

MTA PAHRTS
09.25.15 Hiring & Recruiting

LEGAL SECTION

MAJOR THREAD: Hiring law is all about the timing.

Bona Fide Occupation Qualifications: Employers cannot discriminate based on certain characteristics due to federal and state laws, UNLESS there is an exception for religion, sex, national origin, and age that is necessary to the normal operation of the business. *There is no BFOQ for race.* In ob-gyn, sometimes people request a woman, or female custodians in a women's dorm, or Chinese hires for a Chinese restaurant.

Not a lot of lawsuits from the application process, because applicants don't know why they were rejected (unless an employer states the discriminatory reason).

Equal Employment Opportunity Commission (EEOC) considers sex to be a BFOQ for actors.

Ban the Box: The Department of Human Rights spearheaded this case a couple of years ago so that private employers cannot perform a criminal background check until an interview or conditional offer of employment has been offered. So don't put that on an application. This *does not* apply to volunteers, and you could be declared negligent if you bring in a volunteer with a criminal background to work with vulnerable populations.

Question: Are employers at risk if they do not run background checks?

Depends on the role. Working with youth, financial embezzling.

Question: Are you allowed to say "Applicants with criminal backgrounds will not be considered"?

No, don't do that. But you can state the nature of the job and that all employees will be subject to drug tests or criminal backgrounds before hire. If it is specific to state law to perform a background check, definitely include the statement about background checks being conducted. Just be aware of the timing.

Also don't advertise the position specifically as a BFOQ.

Question: Is it okay to say that we do not budget for out of town talent?

Yes, that's fine. Being from out of town is not a protected class.

Minnesota has a robust human rights act.

Interviewing: Being cautious of the characteristics you are not allowed to ask does interrupt the natural flow of conversation. Some of these characteristics are somewhat outdated, and some are still covered by BFOQ (height and weight or foreign language).

Question: What about directors? If you want to have a female director for a female-written play, can you say that?

No, you should interview everyone and hire the best person of the job. You'd better have more reasons than just gender. Not necessarily a BFOQ. Statements like "Applicants of color strongly encouraged to apply" can be portrayed as voluntary affirmative action (which is discriminatory if you are not federally classified as an AA employer), could be grounds for legal trouble. A way to avoid that is to have a blanket organizational statement saying you do not discriminate. Think bigger about where you post your application, or come up with other

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practical solutions. DO NOT PUT IT IN WRITING. You can still strongly consider it, but definitely don't leave a bad paper trail.

FMLA only applies if you have more than 50 employees.

ADA: Once a job has been offered, you can ask questions, but you cannot ask before unless it is absolutely relevant.

Question: Can you state things like "Successful applicant must be able to lift 50 lbs"?

No, don't do that. for the ADA, the followup question would be "Well, is that absolutely necessary and is there a way to assist that lifting in a reasonable way?" and that is a mouthful so it's better to just not say that. Folks who are currently including those terms just haven't been caught yet.

Fair Credit/Consumer Reports: Unless you are working for a bank, probably do not run this report. The criteria for rejection is not objective, how much debt is "too much." If you do run a background check of any sort, make sure you understand exactly what the report says - maybe the crime has been expunged or satisfactorily rectified. Don't use google, because you won't get the full story.

Alcohol and Drug Testing is extremely stringent in Minnesota. Be very careful. And smoking is still a lawful consumable product, though some employers can say it's mandatory for the job (American Cancer Society, Hazledon, etc), and they need to use very careful language.

Question: Is there anything we should avoid in standard rejection letters?

Just keep it vague.

Question: If I have had to terminate an employee and they used me as a reference, what can I say?

Have a company policy for that - dates of employment and position held is the only info you give out. Checking references is kind of pointless other than to confirm the applicant is not lying. There is a MN release form, but the employee must release it.

Question: Is there a requirement to post job applications in more than just English?

Nope.

Question: If I get a call from someone about a potential actor to cast, how liable am I for saying anything?

Give your opinion, but do not say anything with malicious intent. Defamation cases are very difficult to prosecute. You can call someone an asshole, and that's just your opinion.

Question: What if the character has to smoke?

