



This is “Manager’s Ethics: Getting, Promoting, and Firing Workers”, chapter 8 from the book [Business Ethics \(index.html\)](#) (v. 1.0).

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Chapter 8

Manager's Ethics: Getting, Promoting, and Firing Workers

Chapter Overview

Chapter 8 "Manager's Ethics: Getting, Promoting, and Firing Workers" examines some ethical decisions facing managers. It considers the values that underlie and guide the hiring, promoting, and firing of workers.

8.1 Hiring

LEARNING OBJECTIVES

1. Locate ethical tensions affecting the breadth of a hiring search.
2. Define applicant screening and mark its ethical boundaries.
3. Define applicant testing and consider what makes an appropriate test.
4. Draw the lines of an ethical interview process.

Help Wanted, but from Whom?

The Central Intelligence Agency's hiring practices are widely known and well depicted in the movie *The Recruit*. After discretely scouting the special capabilities of a young bartender played by Colin Ferrell, Al Pacino catches him at work, orders a drink, carries on a one-sided and cryptic conversation, performs a magic trick with a ripped newspaper, announces that "things are never quite as they appear," and finally admits that he's actually a job recruiter.

Ferrell seems annoyed by the man's presence.

Pacino returns to the newspaper, pulls out a page covered by an ad announcing "Two Day Specials." He circles the letters *c*, *i*, and *a* in "Specials" and walks out. Colin Ferrell follows. R. Donaldson (director), *The Recruit* (Burbank, CA: Touchstone Pictures, 2003), film.

Actually, that's not true. The CIA doesn't hire that way. They advertise on CareerBuilder just like any other company. You can understand, though, why they wouldn't mind scouting out their applicants even before allowing people to apply; they don't want to end up hiring double agents.

Something like that happened soon after Procter & Gamble grew jealous of a competitor's hair-care products. Salon Selectives, Finesse, and Thermasilk were all doing so well for Unilever that P&G contracted people to get hired over at Unilever and bring back secrets of their success. The corporate espionage—which P&G executives characterized as a "rogue operation"—led to a multimillion-dollar settlement between the companies and left behind the lesson that when you're the boss and you're hiring, you've got to make sure that the people you bring in will be loyal to the company. "Fortune: P&G Admits Spying on Hair Competitors," *Business*

Courier, August 30, 2001, accessed May 24, 2011, <http://cincinnati.bizjournals.com/cincinnati/stories/2001/08/27/daily43.html>.

The problem is you've also got to make sure that they're going to do good work, the best work possible.

Between the two requirements there's a tension stretching through every decision to hire a new worker. On one side, you want to limit the people you even consider to those few who, for one reason or another, you know won't be a total disaster. On the other side, no company can survive playing it safe all the time; generally, the corporations able to hire the best talent will win over the long run. And one way to get the best talent is to cast as large a net as possible, let a maximum number know that a position is available, and work through the applications carefully no matter how many pour in.

Conclusion. Hiring employees can be safe or risky depending on how broadly you announce a job opening.

Three Strategies for Announcing a Job Opening: Nepotism, Internal Public Announcement, Mass Public Announcement

Start on the safe side of hiring. **Nepotism**¹ is granting favored status to family members. In the case of hiring, it means circulating information about open jobs only to your relatives. Naturally this happens at many small businesses. A sales representative at a small firm importing auto accessories meets a woman at work. She's also a rep. Marriage follows. A year later he decides to quit his job and strike out on his own with a new website project that reviews and sells the same kind of car products. Things go well, page hits climb, sales increase, and soon he needs help so he hires...his wife. They've worked together before, and they both know the field. Most important, the risk is minimal. Since he's waking up with her in the morning he can figure she's not going to skip out on work just because it's a nice spring day. And is she going to steal office supplies? A little money from the payroll? An important client? Probably not. This is a case where nepotism makes sense.

But what about the other way? What if the husband's solo venture flops, and at the same time, his wife's career flourishes. Now he needs a job, and she's got the power to hire. A job opens up. Probably, she's got junior staff ready for the post, but can she push them aside and bring her husband in?

1. In the case of hiring, announcing an open position only to members of the extended family.

There *is* some justification: she's worked with him before, and she knows he performs well. Plus, as a boss of his own (failed) business, he's obviously got

leadership experience and he has demonstrated initiative. All that counts for something. But if she goes with him she's going to breed resentment in her group. You can hear it:

"Hey, what do you need to get a promotion around here?"

"A last name."

And

Now you might be asking why nepotism bugs me so much. It's the presumption. It's the attitude. It's just one more example of how life isn't fair. Am I jealous? I don't know. I guess I take advantage of the company in other ways...LOL. What can I learn from this? That life is good if you're born into the right family? That I need to control my attitude and stop letting petty crap drive me to drink? Marti's Musings, "Nepotism Sucks," August 30, 2004, accessed May 24, 2011, http://businessethicsworkshop.com/Chapter_8/Nepotism_sucks.html.

That last paragraph comes from a blog entry titled "Nepotism Sucks." It does for his company too: few firms can be successful with employees musing about how they "take advantage of the company" while they're punctuating comments about their work with LOL. As for the central issue, he's right. Basic fairness isn't being honored: people are getting considered for a job because of who they're related to, and it's not this blogger's fault that his last name is wrong.

On the other hand, "Is Nepotism So Bad?" titles an article on Forbes.com that compiles a list of large companies—including *Forbes*—where nepotism has been the norm...and successful. According to the article, experts estimate that executive-level nepotism works out about 40 percent of the time. What are the advantages to bringing in your own? Familiarity with the business and trust are noted. Another advantage is also underlined: frequently, relatives don't want to let their own relatives down. Sons work harder for fathers, cousins for cousins, brothers for sisters. There's a productivity advantage in nepotism. Arguably, that factor weighs more heavily than the bitterness arising when deserving workers already employed don't get a chance to apply for a job because it already went to the boss's sister-in-law. Klaus Kneale, "Is Nepotism So Bad?," *Forbes*, June 20, 2009, accessed May 24, 2011, <http://www.forbes.com/2009/06/19/ceo-executive-hiring-ceonewtork-leadership-nepotism.html>.

Finally, at least theoretically, there's a creative solution to the bitterness caused by nepotism: make virtually every post a nepotism-first position. Oil-Dri, a producer of

absorbent materials, celebrated its fiftieth anniversary with a party for all employees. "Would everyone," the group was asked at one point, "who is related to someone else in the company please stand up?" Of the seven hundred employees, about five hundred left their seats.

Internal public job announcements² occupy a middle spot on the continuum between playing it safe (only letting selected people you're *certain* will be loyal and at least moderately capable know when a job is available) and going for the best talent (broadcasting the post as broadly as possible and accepting applications from anyone).

