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The Bill Blackwood
Law Enforcement Management Institute of Texas

Legal Aspects of Recruiting and Hiring

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RESERVE

623

Abstract

Fredericksburg Police Department is a progressive rural agency located in the Texas hill country. For many years the department had little employment turn over averaging less then one officer per year. In the late 1990's the city and the department started experiencing unprecedented growth. In 1999 Fredericksburg Police Department hired 6 officers and currently has unfilled vacancies.

Due to the low turn over rate the need for establishing recruiting and hiring procedures were low priority. The sudden growth of the city coupled with the recent federal case rulings concerning, discrimination, adverse impact, and negligent hiring. The Fredericksburg Police Department is wise to implement a standard operating procedure to guide the department in the selection of new recruits.

The Fredericksburg Police Department is reasonable for maintaining records on all applicants who apply for employment with Fredericksburg Police Department. The records should reflect the departments' efforts to assure that adverse impact does not exist against any gender or ethnic group.

It is this authors recommendation is that the Fredericksburg Police Department establish a written policy outlining the recruiting procedure. It is further recommend the police department establish testing procedures, which have been validated through relevant research to not have adverse impact on the protected classes.

RESERVE

TABLE OF CONTENTS

Section	Page
Abstract	
Introduction	1
Historical, Legal or Theoretical Context	2
Review of Literature or Practice	4
Discussion of Relevant Issues	7
Conclusion/Recommendations	9
Bibliography	

RESERVE

Introduction

The Fredericksburg Police Department has recently found it's self, thrust into the twenty first century. The need to comply with recent case law, state and federal mandates has left the police department grasping for a new way to conduct business. Standardizing and validating testing procedures used to select new recruits will enable the police department to select highly qualified employees and reduce the risk of civil litigation.

Historically, the Fredericksburg Police Department was not concerned with recruitment issues due to the relatively low employment turn over in the department. In the recent years the City of Fredericksburg has experienced rapid growth requiring increased police personnel. The changing time dictates the need for a specialized recruiting policy developed to fit the needs of the police department and comply with state and federal equal employment opportunity mandates.

This research is dedicated to educating the Fredericksburg Police Department in current trends in law enforcement. By researching case law, state & federal law and other police department policies, the police department will be armed with the necessary information to develop and implement a standard operating policy that will reduce department liability in civil litigation.

Across the state of Texas every day, individuals are inadvertently discriminated against during the hiring process because the employer is uneducated. An individual who is discriminated against in the hiring process has the potential to collect large dividends in the courtroom. At an average cost of \$30,000 to defend a lawsuit of this type it only makes good sence to make every effort to comply with all mandates. This research will be one step in the direction of education.

Historical, Legal or Theoretical Context

The Fredericksburg Police Department currently has no hiring guidelines. In the past the department hired so infrequently that no one was practiced at the task. Often officers, whom we knew were hired from surrounding agencies and immediately put to work without thought to adverse impact or other types of discrimination. Of the 24 sworn officers employed by the Fredericksburg Police Department, two female officers and five Hispanic officers over the past decade have been hired. This relates to 29% of our staff represented by the protected classes. The Fredericksburg Police Department is challenged with the task of establishing a comprehensive standard operating procedure to facilitate the hiring process. Federal and state governments have mandated that hiring issues to be considered through out the policy origination stage. The department is mandated to assure discrimination does not exist on the bases of race, color, religion, gender, age, national origin or ancestry or physical or mental abilities. (Joel-19), (Yate-207), (Griggs v. Duke Power Co., 401 U.S. 424 (1971), (Lipsett 54)

All agencies must comply with the American Disabilities Act by making reasonable accommodations for the disabled applicant. However, the department is not required to provide accommodations that impose undue hardship on the agency. The ADA and the EEOC's regulations provide a number of factors that are to be considered in determining whether an accommodation imposes an undue hardship on the employer. The statute and regulations provide that the following factors are relevant to the undue hardship determination: (EEOC, 42 U.S.C. 12111(10).

- The nature and net cost of the accommodation;

- The financial resources of the facility/facilities, the number of employees at the facility/facilities, the effect on expenses and resources, or other impact on the operation of the facility/facilities;
- The overall financial resources of the entity, the size of the business with respect to the number of employees; the number, type, and location of its facilities; and
- The type of operations of the entity, including the composition, structure, and functions of the workforce, and the geographic separateness and administrative or fiscal relationship of the facility/facilities in question to the covered entity.

