



# Employment Law Update

## Don't Lose Yourself While Trying to Find Them



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# Why Does This Matter?

- Record 4.5 million quit (Bureau of Labor Statistics, Nov. stat)
- Job openings in US=10.9 million jobs on the last business day of December 2021 (Bureau of Labor Statistics)

# **It's All About Culture**

# How To Have Culture Conversations?

- Five steps to transform work culture (SHRM)
  - Have a follow-up
  - Assess what you've learned
  - Have conversations with others
  - Take action
  - Engage employees in solutions

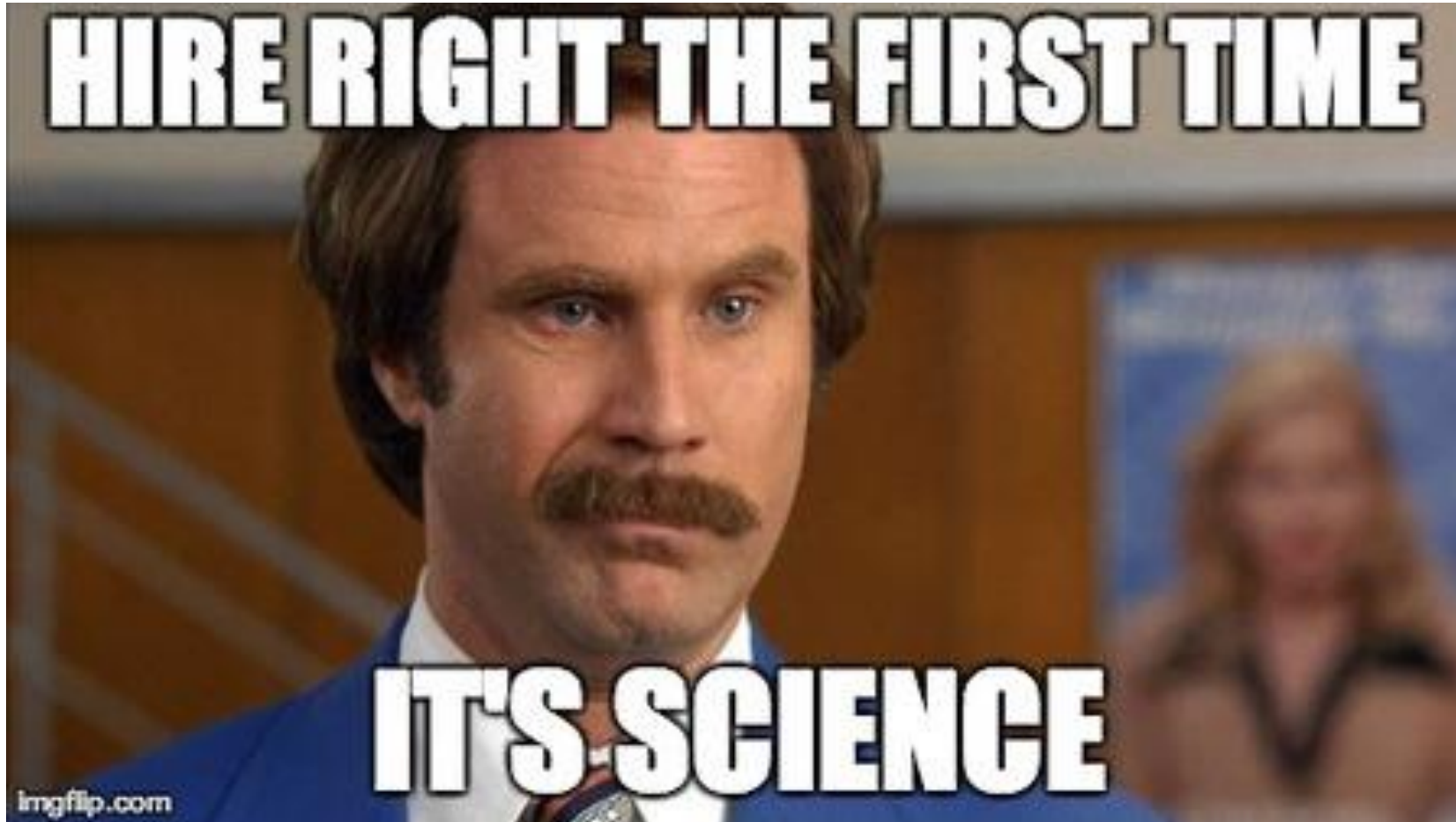
# Challenge

*Commit to have one workplace culture conversation with a peer within your organization (if you have no peers, well done, you are awesome. As a result, replace peer with manager. If you have no managers, just find someone. The guy who fixes the copy machine, the woman on the 3<sup>rd</sup> floor who always tells you that you have a coffee stain on your shirt)*

# Your First Hire



# Is Hiring Really Your Top Priority?



# Free Tip of the Week

- Hire slow, fire quick
- Much easier said than done



# Why Does It Matter?

- Invest in people
- An early mistake can take months/years to fix
- Amazing companies attract awesome employees
- If you think hiring is difficult, wait until you get to firing
- You only get one chance to make a first impression
- Culture starts with the recruitment process