An example of an internal public job announcement comes from the *National Review*, a political magazine and website run by the kind of people who wear suits and ties to baseball games. Their blog is called *The Corner*, and the magazine's editors fill it with thoughts and arguments about the day's political debates in Washington, DC. There's also a bit of insider humor, provocation, and satire tossed back and forth between posters. If you keep reading for a few weeks, you'll start to sense an intellectual soap opera developing along with the libertarian-conservative politics; there's an undercurrent of shifting alliances, snarkiness, and thoughtful jabs.

You'll also notice that *National Review* places job announcements on *The Corner* blog. There aren't a lot of openings, but every couple of weeks a little announcement appears between posts.

The National Review Online is seeking an editor with web capabilities. Send applications to ____@nationalreview.com.

It's pretty ingenious. The *only* people who are going to be reading *The Corner* are

- *sincerely* interested in the wonkish subjects these guys publish about;
- not out there just looking for *any* job (at the time they see the announcement, they're not looking for a job at all because it's not a job site);
- compatible on a personal level with the *National Review* crew. The posters let personalities shine through, and if you don't have chemistry with their style of humor and talk, you're simply not going to be reading them.

2. Announcing an open position only to individuals already closely linked to an organization.

What an internal public job announcement seeks to do is get the most applications in the hopper as possible, and so the announcement is published on a free Internet page that anyone can see. That's the public part. *But* because the page is only

commonly followed by people who are *already inside* the world of public policy defining the employees at *National Review*, the bosses don't need to worry about the wrong kind of people sending in résumés. That's the "internal" part. Recruiters can get a lot of applicants—increasing their chances of finding really talented people—without worrying too much about a bunch of lefties who really prefer websites like *Daily Kos* trying to fake their way into the organization.

Mass public job announcements³ are just what they sound like. You need someone and you post the position at Monster, CareerBuilder, TheLadders. Here you're giving up confidence that applicants will fit into the organization naturally, and you're even risking corporate spying moles like those that infested Unilever. In exchange, however, you're getting the broadest selection possible of people to toss their hat into the ring, which maximizes your chances of finding stellar work performance.

Beyond the advantage of many applicants, there are good ethical arguments for mass public job announcements. The simplest is *fair play*: everyone should get an equal opportunity to take a run at any job. Just past that, there are concerns about discrimination that are eased by mass announcements. While there's no reason to launch charges of inherent racism at nepotistic hiring practices, it might well be true that if a small business is initiated by an Asian family, and they start hiring relatives, the result at the end of the day is a racial imbalance in the company. Again, no one is equating nepotism with racism, but the *appearance* can develop fairly easily whenever job announcements are not publicized as widely as possible. The parallel case can be made with respect to internal public job announcements. If 90 percent of the people who come in contact with the "help wanted" message happen to be women, sooner or later, there's going to be some guy out there who complains. So, one argument in favor of mass announcements is the stand it helps take against illegal and unethical discrimination.

Another argument for mass announcements is *reciprocity*. If a company is trying to sell a product to the general public, to anyone who's willing to pay money for it, then shouldn't they allow everyone a shot at becoming an employee? It doesn't seem quite right to profit from anyone—to try to sell, say, a car to anyone who walks in the door—and then turn around and not give all those consumers a decent chance at earning a living there at the dealership.

Conclusion. Announcing a job opening is not automatic. You can announce the spot more publicly or less so. There are advantages and disadvantages to the various approaches, but there's always an ethical responsibility to clearly account for the reasons why one approach is selected over another.

3. Announcing an open position widely and indiscriminately with the idea of maximizing knowledge of the available post and applications for it.

Ethical Perils of Job Announcements

Ethical perils of job announcements include

1. describing a position in ways that don't correspond with the reality,
2. announcing a post to people who really have no chance for the job.

Once you've identified the demographic pool you'd like to recruit from, it's easy to oversell the job in the announcement you post. The most blatant cases—*You can earn \$300 per hour working from home!*—are obvious frauds, but even sincere attempts can cause misunderstandings. Say a job requires “occasional travel.” Fine, but does that mean occasionally during the year or occasionally during the month?

The much more severe case of insincerity in job announcements is posting one before an audience that has no reasonable chance of getting the job. When Hooters posts a “server wanted” sign, we all know what they're looking for just like when the rough bar next door advertises for a bouncer. But what if it's a formal restaurant advertising for a waiter? If the place is across town, you can't just drop in to check out the kind of people they hire. So maybe you go through the application process and make the telephone calls and finally go in for the interview. As you walk through the door, the first thing they check out is your weight profile. Then your jawline, haircut, eyes, and the rest. They want to see how you compare with the other waiters who all look like they model on the side.

If you're lucky, you see yourself fitting right in, but if you're like most of us, you know the interview's over before it started; the whole thing has been a huge waste of time.

Now put yourself on the other side. As the restaurant manager trying to fill the position, you know you *should* put the requirement that applicants be devastatingly handsome into the ad. The duty to be honest requires it. The duty to treat others as an end and not a means requires it. The idea that our acts should be guided by the imperative to bring the greatest good to the greatest number requires it. Almost every mainstream ethical theory recommends that you tell the truth about what you're looking for when you announce a job. That way you don't waste peoples' time, and you spare them the humiliation of being treated as irrelevant. So you should want to put in the ad something about how only potential movie stars need apply.

But the law virtually requires that you *don't* put the line in. If you explicitly say you'll *only* consider exceptionally attractive men for your job, you open yourself to

a slew of lawsuits for unfair and discriminatory hiring practices. In fact, even Hooters isn't safe. In 2009 the chain was sued by a Texas man named Nikolai Grushevski because they refused to hire servers who looked, well, like him. When it gets to that point—when hairy guys can get away with calling lawyers because they aren't hired to serve food in short shorts and halter tops—you can understand why restaurants don't want to publicly admit exactly what they're looking for. "Texas Man Settles Discrimination Lawsuit Against Hooters for Not Hiring Male Waiters," *Fox News*, April 21, 2009, accessed May 24, 2011, <http://www.foxnews.com/story/0,2933,517334,00.html>.

Bottom line: if Hooters just comes out and states what it is that makes their kind of employee, they can get sued. So they're much better off just making the announcement ambiguous. That way, when it turns out that no hairy guys ever seem to get hired, they can always say it's because they didn't seem so adept at dodging tables while shooting around with trays of beers and sandwiches. Or whatever. One lie is as good as another so long as it keeps the restaurant out of the courtroom.

For managers, this is a tight spot. They're caught between what's right and the law. In ethical terms, they're stretched between two conflicting duties: to tell the truth and to get the famous Hooters Girls into the restaurant.