Some courts have found accommodations to pose an undue hardship specifically because of the adverse effect on other employees. For example, in Turco v. Hoechst Celanese Chemical Corp., 101 F.3d 1090 (5th Cir. 1996), the court noted that "an accommodation that would result in other employees having to work harder or longer is not required under the ADA." Similarly, in Mears v. Gulfstream Aerospace Corp., 905 F. Supp. 1075, 1080, 5 AD Cases 1295 (S.D. Ga. 1995), aff'd, 87 F.3d 1331 (11th Cir. 1996), the court held that if an accommodation "adversely impacts other employees' ability to do their jobs," it "is an undue burden on the employer."

To better insure compliance with federal mandates, the department must establish policies to document adverse impact. To assure the department is not engaged in discriminatory procedures, which could cause "adverse impact" each stage of the hiring process should be clearly established and validated. "Tests that have adverse impact on the employment opportunities of any race, sex, or ethnic group are presumed to be illegal." (Joel 37)

"Adverse impact means any disadvantage in the hiring, firing, discipline, or any other terms and conditions of employment. The guidelines contain a "rule of thumb" known as the "four-fifths rule" or "80 percent rule" which the EEOC and courts use to determine whether or not a test has adverse impact. Under the rule hiring rates for different groups are compared. A selection rate for any sex, race, or ethnic group that is less than four-fifths of the rate for the group with the highest selection rate will generally be regarded as having an adverse impact on that group." (Joel 37)

Review of Literature or Practice

The intent of this research is to establish a recruiting and hiring policy that will enable police departments to hire the best-qualified applicants without jeopardizing the department's resources to costly lawsuits.

An outstanding recruiting mission statement can be found in Chapter 27 of the College Station Police Department Policy Manual. (117) "The positive recruitment selection, and placement of high caliber personnel, not just the elimination of the least qualified, should be the intent of any good recruitment and selection process. Positive recruitment and selection will assist the department in achieving its mission through a lower turnover rate, fewer disciplinary problems, higher morale, improved community relations and increased efficiency and effectiveness."

The modern police officer selection is a difficult one as stated by Chief Bill Whitworth in his February 1999 article in Texas Police Journal Who Should We Hire. "Under the community policing philosophy the model employee would seem to be an individual that can maintain order, operate under stress, and at the same time relate to the community with understanding and concern. The question for agency administrators is where do we find such people and how do we evaluate them as applicants?" The answer to this question may well lie in the attitudes of the police department itself. The days of hiring someone based on how he or she looks or which church they go to is long since been outlawed by the court system. The police department must take the stand that everyone who walks in the door with an application is a potential good police officer. In Texas, state law relating to the licensing of police officers governs us, Title 37, Public Safety and Corrections Part VII, Texas Commission on Law Enforcement Officers Standards

RESERVE

and Education, Chapter 217. Licensing Requirements Division states in part: An applicant for peace officer, must be 21 years of age, a high school graduate and not convicted at anytime of a felony and certain misdemeanors offences. It further states that a police applicant must be of good moral character, satisfactory psychological, emotional health, physically sound and free from any defect, which may adversely, affect the performance of duty.

Under Federal Law, Texas law enforcement agencies are required to use the above statutes in their evaluation of police applicants. Therefor, agencies can in fact discriminate against an individual who does not meet the minimum requirements for licensing by the state of Texas as a peace officer. However, the state statutes will not protect an agency in civil litigation against discrimination claims based on religion, gender or race.

A main area of concern, for law enforcement hiring procedures, is to comply with the federal law regulated by the Equal Employment Opportunity Commission. Law enforcement agencies are exempt from some federal requirements due to the type of occupation. However, a police department is still required to validate its testing procedures to show that discrimination has not occurred.

Police departments across the nation traditionally hired individuals that met a certain set of predisposed expectations, such as tall slender white males with military experience. (Whitworth, 13) However, in today's law enforcement that may no longer be the best choice. Society has demanded that a police officer to be kinder, gentler and better educated.

