



DEPARTMENT OF EMPLOYEE RELATIONS

Issue Date: August 18, 2022

Process for Selecting Candidates for Positions that are Exempt from Civil Service

Purpose:

The purpose of this policy is to ensure the process used to hire non-Civil Service employees is merit-based and objective, ensuring that individuals are hired for their expertise and qualifications and not based upon personal affiliations or other factors that are not job-related.

All selection processes are subject to legal requirements (please refer to the Addendum). Accordingly, the City's hiring processes must be fair and legally defensible, grounded in best practice. To ensure that is the case, the following is the expected process for filling non-civil service (exempt) positions. *Any exception to this process must be pre-approved by the Mayor's Office Chief of Staff or a designee.*

This policy does not apply to positions in the Fire or Police Department, the Common Council City Clerk and the Department of Emergency Communications.

Process:

1. Announce the position

City Service Commission (CSC) exempt positions will be announced internally or externally to allow for a qualified, competitive candidate pool. The DER job announcement format will be used and the job announcement will be sent to the DER for review and to be posted on JOBAPS. The DER staff will ensure that the minimum requirements are reasonable and meet the job-related standard. The position will be posted for at least seven business days.

2. Conduct a Selection Process:

A. Minimum Requirements

The first step in the selection process is to determine which candidates, based upon a combination of education, training and experience, meet the requirements of the job, as indicated on the job announcement bulletin.

B. Review Education, Training and Experience

Depending upon the number of qualified candidates, there may be a need for a review of education, training and experience to determine which candidates will be invited to interview. To make this determination, a set of pre-determined, job-related selection criteria will be established and applied to all candidates. The best practice in conducting such a review is to remove identifying information from the application materials, number the application materials

and have a panel of subject matter experts determine which candidates should proceed to the interview phase of the selection process, based upon the pre-established criteria.

C. Structured Interviews

Structured interviews must be conducted to ensure the same information is obtained about each candidate by asking standardized questions and developing rating criteria that assess the knowledge, skills, abilities and personal characteristics (KSAOs) necessary to perform the job at the time of hire. Consistency is key in maintaining fairness; while follow-up questions can be asked, they should be in line with the KSAO being assessed by the question. Depending upon the number of candidates interviewed, it is recommended that a second interview is conducted for final candidates.

- **Rating Panels for Review of Education, Training and Experience & Structured Interviews**

Objective, qualified rating panels are critical to ensuring the best candidate is selected.

Rating panels will include the following:

- **Diversity:** Each panel will include both gender and racial diversity.
- **Objectivity:** Each panel will include individuals from outside the department and/or outside City employment. Consideration must be given to ensure that panel members are not beholden to a certain outcome in the selection process (e.g., contractors awarding a position to an employee with whom they have done business professionally or close friends of a candidate or the hiring manager). Additionally, if subordinate managers are included on a hiring panel, the hiring manager must be mindful that those employees may not feel free to express their objective opinion, particularly if it is different from that of their manager.
- **Subject Knowledge:** Panel members must be subject matter experts; this can include individuals who are experts in assessing customer service, interpersonal and leadership skills. Panel members should generally be in a position equal to or above the level at which the hire is being made.
- **Multiple Raters:** It is recommended that panels be comprised of three or four raters. Multiple raters increase objectivity and reliability; having too many raters creates difficulty in arriving at consensus and provides diminishing returns (i.e., using more than four raters has not been shown to be more beneficial from a reliability perspective).

D. Final review:

Prior to the hiring manager making a job offer, the DER Certification unit will review all recommended hires to ensure they meet the minimum requirements of the position. Situations in which the DER staff determines that the candidate does not meet the minimum requirements will be addressed between the hiring manager and the Chief of Staff or a designee, prior to an offer being made. For positions in high-level management or leadership, the hiring manager must schedule a final interview for the candidate with the Mayor and/or Chief of Staff prior to making a job offer.

Summary:

Job related, merit-based selection processes are integral to maintaining a strong organizational structure and to ensuring fairness in hiring. Templates for the selection processes as well as further guidance can be obtained from the Staffing Division, by calling 414.286.8643 or emailing krurban@milwaukee.gov.

Addendum: Laws, Regulations and Caselaw Relevant to Employee Selection

Law	What it prohibits
Age Discrimination in Employment Act (1967)	Discrimination against persons aged 40 or over.
Americans with Disabilities Act Amendment Act (2009)	Discrimination on the basis of disability; excluding an otherwise qualified person who can perform the essential functions of the job with or without a reasonable accommodation.
Equal Pay Act (1963)	Sex based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions.
Pregnancy Discrimination Act (1978)	Discrimination on the basis of pregnancy, childbirth or related medical conditions.
Title VII of the Civil Rights Act (1964)	Discrimination on the basis of race, color, religion, sex and/or national origin.
Uniform Guidelines on Employee Selection (1974)	Selection of candidates using factors that are not job-related; provides guidance on assessing adverse impact and proving job-relatedness of selection process components.
Wisconsin Fair Employment Act (amended 2009)	Discrimination on the basis of age, arrest/conviction record, ancestry, color, creed, disability, genetic testing, honesty testing, marital status, pregnancy or childbirth, sex, sexual orientation and/or use or nonuse of lawful products off the employers' premises during nonworking hours.
Chapter 109, Equal Rights, of the Milwaukee Code of Ordinances (amended 2021)	Discrimination on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, protective hairstyle, past or present membership in the military service, HIV status, domestic partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories.

Certain Supreme Court decisions have set the legal and procedural expectations related to hiring employees. The most significant selection related decision is *Griggs v. Duke Power* (1974), which established that all selection processes must be job-related and the burden of proof is on the employer to prove job-relatedness if there is adverse impact upon a racial or ethnic group. Adverse impact means that even if there is no discriminatory intent, an employer may not use a job requirement that functionally excludes a member of a certain race or ethnicity if the requirement has no relation to measuring the performance of job duties. Assessment of adverse impact and related guidance is found in the EEOC's **Uniform Guidelines on Employee Selection Procedures**, which apply to all selection procedures used to make employment decisions, including interviews, review of experience or education, resumes and evaluations of performance.