Screening

Reducing a large pool of applicants to a manageable selection of people for serious consideration is **applicant screening**⁴, sometimes referred to as filtering. Screening begins with the job announcement. Requirements like "three or more years of experience" and "willingness to work the night shift" go a long way toward eliminating applicants.

It's impossible, though, to completely define the perfect applicant beforehand, and even if you could, there's almost always going to be someone like Nikolai Grushevski who shows up. So screening continues as the preliminary review of applications and applicants to see who can be quickly crossed off the list without any serious consideration.

4. Reducing a large pool of applicants to a manageable selection for serious consideration. Filters—for example, a certain educational level—eliminate inadequate applications rapidly.

Legally, who can be crossed out? The default response is no one. In its broadest form, civil rights employment law guarantees equal opportunity. *All* applicants deserve to be considered and evaluated *solely* on their ability to do the job, and the federal government's Equal Employment Opportunity Commission is stocked with lawyers who are out there doing their best to make sure the rules are upheld. For managers, that means they've got to take all applicants seriously; they've got to

pursue interview questions about ability, training, experience, and similar. Now, this is where a guy like Grushevski can come in the door and say, "Look, I can deliver a round of burgers and beer as well as any woman." He's probably right. Still, he's not the right person for the job; there's no reason for a manager to lose valuable time dealing with him.

Similarly, a wheelchair-bound man shouldn't be a beach lifeguard; an eighty-year-old shouldn't be flying commercial jetliners; the seven foot one and 330-pound Shaquille O'Neil isn't going to be a horse jockey. There is a legal way for companies to summarily screen out inappropriate applicants: by appealing to **bona fide occupational qualifications (BFOQs)**⁵. BFOQs are exceptions granted to equal opportunity requirements. A form of legalized discrimination, they let managers cross off job applicants for reasons that are normally considered unfair: gender, physical size, religious belief, and similar. (As a note, race isn't allowed to be considered a BFOQ.)

When do bosses get this easy way out? When they can show that the otherwise discriminatory practices are required because of a *business' nature*. So while it's clear that Shaquille O'Neil's intimidating size doesn't mean he'll be a bad accountant, the nature and rules of horse racing require that riders be diminutive, and that means Shaq would be a disaster. A horse owner can show that the job *requires* a physically little person to be successful. Thus size becomes a BFOQ and a legitimate way of screening applicants for that particular job.

A maker of men's clothes can reasonably screen out women from the applicant pool for models—but they can't eliminate female applicants from consideration for a *sales* position. Or they could, but *only* if they could show that maintaining a masculine public image was integral to the success of the company. For example, you could imagine a company called Manly Incorporated, which sold products based on the premise that every employee was a quality control officer.

Along similar lines, a Catholic school may screen atheists from the search for a teacher, but it's harder to justify that filter for janitors. At the airport security line women can be assigned to pat down women and men to men, but either may apply for the job to hand check the carry-on bags.

Another common screen is **education**⁶. Imagine you have just opened a local franchise of Jan-Pro, which offers commercial cleaning services to car dealerships, gyms, banks, churches, and schools. "2011 Fastest-Growing Franchise," *Entrepreneur*, accessed May 24, 2011, <http://www.entrepreneur.com/franchises/fastestgrowing/index.html>. What level of education will you be looking for in potential employees? Since the job involves mixing chemicals, it seems like requiring some basic

5. Exceptions granted to equal opportunity requirements when a specific qualification is essential to the job.

6. Screening job applications by eliminating those not meeting educational requirements. The candidate may be either undereducated or overeducated for the post.

education is a fair demand, but is a college degree necessary for the work? You may have one as a manager, but that doesn’t mean you should necessarily demand that much from employees. And on the other side, is it fair to screen out someone who’s got *too much* education, say a master’s degree in chemistry? It does seem reasonable to suspect that this kind of person will soon become bored pushing a vacuum over carpets.

Then again, do you *know* that will happen? Is it fair to screen based on what you *suspect* might occur?

Another type of screening catches **high-risk lifestyles**⁷. Smoking is one of the most often cited, and the Humana company in Ohio is one of a growing number that’s directly banning smoking—on or *off* work—by new employees. Megan Wasmund, “Humana Enforces Mandatory Stop Smoking Program,” *wcpo.com*, June 16, 2009, accessed June 7, 2011, http://www2.wcpo.com/dpp/news/local_news/Humana-Enforces-Mandatory-Stop-Smoking-Program.

These healthy lifestyle policies set off firestorms of ethical debates. With respect to smoking and in broad strokes, the company has an interest in prohibiting smoking because that should mean healthier workers, fewer sick days, lower health insurance premiums, and higher productivity. In short: better working workers. On the other side, job applicants (at least the smokers) don’t believe that they’re less productive than everyone else, and anyway, they resent being excluded for a recreational habit pursued on their own time. In long discussion boards—there are hundreds online—the debate plays out. Here’s one exchange from a typical board:

bonos_rama:	I wouldn’t hire anyone that has a habit of leaving their desk every hour to stand outside for 10 minutes. Doesn’t matter if it’s to smoke, drink coke, or pass gas that they’re leaving, it’s bad for productivity.
Mother of a Dr.:	But it’s OK to stand by the coffee pot and discuss sports and politics? Productivity actually improves when you get away from the computer every hour.
matt12341:	Even discounting the productivity argument, smokers tend to have more long-term health problems, leading to higher insurance premiums so companies end up paying more.
jamiewb:	What if we apply this logic to people who are overweight? What about people who have a family history of cancer? Or a higher incidence of diabetes? As long as it doesn’t impact job performance, I don't think it’s fair to refuse to hire smokers.
happily-retired:	I think it is a great idea to not hire smokers. Up next should be obesity, as it leads to diabetes, heart problems, joint

7. Screening job applications by eliminating those whose lifestyles pose risks to work performance. Smoking is a common example.

	problems, etc. Companies following that path would be demonstrating good corporate citizenship by fostering a healthier America.
Zom Zom:	Yes, the good citizenship of fascism. Now my employer has the right to dictate what I do with my body? “Land of the free,” unless your boss doesn’t like the choices you make. “Humana: We Won’t Hire Smokers,” <i>Newsvine.com</i> , June 16, 2009, http://sorrelen.newsvine.com/news/2009/06/16/2935298-humana-we-wont-hire-smokers .

You can see that underneath the back-and-forth, this is ultimately a debate about ethical perspectives. One side tends toward a utilitarian position: the greater good in terms of health and related issues justifies the filtering of smokers in hiring decisions. The other side tends toward a fundamental rights position: what *I* do with *my* time and body is my decision only. Both sides have strong arguments.