RESERVE

Federal guidelines should not be viewed as a damper to the selection process. The guidelines should be utilized as a management tool by law enforcement. The guidelines do not state that an agency has to hire unqualified applicants only that all applicants are treated equally. For example, it would be discriminatory to state that all police officers have to be at least six-foot tall with no exceptions. An agency would have to prove that a person shorter than six-foot would not be able to perform the job. The courts realize that a police officer must be able to perform certain task that are inherent to the job, such as operating a standard police car safely at high rates of speed. Austin Police Department administers their height test by asking the applicant to perform a test, While seated in a patrol vehicle, described as follows: "From a seated position in a standard patrol vehicle, lap-belt tightly secured, you must be able to see over the steering wheel, successfully operate the accelerator and brake, and grip the steering wheel with both hands, looking forward and through the rear window." (APD Web Page (recruiting and application process page 3) This is a good example of outcome oriented thinking. It does not matter how tall a person is if the out come is the same. However, if a person is so small or big that this task is not possible then they are dismissed for safety reasons.

The Fredericksburg Police Department should consider the use of B-Pad testing in the hiring process. The B-Pad test has been validated by many law enforcement agencies as a predictor for pre employment, as well as promotional evaluations. Police agencies are currently using the B-Pad tests to screen applicants (Austin P D, Pasadena PD, etc...). B-PAD video tests assess an applicant's interpersonal skills and judgment. Scenarios portraying difficult interpersonal challenges are used to elicit a wide variety of behaviors.

RESERVE

Behavioral responses to standardized, realistic, job-relevant situations provide for the most valid prediction of future work behavior. (<http://www.bpad.com/report1.html>)

Discussion of Relevant Issues

Unfortunately, the Fredericksburg Police Department is handicapped in the competition for qualified applicants. The department offers low pay and reduced benefits when compared with the larger metropolitan areas. Fredericksburg Police Department has a difficult time competing with agencies that have civil service and/or collective bargaining. Another benefit larger agencies have is the size of their applicant pool. When a police department can offer employment to non-certified employees and can provide academy training the applicant pool greatly increases. So the question remains how does a rural department obtain qualified applicants?

This author believes that there is a quality of life issue for rural communities. A proactive agency can begin recruiting at the high school level by implementing a program within the school system allowing criminal justice courses to be taught by a police officer at the high school level. This line of thinking allows the police department a positive contact with the students and also the ability to guide the hometown prospects in the direction needed to develop into good applicants. Also by actively recruiting the protected classes within our community we are establishing a diversified department and the police agency is better able to provide a wide range of services needed in implementing community based policing.

RESERVE

The cost associated with testing of a police applicant is great. An agency can either produce its own set of tests that have been validated as job relevant or purchase tests from a testing company. The estimated cost of purchasing a test that has been validated for a specific agency is approximately \$10,000. However, an "off the shelf" test can be purchased for approximately \$2000.00 (Fealy, interview). The following charts are cost estimates based on the assumption that the department is interested in hiring 1 applicant out of an applicant pool of 50. The salary estimates are based on an arbitrary figure of \$20.00 per hour for officers and \$10.00 per hour for clerk staff.

Chart #1 shows current expenditures in the hiring process.

Activity	Purpose	Preformed By	Time	Cost
Review of application	Cull unwanted applicants	Patrol Lieutenant	50 hours	\$1000.00
Review of application	Cull unwanted applicants	Asst. Chief	50 hours	\$1000.00
Oral Review Board	Cull unwanted applicants	Four officers review 10 applicants that make the cut	40 hours	\$800.00
Background Investigation	Research history of Applicant	CID investigator review final three applicants	24 hours	\$480.00
Chief review of applications of final three	Make final decision	Chief of Police	3 hours	\$60.00
Interview with Chief	Make final decision	Chief of Police	3 hours	\$60.00
Physiological and medical evaluations	State requirement	Doctors on selected final applicant.		\$300.00
Polygraph	Determine - 8 - integrity of applicant	State certified Polygrapher		\$200.00
			Total	\$3,900.00

RESERVE

Chart #2 shows the proposed expenditures under a hiring policy designed to select the best applicant and not have adverse impact.