# Strategies in Hiring—Must have both

- Positive/Screen in
  - Culture creation
  - Establishment of expectations
  - Screen in certain qualities of applicants'
  - Competency-based interviews
- Negative/Screen out
  - Screens out problem employees
  - Check on applicants veracity
  - Technical skill requirements

# Start With The Negative/Screen Out

- Background checks
- Credit checks
- Medical examinations
- Interview questions
- Physical agility tests
- Physical fitness test
- Psychological testing
- Drug/alcohol testing
- Degree requirements
- Experience requirements

# Positive Strategies

- Competencies-based determinations
- Skill-based assessment
- Have applicants demonstrate skill or aptitude
- Engage from the beginning
- Design your onboarding process intentionally—applicants/new hires will notice
- Self-evaluate the competencies you need (not just the skills)

# Competency-based Hiring

- Different than pedigree- or degree-based hiring
- Requires more reflection and self-analysis

# Culture Conversation Starter—Hiring Related

**For many hiring managers the talent shortage is very real. How do you feel about hiring an “underqualified” job candidate who shows potential?**

- How do you identify promising “inexperienced” job candidates?
- How can your organization build paths to success for these types of candidates?

# Competencies

Knowledge + Skills + Attitude + Personal Characteristics

# Types of Competencies

- Technical
- Knowledge
- Behavior
- Interpersonal



# Where Do You Find The Competencies Necessary?

# Competency-based Hiring Process

- Intro
- Explanation of job
- Interviewing
- Validation/Verification of technical skills
- Engagement
- Ending

# Competency-based Interviewing

- A structured form of interviewing
- Focuses on a candidate's past experiences, behaviors, knowledge, skills, and abilities
- Involves asking candidates to provide specific examples of when he or she has demonstrated certain behaviors or skills
- Serves as a means of predicting future performance of the candidate
- Provides an opportunity for the applicant to explain what they learned on a given job

# Traditional Questions

- How would you describe yourself?
- What are your greatest strengths and weaknesses?
- Where do you want to be in five years?
- How would your boss describe you?
- If you were a lunch meat, which lunch meat would you be and why?

# CBI

- Tell me about a time when ...
- Give me an example of ...
- Walk me through a time in which you demonstrated ...

# STAR Method

- Situation
- Task
- Action
- Result

# Stay Legal, Folks

- Job Related
- No questions about disability, age, race, religion, national origin, sex, sexual orientation, gender identity, color, marital status, # of kids, work comp history, # of times applicant sued her/his former employer
- Be consistent

# Potential Job Applicants

*“The employment of people with criminal records is an issue workplaces should be talking about. I encourage HR professionals to lead conversations about inclusive hiring at their organizations so other executives can make informed, sensible and beneficial hiring decisions.”*

—Johnny C. Taylor, Jr., SHRM-SCP, President and Chief Executive Officer of the Society for Human Resource Management (SHRM)



## Makes It Less Likely They'll Return to Prison



**2.3 million**  
Americans are incarcerated



**1 in 3** adults  
(or 75 million Americans) have a  
criminal record



Participation in correctional  
education results in a  
**43% reduction**  
in recidivism

**95%**  
of people in state  
prisons **will be released**

**75%**  
of formerly incarcerated individuals **will**  
**remain unemployed a year**  
**after release**

### OTHER KEY FACTS

- The single most important predictor in recidivism is **joblessness**.
- GNP is reduced by **\$78 - \$87 billion** as a result of excluding formerly incarcerated individuals from the workforce.
- States that lower recidivism rates **by just 10%** could save an average of **\$635 million** annually.

**Sources:** "Back to Business: How Hiring Formerly Incarcerated Jobseekers Benefits Your Company," 2017, Trone Center for Justice & Equality and The American Civil Liberties Union (ACLU); "State of Recidivism: The Revolving Door of American Prisons," 2011, Pew Center of the States."