Criminal record screening⁸ is another common filter for job applicants. Most states won’t allow employers to deny someone fair consideration for a job *only* because of a prior criminal conviction. There’s wiggle room, though. In New York, Article 23-A of the correction law certifies that employment *may* be denied if

- there’s a direct relationship between the criminal offense committed and the employment sought,
- the applicant would pose an unreasonable risk to property or the safety or welfare of others.

Those are big loopholes. The first one means the Brinks armored car company can legally refuse to consider ex-bank robbers for a position. It may also apply to the shoplifter who wants to be a cashier or the drug dealer who wants a job in the pharmacy.

The second exception is still broader and applied in *Grafter v. New York City Civil Service Commission*. *Grafter v. New York City Civil Service Commission*, 1992. In that case, the Fire Department of New York refused to hire Grafter because he’d been caught drunk driving on his last job. A potentially drunken fireman *does* seem like a risk to the welfare of others. Pushing that further out, the same would probably go if he applied to be a taxi driver. In fact, the list of jobs that may seem dangerous for others if the worker is drunk extends a long way, probably everything in construction, transportation, or anything with heavy equipment. So the law *does* allow employers to resist hiring convicts across a significant range of wrongdoing.

8. Screening job applications by eliminating those whose past crimes suggest risks in performing job duties.

Finally, the basic ethical tension pulls in three competing directions for any manager facing a criminal hiring decision:

1. **The ethical responsibility to recovering criminals.** Rehabilitation (via honest work) is good for ex-convicts.
2. **The manager's responsibility to the company.** Managers need to avoid problems whenever possible and keep the machine running smoothly so profits flow smoothly too.
3. **The company's responsibility to the general public.** If a taxi syndicate is hiring ex-drunk drivers, you've got to figure something's going to go wrong sooner or later, and when it does, the person who put the driver behind the wheel will be partially responsible.

Social media⁹ is another potential filter. Fifty-six percent of millennials believe that the words and pictures they put on Facebook and Twitter shouldn't be allowed to factor into hiring decisions. Wei Du, "Job Candidates Getting Tripped Up By Facebook," *MSNBC.com*, August 14, 2007, accessed May 24, 2011, <http://www.msnbc.msn.com/id/20202935/page/2>. Recruitment officers, they're saying, shouldn't be going through online photo albums to check out the kinds of things you and your buddies do on Friday nights.

From the employers' side, however, the argument in favor of checking the pages is simple. If an applicant is sufficiently incautious to leave pictures of massive beer funnel inhalations available for just anyone to see—and if they do that while they're trying to put their best face forward as job seekers—then God knows what kind of stuff will be circulating once they've got a job. As a manager, it's part of *your* job to protect the company's public image, which means you've got to account for clients and others maybe running the same Google and Facebook searches that you are.

It's an easy scenario to imagine: you hire someone with a flamboyant online life. Soon after, a client working with her gets nose, does a Google image search, and what comes in at the top of the list is a picture of your new employee slamming beers, chain-smoking cigarettes, or maybe inhaling something that's not legal. This isn't good and the person who looks really bad is the supposedly mature manager who allowed the whole thing to happen by hiring her.

Of course there's always the standard but still powerful argument that what employees do after hours is their own business, but one of the realities inherent in the Internet is that there is no such thing as "after hours" anymore. Once something goes online, it's there all the time, forever. Managers need to take account of that reality, which might mean rethinking old rules about privacy.

9. Screening job applications whose social media pages—Facebook and similar—suggest irresponsibility or unfitness for a post.

Testing

Once an ad has been placed, and applicants have been pooled, and the pool has been screened, the real hard work of hiring begins: choosing from among apparently qualified people. One tool used in the selection process is **applicant testing**¹⁰. There are various sorts of tests, but no matter the kind, for it to be legitimate, it should itself pass three tests. It ought to be

- **Valid.** The test must measure abilities connected to the specific job being filled. A prospective roadie for Metallica shouldn't be asked to demonstrate mastery of Microsoft Excel, just as there's no reason to ask an accountant to wire up his cubicle with speakers blasting 115 decibels.
- **Normalized.** The test must be fair in the sense that results are adjusted for the circumstances of the testing session. If you're checking to see how frequently applicants for the post of TV weatherman have predicted sunshine and it turned out to rain, and one woman gets tested in Phoenix while another takes Seattle, it's pretty easy to see who's going to win in terms of raw numbers. Those numbers need to be adjusted for the divergent levels of difficulty.
- **Constant.** The results any test taker achieves over time should be similar. Just like a broken clock is right twice a day, an applicant for an interior design job who happens to be color-blind might once in a while throw together a carpet-sofa combination that doesn't clash. A good test eliminates the lucky hits, and also the unlucky ones.

Of the many kinds of hiring tests now in use, the most direct try to measure the exact skills of the job. **Skill tests**¹¹ can be simple. They're also relatively easy to control for validity, normalization, and constancy. For example, applicants for a junior-level position in copyediting at a public relations firm may be given a poorly written paragraph about a fictional executive and asked to fix up the spelling and grammar.

Psychological and personality tests¹² are murkier; it's more difficult to show a direct link between the results and job performance. On one side, you've got a test that probes your inspirations and fears, your tastes and personal demons. On the other side, the test's goal is to reveal how well you can handle plain work assignments. Here's an example of the disconnect. The following is a true-or-false question that Rent-A-Center placed on one of its employee application tests: I have no difficulty starting or holding my bowel movement. Martin Carrigan, "Pre-Employment Testing—Prediction of Employee Success and Legal Issues," *Journal of Business & Economics Research* 5, no. 8 (August 2007): 35–44.

10. Applying exams that are designed to predict an applicant's success in a post.
11. Applicant tests that reproduce jobs tasks.
12. Applicant tests attempting to measure mental state and suitability for job tasks.

Well, it's hard to see the link between bathroom performance and the ability to rent washer and drier sets. Rent-A-Center wouldn't be asking, though, if they didn't think the link was there. And they could be right; there may be some connection. One of the firmest sources of belief in the link between personality profile and job performance is the very interesting Minnesota Multiphasic Personality Inventory (MMPI). That specific test is the origin of the bathroom question. Other true-or-false choices on the long test include the following:

- I am very attracted to members of my own sex.
- Evil spirits possess me sometimes.

Now, the MMPI is a real test with a long and noble history. One of the things it tries to do is establish *correspondences*. That is, if we take a group of successful executives at Rent-A-Center and we discover that they nearly universally have trouble in the bathroom, then it may make sense to look for people who suffer this discomfort when looking to recruit future company leaders. As for the *why* question—as in *why is there a link between bathroom habits and success?*—that doesn't matter for a correspondence test; all that matters is that some link is there. And if it is, then you know where to look when you're hiring.