Activity	Purpose	Preformed By	Time	Cost
Pre-employment questioner	Determine Eligibility	Clerk	50 hours	\$500.00
Written exam	Disqualify applicants	Officer	3 hours	\$60.00
Physical Ability	Disqualify applicants	Two officers	3 hours	\$120.00
Oral Board	Reduce top 10	Three officers	10 hours	\$1200.00
Record keeping	Adverse Impact	Clerk	8 hours	\$80.00
Review of top three applicants	Assure compatibility and review adverse impact chart prepared by clerk.	Patrol Commander	3 hours	\$60.00
Polygraph	Determine integrity of applicant	State certified Paleographer		\$200.00
Background investigation	Discover hidden defects in top three applicants.	CID Investigator	60 hours	\$1200.00
Travel expenses	Background investigation	CID Investigator		\$600.00
Chief review of applications of final three	Make final decision	Chief of Police	3 hours	\$60.00
Interview with Chief	Make final decision	Chief of Police	3 hours	\$60.00
Physiological and medical evaluations	State requirement on selected final applicant.	Doctors		\$300.00
			Total	\$4,440.00

Conclusion

In today's society the court system is overwhelmed with civil law suits. Most law enforcement administrators are attuned to the case laws involving such issues as use of force, high-speed pursuits, and sexual harassment. These issues then tend to generate policies. To often in the rural department, which does not experience a large turn over, the legal aspects of the recruiting process are forgotten. It is the attempt of this paper to

RESERVE

express the legal and financial necessity of following the federal mandates concerning equal employment opportunity.

It is not the intent of this paper or the federal law to force any law enforcement agencies to hire unqualified minorities. The law simply requires that all be treated equally in the hiring process regarding race, color, age, citizenship, religion and physical impairments.

It is my recommendation that the Fredericksburg Police Department establish a written policy outlining the recruiting procedure. It is further recommend that the police department establish testing procedures, that have been validated through relevant research. The b-pad assessment could be a tool used by the department in its recruitment effort. An alternative to the b-pad would be at least using part of the assessment or developing a like tool that would be unique to the Fredericksburg police Department.

The department should also review the written application and oral interview questions currently being utilized to determine compliance with federal mandates. Even though the police department is currently ethnically diverse, the department could have a hard time establishing adverse impact statistics, to comply with the federal mandates. Even though, the cost of hiring someone the right way is more expensive in the short term, it is significantly cheaper then paying high dividends as the result of a court action brought against the agency.

RESERVE

Bibliography

- Austin Police Department, Hiring Process,
<http://www.ci.austin.tx.us/police/pdproces.htm> (6/2/99)
- B-Pad , Test Construction & Validation, <http://www.bpad.com/report1.html> (June 1999)
- College Station Police Department Policy Manual. Chapter 27, (117) (Jan,1999)
- EEOC (42 U.S.C. 12111(10), <http://www.eeoc.gov/laws/ada.html> (page 4), (01/13/99)
- EEOC: Enforcement Guidance on Pre-Employment Inquiries Under the A.D.A., FEP Manual (BNA) 405:7208-09 (No. 748, 1994).
- Fealy, Jim, Commander Austin Police Department "interview" (June 1999)
- Griggs v. Duke Power Company, 401 U.S. 424 (1971).
- Joel, Lewin G. III, Every Employee's Guide to the Law, Pantheon Books New York (1993)
- Lacey, Dan, Your Rights in the Workplace, Nolo Press, Berkeley California (1991)
- Lipsett, Laurence, How to Hire Winners – Legally, HRD Press Amherst, Massachusetts (1994)
- Mears v. Gulfstream Aerospace Corp., 905 F. Supp. 1075, 1080, 5 AD Cases 1295 (S.D. Ga. 1995), aff'd, 87 F.3d 1331 (11th Cir. 1996).
- Pasadena Police Department Application Process (Jan. 1999)
- TCLEOSE, Title 37, Public Safety and Corrections, Chapter 217,
<http://www.sos.state.tx.us/tac/37/VII/217/217.1.html> (6/2/99)
- Turco v. Hoechst Celanese Chemical Corp., 101 F.3d 1090 (5th Cir. 1996)
- Yate, Martin , Hiring the Best, Bob Adams Inc. Holbrook Mass. (1990)
- Wassum v. City of Bellaire, Tex., 861 F. 2d 453 (5th Cir. 1988)
- Whitworth, Bill, "Who Should We Hire", Texas Police Journal vol. 47 no. 2 (February 1999)

RESERVE