to summon medical assistance. Conversely, if you did not call 911 and a medical event happened that could be a result of dental treatment, your judgment would be called into question. Which is worse?

For this situation, calmly explain that you assessed his situation, made a decision that, in your professional opinion, was appropriate and in his best interest. Given the same set of circumstances, you would make the same decision again.

The TDIC Professional Liability policy contains a medical payment provision that may be useful in this type of situation. Typically, this provision allows for payment of bills for events that occur during dental treatment. Examples that qualify would be payment of radiographs when a patient swallows an object during treatment or an ambulance ride as described above. There are certain

restrictions with the provision so prior to making any representations, please contact TDIC Claims Department for guidance at 800.733.0634.

Q: I work at a practice twice a month. While there, I treated a patient with dental anxiety. She and I spent a lot of time during her appointment to ensure her anxiety was at a manageable level. After the appointment, the patient was very thankful for my patience and understanding. She asked if she could contact me on my cell phone if further treatment issues arose. Unsure of the protocol, I gave her my cell number. Now, she calls me constantly with dental issues.

A: You are not the point of contact for patients who call with dental issues. The practice should have a protocol set up to triage and manage patients of the practice.

It is OK to tell a patient no if he or she

asks for your cell number. You are not the practice owner. Do not provide your personal cell number, as it is the practice's duty to record interactions that occur with a patient. Explain that you would not have regular access to the patient's chart in which to record these conversations.

Direct her to call the practice and assure her the practice is well-versed in handling any dental emergency that may arise.



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