Theoretically, correspondence testing makes sense. Still, it's hard to know how *applicants* are going to react to questions about sexual attraction and evil spirits. Obviously, some are going to find the whole thing too weird and not turn in responses that actually match their profile. As for applicants and employees of Rent-A-Center, they filed a lawsuit. *Karraker v. Rent-A-Center*, 2005.

Inescapably, correspondence-type personality tests are vulnerable to lawsuits because they're explicitly based on the premise that no one knows *why* the results indicate who is more and less suitable for a post. The administrators only know—or at least they think they know—that the correspondence is there. It's not obvious, however, like it is with a simple skill test, so it makes sense to imagine that some are going to doubt that the test is valid; they're going to doubt that it really shows who's more and less qualified for a job.

So the problems with psychological tests include validity failure and lawsuits. Problems with constancy and normalization could also be developed. Added to that, there are invasion of privacy questions that are going to get raised whenever you start asking perspective employees about their bathroom habits and bedroom wishes.

On the other hand, it needs to keep being emphasized that the tests do happen, and that's not a coincidence. At the Universal Studios Hollywood theme park, recruiter Nathan Giles reports that the tests he administers—with true-or-false questions including “It’s maddening when the court lets guilty criminals go free”—actually do produce valuable results. They correlate highly, he says, with personal interviews: if you do well on the test, you’re going to do well face to face. And though the application and interpretation of these tests are expensive, in the long run they’re cheaper than interviewing everyone. Finally, if that’s true, then don’t managers have a responsibility to use the tests no matter how heated the protests? Ariana Eunjung Cha, “Employers Relying on Personality Tests to Screen Applicants,” *Washington Post*, March 27, 2005, accessed May 24, 2011, <http://www.washingtonpost.com/wp-dyn/articles/A4010-2005Mar26.html>.

Lie detectors in the Hollywood sense of wires hooked up to the fingers for yes-or-no interrogations are illegal except in highly sensitive and limited cases, usually having to do with money (bank guards) and drugs (pharmaceutical distribution). Written **honesty tests**¹³ are legal. Generally, the questions populating these exams resemble those found on psychological tests, and deciphering the results again works through correlation. Obviously, the test can’t work directly since both honest and dishonest people will answer “yes” to the question “are you honest?” Here are some typical questions that do get asked:

- I could help friends steal from my company.
- I’m not an honest person and might steal.
- I return quarters I find on the street to the police station.

Medical tests¹⁴ are generally only considered appropriate when the specific job is labor intensive. As always, there’s a difference between testing and prying, and it’s your responsibility as a manager to limit the questioning to specifically work-related information. Questions about *past* physical problems are generally considered off limits as are *future* problems that may be indicated by family health history. A simple example of an appropriate medical test would be a vision examination for a truck driver.

When Michael Phelps—the thick-grinned Olympic swimming hero—got photographed pulling on a bong, he immediately failed the **drug test**¹⁵ with one of his employers: Kellogg’s breakfast cereal. He wouldn’t be hired again, the company explained, because smoking pot “is not consistent” with the company’s image.

The National Organization for Reform of Marijuana Laws rushed to disagree, insisting that the problem’s not that the drugs are bad; it’s the *law* that’s outdated and wrongheaded. They were supported, NORML claims, by the *Washington Post* and

13. Psychological tests attempting to measure honesty.
14. Testing for specific medical problems that may impede work performance.
15. Questioning about and testing for illegal drug usage.

Wall Street Journal. Paul Armentano, "The Kellogg Company Drops Michael Phelps, The Cannabis Community Drops Kellogg's," *NORML* (blog), February 6, 2009, accessed May 24, 2011, <http://blog.norml.org/2009/02/06/the-kellogg-company-drops-michael-phelps-the-cannabis-community-drops-kelloggs>.

However that might be, it's seems difficult to object to Kellogg's argument. The *reason* they'd hire Michael Phelps in the first place is to brand their product with the image of beaming, young health, not zoning out in front of the TV eating Doritos. Whether it's legal or not, pot smoking is going to clash with the job description.

But what if he hadn't been caught by someone with a camera? Would Kellogg's have the right to demand a drug test before signing Phelps up as a representative? It depends where you are. Because there's no broad federal law on the subject, the rules change depending on your state, even your city. If you're looking for a job and you share a pastime with Michael Phelps, you may be in trouble in Alaska where any employer can test any applicant at any moment. In Arizona, on the other hand, you have to get written warning beforehand, which might allow for some cleanup. And if you're applying for a government job in Berkeley, California, you can party on because a local ordinance prohibits testing. American Civil Liberties Union, "Testing Chart," [aclu.org](http://www.aclu.org/FilesPDFs/testing_chart.pdf), accessed May 24, 2011, http://www.aclu.org/FilesPDFs/testing_chart.pdf.

Looking at the Berkeley law allows a sense of the central ethical conflict. On one side, the employers', the obvious and strong argument is that drug use negatively affects work performance, so evaluating job prospects in terms of their future productivity implies, it almost *requires*, making sure they're not distracted or disoriented by drug habits. In contrast, the Berkeley ordinance persuasively states that mandatory drug testing fails two distinct tests:

1. It assumes guilt instead of innocence.
2. It invades the individual's privacy.

Deciding about drug tests seems to come down to deciding whose legitimate rights deserve higher billing: the employer's or the employee's.

In 1971 the US Supreme Court banned **intelligence quotient (IQ) testing**¹⁶ except in very limited circumstances after finding that the tests disparately affected racial minorities. Further, serious IQ tests (as opposed to seven-question Internet quizzes) are extremely expensive to apply, so even if it were legal, few employers would use the test with any frequency.

16. Testing for intelligence.

Conclusion. Tests applied by employers to job applicants include those probing skills, psychological profile, honesty, medical condition, and drug use.

Interviewing

In 1998 the Indianapolis Colts had a very good problem. Holders of the top pick in the National Football League draft, they had to choose between two exceptional players: two that everyone agreed radiated Super Bowl talent. Both were quarterbacks. Peyton Manning had a better sense of the field and smoother control of the ball; Ryan Leaf had a larger frame and more arm strength. Which would make the better employee? The call was so close that the team with the *second* choice, the San Diego Chargers, didn't care much who the Colts selected; they'd be happy with either one.

The Colts didn't have the luxury of letting the choice be made for them, and as draft day approached they studied film of the players' college games, poured over statistics, measured their size, speed, and how sharply and accurately they threw the ball. Everything. But they couldn't make a decision.