You can state that the character smokes, but you probably don't want to say "mandatory nicotine/tobacco smoker."

Surveys

Rachel Brown - lynchpin of the project since the beginning. She's a data wizard and curricula design expert.

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The surveys that you may have taken are our attempt to gather data for context, but the resulting survey will be much more comprehensive with community buy-in.

400 people completed the survey, and it was long!

Data Exercise:

- Relation to theatre: one theatre, one job; one theatre, many jobs; base theatre but many others; multiple project based jobs
 - Results: Very even split.
- What would you like your relationship to be?
 - Results: 60% in one role wanted to have just one role. People in one theatre doing many jobs are the ones who want to change, and they want more flexibility in companies. Not a lot of people joined the one theatre one job.
 - Recruiting could really be done internally to increase satisfaction

Rachel Brown was Cobweb in Midsummer as an 8 year old, dabbled in college, then switched to education focus. Started a curricula for Stages and has been freelancing with them for over a decade. Also external program evaluation for them.

The survey's purpose is to start discussions and collect data about who is in MN theatre, and also to collect experiences with HR in MN theatres. Survey was very much developed by steering committee. Each workshop will include some data results, and the toolkit will include technical reports and relevant statistics, and also will launch more surveys.

On average people selected 5 of the 38 areas of work in the last year. And some areas were missed - electricians, carpenters, etc. 15% did 10 or more. For primary work, it shrinks a lot.

Typical path to current position: moment of exposure, education (many mentors still connected), entry (lots of "they took a chance on me and I wasn't prepared and then it led to everything"), expansion. Much burn out or financial/family needs cause folks to step out and sometimes re-enter. Most common threads hard work, relationships, ongoing learners, and easy to work with. "I know someone who knows someone who needs someone." Often one or two key mentors, or sometimes Oscar acceptance speeches. Very much gratitude toward people and unions, or particular theatres who trained them.

For hiring and recruiting, think about more than just one phase of this process.

Level of responsibility Mostly satisfaction of current responsibility increased with age, and the path to achievement is mostly young folks. 19% of under 40s needed help. 10-20% of each age breakout feels overwhelmed.

Some workshops will include data analysis worked thru by attendees, all will include more data.

Contact Rachel with any questions or ideas.

(10 Minute Break)

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Management Best Practices

Andre Coen & Leah Cooper: [The Big Big Picture & Paradigms](#)

- Culture eats strategy for lunch. Culture can be one of the biggest impediments or helpers to strategic plan.
 - Context is the table on which culture eats strategy for lunch. And context changes all the time.
- Responsibility and accountability
- Celebration of success and failure
- East West Players looked at demographics - [51% Preparedness by Tim Dang](#)
 - Said they will reflect demographic shifts of LA into their organizations
- Self evaluation activity reflection:
 - Transitions - staff, vision, individuals
 - How to support the culture you want to create with resources
 - Presenting in the community without representation from the community in leadership
 - “Anything about us without us is not for us.”
 - Challenge/opportunity that people have several roles and take on more than their share of work
- How to make it actionable:
 - Diversity, Equity, Inclusion diagram
 - Equity - intent, how we do work
 - Inclusion - impact, what we do
 - Diversity - law, who is at the table
 - Shapes: the differences and the similarities are included in diversity
 - CHS Stadium has incorporated equity - two bathrooms for women for every one for men is creating equity (a 1:1 ratio is equality)
 - Inclusion: What do our bylaws say about inclusion
 - Mental Models:
 - Right Fit and Low Standards are cop outs
 - Reverse discrimination is about incompetence
 - Microaggressions can decrease effort based on employee (unintentional) discretion
 - Racial orthodoxy is the idea that there is a rank of the races
- Andre will take part in every workshop, and one will be pretty much focused on his work

Rebecca Ervasti & Meghan West: [Invitations and Barriers](#)