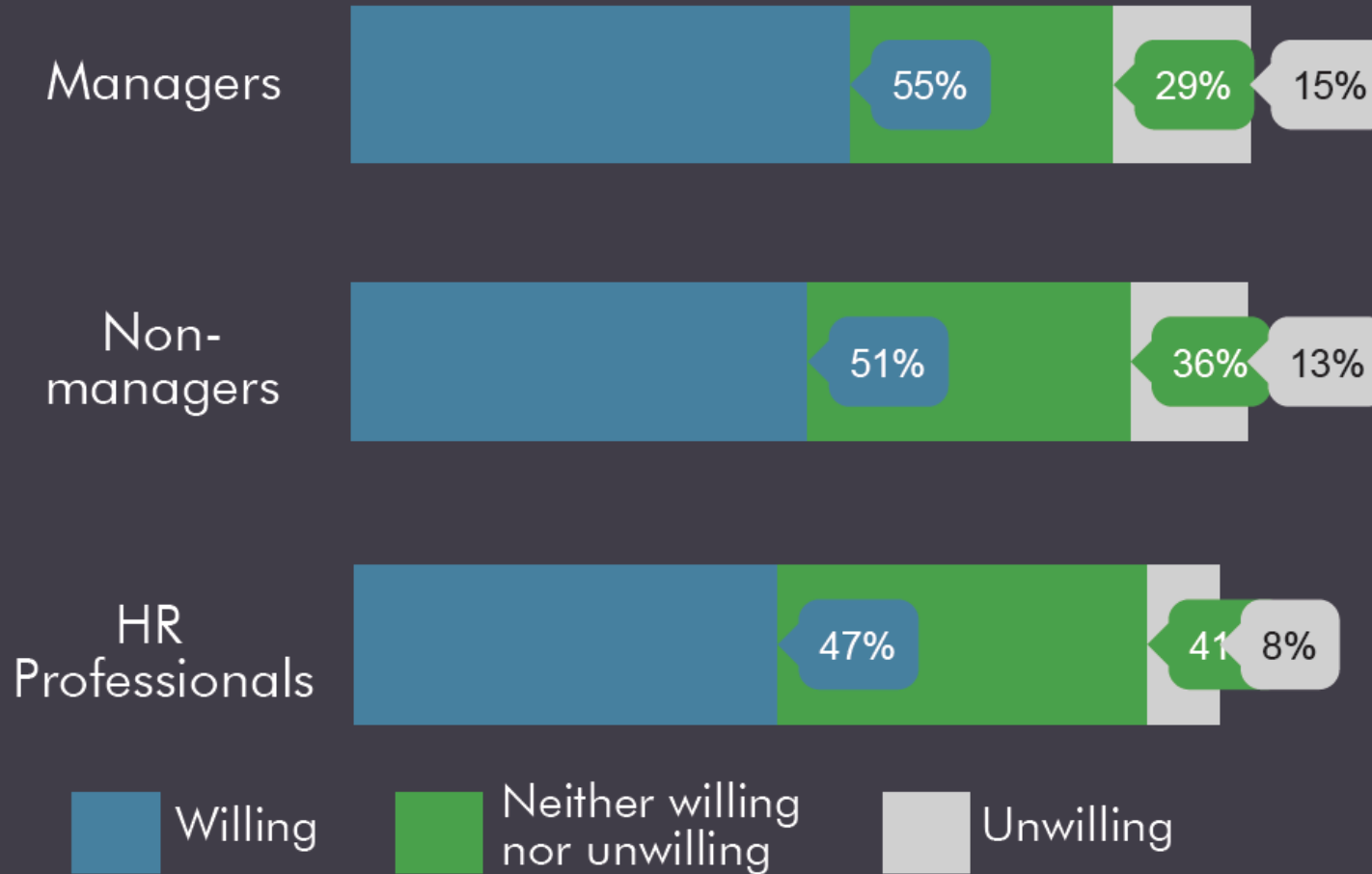
# Impact

- A 2017 report by the National Employment Law Project (NELP) showed that employers did not call back for an interview:
- 40 percent of male applicants with a criminal record, and
- 70 percent of female applicants with a criminal record
  - with 93 percent of black women and 61 percent of Hispanic women less likely to be contacted for an interview or offered a job than white women.

66% of HR professionals report having already hired workers with a criminal record.



About half of workers, at all levels, are willing to work with those who have a criminal record, and most of the rest would decide on a case-by-case basis



# Compliance: Tips for using criminal records in hiring decisions

- **Don't ask about criminal records on the application**

A criminal record is a stigma. The best way to minimize the stigma is to learn about the record as late in the hiring process as possible, when it can be considered in the context of the rest of the applicant's information. This is legally required in a growing number of states and cities and is a good business practice in any location.

- **Conduct an Individualized Assessment**

Finding a relevant conviction is the beginning of the process, not the end. Employers need to consider the applicant's entire record, of which the conviction is only one component. In some cases, someone with a record will have assets such as training, work experience, or outstanding references that make them, overall, the strongest applicant.

- **Consider only convictions and pending prosecutions**

Americans are considered innocent until they are proven guilty. Employers should not consider arrests unless the prosecution is still pending, and the crime is job-related. A qualified background checking company should be able to determine whether an arrest with no disposition is still pending.

# Compliance: Tips for using criminal records in hiring decisions

- **Consider only convictions that are relevant to the job in question**

Not all convictions create a risk in every job. A DUI conviction presents a risk in a job driving a motor vehicle; a theft conviction presents a risk in a job involving unsupervised access to cash or property that easily be converted into cash. The critical question is “does this job present an opportunity for the type of behavior involved in the conviction?”

- **Consider only convictions recent enough to create a risk**

The longer a person goes without committing a new offense, the less likely it is that they will do so. Eventually, they are no more likely to commit a new offense than a person with no prior convictions. The length of time required before the risk is gone varies with type of offense and the age at which it was committed. In general, this ranges from approximately three to ten years.

- **Give the applicant an opportunity to review the record**

Large reporting databases make errors; and context matters. Before making a no-hire decision give the applicant a chance to review the report to identify any incorrect information or provide relevant context. A sexual assault conviction, for example, may have resulted from a teenage boy having consensual sex with a girlfriend who was under the age of consent.

# Thank you!

## Questions? Contact me:

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