So they decided to interview both candidates. The key question came from Colts coach Jim Mora. He asked the young men, "What's the *first thing you'll do if drafted by the Colts?*" Leaf said he'd cash his signing bonus and hit Vegas with a bunch of buddies. Manning responded that he'd meet with the rest of the Colts' offense and start going over the playbook. Mora saw in Manning a mature football player ready for the challenges of the sport at its highest level. In Leaf he saw an unpredictable kid.

More than a decade later, Peyton Manning heads into another season as starting quarterback. Having won the Super Bowl, set countless team and NFL passing records, and assured himself a spot in the NFL Hall of Fame, you can understand that the Colts are happy with their selection.

Ryan Leaf has recently been indicted on burglary and drug charges in Texas. He got the news while in Canada at a rehab clinic. As for football, after a rocky first few seasons, his performance collapsed entirely. He hasn't been on a field in years.

Interviews matter. Grades, recommendation letters, past successes, and failures on the job—all those numbers and facts carry weight. But for most hiring decisions, nothing replaces the sense you get of a candidate face to face; it's the most human part of the process.

Because it's so human, it's also one of the most ethically treacherous. Two factors usually weigh heavily in deciding which questions should and shouldn't be asked:

1. Fairness
2. Pertinence

Fair questioning¹⁷ means asking similar questions to all applicants for a post. If the position is entry level, many candidates will be young, inexperienced, and probably easily flustered. That's normal. So too there's nothing necessarily wrong with trying to knock applicants off rhythm with a surprise or trick question. The problem comes when one candidate gets pressed while another gets softballs.

What do tough questions look like? One answer comes from Google. There are always blog entries circulating the Internet from applicants talking about the latest weird questions asked by that successful and unpredictable company:

- How many golf balls can fit in a school bus?
- You are shrunk to the height of a nickel and your mass is proportionally reduced so as to maintain your original density. You are then thrown into an empty glass blender. The blades will start moving in 60 seconds. What do you do?
- How much should you charge to wash all the windows in Seattle?
- Every man in a village of 100 married couples has cheated on his wife. Every wife in the village instantly knows when a man other than her husband has cheated, but does not know when her own husband has. The village has a law that does not allow for adultery. Any wife who can prove that her husband is unfaithful must kill him that very day. The women of the village would never disobey this law. One day, the queen of the village visits and announces that at least one husband has been unfaithful. What happens?
- Explain a database in three sentences to your eight-year-old nephew. Michael Kaplan, "Want a Job at Google? Try These Brainteasers First," *CNNMoney.com*, August 30, 2007, http://money.cnn.com/2007/08/29/technology/brain_teasers.biz2/index.htm.

We're a long way from "why do you want to work at Google?" and even further from "what was your biggest accomplishment or failure in your last job?" Those are softballs; anyone going into Google for an interview is going to have prepared answers to those. It's like reading from a script. But looking at the hard questions Google actually poses, there is no script, and you can see how things could go south quickly. You can't figure out about golf balls and school buses, and you start to get nervous. Next, the blender question seems odd and threatening, and it's all

17. Asking similar and similarly challenging questions to all applicants for a post.

downhill from there. Some interviews just don't go well and that's it. As an applicant, you probably don't have too much to complain about as long as the next guy gets the same treatment. But if the next guy gets the softballs, the fairness test is getting failed. As a manager, you can go hard or soft, but you can't change up.

On the question of **pertinent interview questions**¹⁸, the Google queries seem, on the face, to be troublesome. Is there any job that requires employees to escape from a blender? No. But there *are* many jobs that require employees to solve unfamiliar problems calmly, reasonably, and creatively. On that ground, the Google questions seem perfectly justifiable as long as it's assumed that the posts being filled require those skills. By confronting prospective employees with unexpected problems demanding creative solutions, they are, very possibly, rehearsing future job performance.

When the Colts were interviewing Peyton Manning and Ryan Leaf, something similar happened at the key moment. At first glance, it seems like the question about the first thing each player would do after draft day wouldn't reveal much about all the other days to come. But the guys probably weren't prepared for the question, and so they had to reveal how they'd face a rapidly shifting reality that they had no experience in dealing with, a reality just like the one they'd face the day after the draft when they'd go from being college students on campus to wealthy adults in the big world. *That* makes the question pertinent. And that explains why the answers that came back were telling. They distinguished a great hire from one of the sports world's monumental bumbles.

On the other side, what kinds of questions reveal employees' personalities but *not* their job skills? Interview consultants typically warn managers to avoid asking about these subjects:

- Sex life
- Opinions about homosexuality
- Beliefs about contraception
- Personal finances
- Religious faith
- Political affiliations

Except in special circumstances (a job is with a church, a political party, or similar), these kinds of questions fall under the category of privacy invasion.

18. Interview questions relating to job performance.

Finally, there are legal red lines to respect. While managers should ensure that applicants are old enough to work and so can confirm that people are, say, eighteen

or older, it's discriminatory in the legal sense to hire one person instead of another because of an age difference. This means asking "how old are you?" is an off-limits question. It's also illegal to ask about citizenship, though you can ask whether applicants are legally authorized to work in the United States. It's illegal to ask about disabilities, except as they relate directly to the job. It's illegal to ask about *past* drug and alcohol use, though you may ask applicants whether they are *now* alcoholics or drug addicts.

The interviewer's fundamental responsibility is to choose the best applicant for the job while giving everyone a fair shot. Being fair isn't difficult; all you need to do is just ask everyone the standard questions: Why do you want to work for our company? What are your strengths? How do you work with others? Do you stay cool under pressure? The problem here, though, is that it's easy to get gamed. It's too easy for applicants to say, "I love your company, I'm a team player, and I never get mad." Since everyone knows the questions and answers, there's a risk that everything will be fake. And that makes identifying the *best* applicant nearly impossible.

One response to this is to junk the standard questions and come up with surprising and (seemingly) crazy questions like they do at Google. Another strategy is a different *kind* of interview. A situational or **behavioral interview**¹⁹ asks candidates to *show* how they work instead of talking about it.

Here's how it goes. Instead of asking an applicant, "Do you stay cool under pressure?" (the correct response is "yes"), the question gets sharpened this way:

You know how jobs are when you need to deal with the general public: you're always going to get the lady who had too much coffee, the guy who didn't sleep last night and he comes in angry and ends up getting madder and madder...at you. Tell me about a time when something like this actually happened to you. What happened? How did you deal with it?