- How do you roll out the welcome mat and ensure that candidates are reached and understand the process?
- Half/half interviews - part at desk seated and part walking tour
- Everyone has an employment brand. Do you know what yours is? What do you want it to be? How can you be more intentional about it? It impacts who will apply.
 - Example: Using staff comments on the hiring page “I’ve never worked for any other company that cares so much for its staff and customers.”
- Where do you post?
 - MinnesotaPlaylist - no full time positions currently posted
 - onsite
 - Social media
 - TCG
 - springboard
 - universities
 - mn council of nonprofits

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- Emails to past employees
- Minnesota Jobs.com
- Indeed/Monster/CareerBuilder
 - Indeed will scrape your website to pull postings, which is free
- Community organizations
- It is hard work to post everywhere, but it should be a part of everyone's job to keep their eyes open and be an ambassador for hiring.
- What do you post?
 - Even if you think you'll be hiring internally, it's important to post every position to show that you are available and to get your name seen.
- Outreach and recruitment are year round.
- Leading the job posting: start with a question or an eye catching statement
 - Sample [Position Specification](#)
 - Keep it short!
 - List minimum requirements
- Interviewing:
 - Humans are not rational, we all have biases and we need to know what they are. Team interviews help avoid bias.
 - Be clear on the process and lines of communication.
 - Don't include "car required"
 - Include a salary range

Randy Reyes: Hiring from the Casting Perspective

- These thoughts are things to consider, things that Randy and many struggle with. We have to set our own values and our own morality. Return to "What is your mission?"
 - We're allowed to discriminate based on appearance. But do we need to?
 - What's the morality to ask someone to change their physical appearance for a part (weight, hair, shaving, etc)?
 - Sample of casting a Korean American in a role of a Hmong American and what that meant to the Hmong community, with the knowledge that Mu Performing Arts has a very narrow pool of talent because of their mission
- Casting begins with choosing the play. Then the design team - who has the power, who gets to tell the story. How does that fit your mission? Then the actors - what does that look like, how is it diversity? What is diversity versus cultural appropriation? How will diversity impact the story - what is the power dynamic for the roles cast to non-white actors?
- Perceived barriers: there is not enough people of color, not enough tap dancers. If Mu wants to do a big musical, they have to start very early recruiting from dance organizations at universities.
- Color blind versus color aware/conscious - color blind acts as though they don't see it, but color aware is intentionally impacting the story. "Open Casting" is the most inclusive.
- Audition notice - who is invited and how is the invitation sent? Nontraditional talent won't be going to the usual sites (because there are no roles for them there). Where else can you post and who do you know? What are the pipelines?
 - Be very sensitive of the work you ask of cultural/community partners - "Do you know any Asian female actors?" Are you asking someone else to conduct your casting call? How do you do that?

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- All we have is transparency and clarity of expectations, so communicate it clearly. Is there nudity in the show, what will the audition look like, is it equity or non, what is the stipend, what is the time commitment for the show and for the audition? We're not paying for the performers time at auditions, so be respectful and tell them what to expect.
- For real, what are the parts that are available? If you want an understudy, say so. If you want another role, have the appropriate sides/character description.
- How do you describe the characters, by the role or by what the director is looking for? That is tricky and depends on the story you are trying to tell. If the role calls for a Korean, but you're willing to cast any Asian, say so. If the role calls for men, but you're open to all genders, say so.
- At the audition, make sure there are seats and shelter from the elements.
 - Who is in the room? What is the power dynamic? Are you asking the performers to be vulnerable without appropriate support? Tell the readers what to do if the side has physical contact or kissing. Keep it safe for everyone by setting the expectations.
 - Who makes the final decision? What are the factors you are considering?
 - What is your definition of diversity?
- How do you make the offers?
 - How do you tell people they did not get cast? Do you tell them before offering?
 - How do you value the actors time and talent?
 - How far out will you offer the job, and what happens if something else comes up?
- If you cast a diverse show, and you do not integrate those choices into the room with conversations about power dynamics and honoring the diversity of the performers, you are doing everyone a disservice.

