



Mineral



Question of the Week

November 22, 2023

Question

We would like to add a working interview to our selection process. Is this permitted and are there other options to help us finalize our selection?

ANSWER

Yes, you can have a working interview as part of your selection process, but there's a big caveat. If you have the candidate do "real work" that is useful to your business, you'll need to hire them as a temporary employee, have them complete new hire paperwork, pay them at least the minimum wage, and then jump through any termination hoops if you don't hire them. You can't lawfully classify them as an independent contractor for this purpose. Here are a few more things keep in mind:

- It will likely be most convenient for you to write a check to the candidate at the end of the working interview. But if not, make sure they get paid within the time frame required by your state's final pay laws.
- If a candidate is injured during the working interview, you may be liable for a workers' compensation claim.
- You'll want to be clear with the candidate that the working interview is not an offer of employment. When the work is completed, give them a timeline for when they can expect to hear back from you.

If you'd prefer to avoid the hassle of hiring candidates as temporary employees, there are alternatives that can yield similar results. Here are two we recommend:

- Test candidates' skills by assigning them a task to complete. This task should be something that can be completed quickly and that doesn't benefit the organization—it shouldn't be work that needs to get done. For example, you could have them process part of last week's (redacted) payroll or have them write a particular type of client communication that has already been sent.
- Allow candidates to observe a current employee doing the job for an extended period. Job shadowing shows candidates what to expect in the role and what sorts of tasks they'd be expected to perform. This will help them gauge their likelihood of success in the role.

This Q&A does not constitute legal advice and does not address state or local law.