It's harder to fake this. Try it yourself, try inventing a story. Unless you're a real good liar, you're going to hear the slipperiness in your own voice, the uncertainty and stammering that goes with making things up. Probably, most people who get hit with situational questions are going to opt for the easiest route, which is tell the truth and see how it goes. So the advantage to this kind of interview is that it helps sort out qualified candidates by giving an unvarnished look at how they confront problems. On the other side, however, there's also a disadvantage here, one coming from the fairness side. If candidate A has spent years at the counter of Hertz and candidates B through G have all been working in the Hertz back office, of course the counter person is going to do better.

19. In a behavioral interview, applicants are asked to talk about how they have responded to specific—generally stressful—situations.

KEY TAKEAWAYS

- In publicizing a job opening, a tension exists between limiting the job announcement to ensure that applicants are appropriate, and widely publicizing the announcement to ensure that applicants include highly qualified individuals.
- Decisions about how broadly to publicize a job opening can be implemented through nepotism, internal public job announcements, and mass public job announcements.
- Screening job applicants makes the hiring process more efficient but raises ethical concerns.
- Common screening techniques involve BFOQs, educational requirements, high-risk lifestyles, criminal record, and an applicant's social media history.
- Testing allows applicants' suitability for a post to be measured but raises ethical concerns.
- Common tests include skill tests, psychological and personality tests, honesty tests, medical tests, and drug tests.
- Applicant interviewing provides valuable information for evaluating job candidates, but questions ought to be fair and pertinent to job-related concerns.

REVIEW QUESTIONS

1. Why might an employer opt for nepotism when hiring?
2. What is an advantage of a mass public job announcement?
3. Invent a job description that would allow applicants to be screened by a BFOQ.
4. Why might an applicant pool be screened for use of social media?
5. List the three requirements for a fair and legitimate job-applicant test.
6. How do psychological and personality tests work through correspondence?
7. Imagine a job and then an interview question for applicants that would *not* be pertinent and one that would be pertinent.
8. Why might a behavioral interview be used?

8.2 Wages

LEARNING OBJECTIVES

1. Explore the limits of wage confidentiality.
2. Delineate the uses and ethics of wages as a work incentive.

Two Salary Issues Facing Managers

Two salary issues facing managers are wage confidentiality and the use of wages as a work incentive. Starting with **wage confidentiality**²⁰, in the private sector it's frequently difficult to discover what an organization's workers are paid. Because of freedom of information laws, many salaries in government operations and contracting are available for public viewing, but in the private sector, there are no laws requiring disclosure except in very specific circumstances.

The main ethical reason for keeping wage information concealed is the right to privacy: agreements struck between specific workers and their company are personal matters and will likely stay that way. Still, ethical arguments can be mounted in favor of general disclosure. One reason is to defend against managerial abuse. In a law firm, two paralegals may have similar experience, responsibilities, and abilities. But Jane is single and living in a downtown apartment while John has just purchased a home where his wife is living and caring for their newborn. Any boss worth his salt is going to see that Jane's got no local commitments and, who knows, she may just up and decide to spend a few months traveling, and then make a run at living in some different city. Maybe she likes skiing and a few years in Denver doesn't sound bad. John, on the other hand, is tied down; he can't just walk away from his job. He can always get a new one, of course, but if money's tight and a recession is on, there's an incentive to raise Jane's salary to keep her and not worry so much about John who probably won't be going anywhere anyway. That seems to be taking unfair advantage of John's personal situation, and it also seems like paying someone for something beyond the quality of the work they actually do. But if no one knows what anyone else is making, the boss may well get away with it.

Stronger, the boss may actually have an *obligation* to try to get away with it given his responsibility to help the company maximize its success.

Another argument against confidentiality is the general stand in favor of transparency, and in this case, it's transparency as a way of guaranteeing that

20. The policy that salaries of employees within an organization will not be disclosed to third parties.

ethical standards of equality are being met. Since the signing of the Equal Pay Act in 1963, the ideal of “equal pay for equal work” has become a central business ethics imperative in the United States. But it’s hard to know whether the equality is really happening when no one knows how much anyone else is making.

Of course, workers *do* frequently know how much other people are getting. In an extreme case, if you’re laboring in a union shop, it’s probable that your wage scale will be set identically to those of your companions. Even if you’re not unionized, though, people still talk at the water cooler. The result is, in practice, that some wage transparency is achieved in most places. From there, arguments can be mounted for the expansion of that transparency, but in most cases, the weight of privacy concerns will carry the day.

Another wage issue concerns its use to provide a **work incentive**²¹. Many sales positions have the incentive explicitly built in as the employees receive a percentage of the revenue they generate. (That’s why salespeople at some department stores stick so close after helping you choose a pair of pants; they want to be sure *they* get credit for the sale at checkout.) In other jobs, generating a motivation to work well isn’t tremendously important. The late-night checkout guy at 7-Eleven isn’t going to get you out of the store with cigarettes and a liter of Coke any faster just because his salary has been hiked a dollar an hour. Between the two extremes, however, there are significant questions.

Probably, the main issue involving the use of wages as a carrot in the workplace involves clarity. It’s quite common, of course, for managers to promise an employee or a team of workers a pay hike if they win a certain account or meet productivity goals. Inevitably, the moment of the promise is warm and fuzzy—everyone’s looking forward to getting something they want, and no one wants to sour things by overbearingly demanding specifics. The problems come afterward, though, if the terms of the agreement have been misunderstood and it begins to look like there’s an attempt to worm out of a promised salary increase. It is management’s responsibility as the proposers of the accord to be sure the terms are clearly stated and grasped all around:

- What, exactly, needs to be accomplished?
- How much, exactly, is the wage hike?

21. Money or other benefit offered to workers to increase the quality or volume of their work.

22. A payment to an employee above the agreed upon salary for a job well done.

The mirror image of promised wage hikes to encourage improved worker performance is the **bonus**²² paid at year’s end to employees marking a job well done. In a letter to the editor of the *Greensboro News-Record* in North Carolina, a teacher cuts to the central ethical problem of the bonus: on the basis of what do some employees receive one while others don’t? Some teachers, the writer states,

“at schools with high ‘at-risk’ populations and students coming from homes where education is just not valued, work themselves into a tizzy every year, but because of the clientele they serve, will never see that bonus money. Inversely, schools with middle-class clienteles have teachers who work hard, but also others who merely go through the motions but usually can count on that bonus because their students come from homes that think education matters. Where is the justice in this?” Bill Toth, “Entire State ABC Bonus System Unfair,” *News-Record.com*, Letters to the Editor, August 19, 2008, accessed May 24, 2011, <http://blog.news-record.com/opinion/letters/archives/2008/08/>.

It's not clear where the justice is, but there's no doubt that bonuses aren't serving their purpose. The problem here isn't a lack of clarity. No one disputes that the rules for assigning a bonus are clear. The problem is that the rules don't seem to account for divergent working conditions and challenges.