Jean Litner & Amanda Williams: Nitty Gritty on Hiring Non-Actors

- Very different animal than casting.
- What are the questions you can and should ask in the interview?
 - How do you make an applicant comfortable with the process?
 - Don't ask yes or no questions.
- **Candidate Rating Chart and First Interview Questions**
 - For an usher, Customer Service is really important. Don't ask "Do you have customer service experience?" Instead, ask "How have you dealt with angry customers?"
 - This tool is helpful to keep the candidates in the middle fresh.
 - Examples:
 - Office Manager qualifications included consistent schedule. Questions "are you available in this range of times?"
 - Running Crew Member requires sense of humor. Question about favorite crew mishap.
 - Hiring Manager. Question: What kind of questions should we be asking you?
 - Combining questions to get the applicant to start talking more comfortably.
- **Job Description Template**
- **Supervisor Training: Hiring & Recruiting**
- Question: Qualitative vs Quantitative - should the interview remain mainly qualitative, or are there quantitative questions you should ask in the interview?
 - Recommend a balance - quantitative at the beginning helps ease into the qualitative. Some quantitative questions are really necessary.
- Question: What are some other pitfalls?

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- Small talk when you're bringing the person to the room can be a source of many legal traps. Also it's easy to let the applicant take over the interview, but you need to stay on track to be consistent. You can get into trouble discussing anything that isn't related to the job.
- Question: Can you talk more about the dynamics of group interviews?
 - It's best when you have a specific plan, who is asking what and in which order. Preparation is key. Group interviews are more common now, so they are less stressful for applicants. Make sure everyone on the panel is fully aware of the legal traps already covered.
 - It's also helpful to give insight into how the applicant relates to different people differently.

Notes from Leah:

- Don't lie. Be transparent.
- Don't limit your pipeline by saying "I'd love to hire someone like so-and-so, but "they" are all in unions/have jobs/etc." Talk to those people! They will at least have advice for you.
- Empathy is very important. Talk to friends who have been applying about what's been hard for them. Talk to hirers about what they love and hate.

Non-Management

These activities were pulled from stories told in the comments of the survey. Also culled from some asks for people to tell stories about weird power dynamics.

Pogi & Ashley: Exercise in Empathy

- People are here as a cohort, and it's on us to police ourselves.

Hiring Non-Actors:

- What are some potential pitfalls you see?
 - Process includes Candidate 1 waiting while Candidate 2 left and there was personal exchange, lack of professional environment
 - Appropriate physical space and timing between interviews
 - Treating candidates differently
 - Poor customer service
 - Impersonal rejection
 - Surprise questions - some inappropriate and some illegal, none mentioned in the posting
- What are the power dynamics at play?
 - No salary stated and basically making the applicant guess at what to ask for
- What assumptions did you make about the main character?
 - How does it change the dynamic if you think of them as being exactly like you or very different from you?
- Very familiar.
- Appalling.

Casting:

- What are some potential pitfalls you see?
 - Conflicting information
 - Setting up expectations and then not following thru on them
 -

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- What are the power dynamics at play?
 - If you don't know people you can feel like an outsider (by actors and by directors)
- What assumptions did you make about the main character?
 - How does it change the dynamic if you think of them as being exactly like you or very different from you?
- Very familiar.
- Appalling.

Questions: How do you say to a theatre "What you're doing is wrong?" when you maybe want to work with them again?

What are some steps we can take right now to make people feel invited, welcomed, and respected?

- Painful transparency - walk through every step of the interview/audition process and decide
 - Do you want the stage manager to introduce everyone
 - Who greets and when and how
- Recognition of collaboration - the interviewee is giving talent and the employer is giving time. State that up front so it's equal! Give people another chance if they make a choice.
 - Shake hands!
 - Encourage people to take their shoes off.
- Accept the callouts.
- Ask questions as the interviewee.
- Create a procedure sheet for everyone participating in the interviews.

Question: Are there more strategies before the audition/interview when you just see the job posting?

- Do tell the posting if you see someone saying something weird.
- Email the site that is hosting the description to say "Hey, maybe require X or include a section about Y."

Thank you! MTA is trying to provide what the field requests and trying to take the macro view of what the field needs. Generally, right now the performing arts is not doing HR that well. Please invite others. We will ask for your feedback in a survey about this workshop, and also you will receive all the handouts from this workshop in your email.

Let's leverage the smallness of our community to be accountable to making change.