The important point, finally, is that even though a bonus is extra money outside the basic salary structure, that doesn't mean it escapes the question, “Where's the justice in this?,” coming with every decision about who gets how much.

KEY TAKEAWAYS

- Wage confidentiality pits the right to privacy against the desire for, and benefits of, transparency.
- Wages and bonuses are used to provide a work incentive, but problems arise when the pay increments don't obviously align well with promises or with job performance.

REVIEW QUESTIONS

1. Why might a company want to maintain wage confidentiality?
2. What is an example of a payment bonus becoming disconnected from work performance?

8.3 Promoting Employees

LEARNING OBJECTIVES

1. Distinguish criteria for promoting employees.
2. Locate and define ethical issues relating to promotion.

The Drinking Strategy

If you want a promotion, does going out for drinks with the crew from work help the cause? Here's a blog post; it's about two uncles—one who goes drinking with the crew and one who doesn't—and you'll see why the answer might be yes:

Look at my uncles, they both work for Ford and one has been in his position for 10-plus years and still doesn't have a company car, while my other uncle has a company car, increase salary, paid training. Even though he comes home to my auntie blinded drunk in the end it's all worth it if you want to be noticed. Maya, "Alcohol: Income Booster?," *Monster* (blog), September 20, 2006, accessed May 24, 2011, http://monster.typepad.com/monsterblog/2006/09/alcohol_income.html.

Get hammered to get promoted! Too good to be true? Probably.

But not entirely, the Reason Foundation commissioned a report on the question of whether drinkers earn more money than nondrinkers. Bethany L. Peters and Edward Stringham, "No Booze? You May Lose," Reason Foundation, September 1, 2006, accessed May 24, 2011, <http://reason.org/news/show/127594.html>. The title "No Booze? You May Lose" pretty much tells what the study concluded about the link between social drinking with workmates and promotions. A few things should be noted, though. Drinking doesn't mean coming home blind drunk every night; it just means taking down alcohol in some amount. And the payoff isn't huge, but it is respectable: about 10 percent pay advantage goes to the wet bunch compared to those workers who stay dry. The really interesting result, though, is that guys who *drink in bars* at least once a month get another 7 percent pay advantage on top of the 10 percent. The bad news for drinking women is that for them, going to the bars doesn't seem to help.

So there are two findings. First, just drinking is better than not drinking for your wallet. Second, at least for men, drinking socially at bars is even better. One of the

study's authors, Edward Stringham, an economics professor at San José State University, comments on the second result: "Social drinking builds social capital. Social drinkers are networking, building relationships, and adding contacts to their Blackberries that result in bigger paychecks." Bethany L. Peters and Edward Stringham, "No Booze? You May Lose," Reason Foundation, September 1, 2006, accessed May 24, 2011, <http://reason.org/news/show/127594.html>.

Now, going back to the blog comment about the drunken uncle, isn't this more or less what the blogger sees too? Here are the next lines from the entry:

No senior management wants to promote a boring old fart. They want outgoing people, in and outside of work. They want social people. If you can display your social abilities to them, it means that you want more than the 9am to 5pm, thank God, time to go home. They want people who enjoy working with the company and the people who they work for. Maya, "Alcohol: Income Booster?," *Monster* (blog), September 20, 2006, accessed May 24, 2011, http://monster.typepad.com/monsterblog/2006/09/alcohol_income_.html.

That sounds reasonable, and it may explain why there's some serious scientific evidence that partying with the workmates does, in fact, lead to promotions in the company.

The link between lifting a glass and moving up may be solid, but is it *right*? From the worker's side, there's not a lot you can do about the situation so you may want to leave some Thursday and Friday evenings available for happy hour regardless of whether you think that's the way promotions ought to be arranged. From management side, however, there is a stark issue here. When you sit down to look at two candidates in your company for one promotion, do you have a right to consider how well they mix after hours? Do you have a *duty* or *responsibility* to consider it?

There are two issues:

1. Should you consider a worker's party aptitude?
2. If you do, how should you manage it?

The reasons for *not* considering party ability are many. Two stand out. First, workers are being paid for what they do from nine to five. That's the job. If you're going to start considering other things, then why stop at parties? You could give the promotion to the better player on the company softball team, or the one who's got curlier hair, or whatever. Second, workers may not have an equal opportunity to party. The guy who lives closer to work and isn't married obviously holds an

advantage over the guy who has diabetes when gin and tonics become job qualifications.

On the other hand, when workmates gather after work to drink, what do they talk about? Well, work. That's why people say a new advertising campaign or a fresh product idea got scratched onto a napkin. It's not a metaphor. Further, the ability to labor together with others—teamwork—that's a real job qualification, and it's reasonable to suppose that people who get along well drinking will carry the camaraderie over to the next morning's breakfast meeting (where coffee and tea are served). This explains why companies including Deloitte Consulting encourage and even to some extent *pressure* employees to socialize outside the office. *Deloitte Consulting: WetFeet Insider Guide* (San Francisco: WetFeet), accessed May 24, 2011, http://www.wellesley.edu/Activities/homepage/consultingclub/wetfeet%20-%20deloitte_consulting.pdf.

Finally, it's a hard call—there are reasonable arguments to be made on both sides. It's also difficult to be absolutely certain how the party qualification should be managed *if* it's included in the performance evaluation. On one hand, a strong case can be made for transparency and openness, for simply stating that after-hours socializing is, in fact, a part of the job. To *not* inform workers, the argument goes, that hanging out is a job requirement is really a form of lying: it's dishonest because the default understanding typical employees are going to have is that what counts in determining the quality of work *is* the work, period. Whether the assigned task got outlined in a cubicle or on a bar stool is irrelevant. Therefore, any manager who secretly totes up the social aptitude of the workers is not being honest about the way workers are graded. It's the equivalent of a college teacher assigning grades partially based on class participation without listing that in the syllabus.

On the other hand, all teachers know that listing class participation as part of a student's grade can lead to brown nosing, and there's a similar threat in the workplace: if employees are told to party, then at least a few are going to tag along for drinks even when they really don't want to go and end up souring the evening for everyone. If you as a manager believe in honesty above all, then you may accept that cost. On the other hand, if your vision of corporate responsibility dovetails more closely with profit maximization, you may be able to build an ethical case around the idea that in the name of evaluating employees as perfectly as possible some elements of that evaluation may have to remain close to the vest.

Three Considerations for Promotion: Work Performance, Seniority, Projected Work Performance

When managing a promotion, there are three fundamental considerations; **work performance**²³ is the most obvious. The person most deserving to step up to a higher level of responsibility is the one who's best managed current responsibilities. This may be measured by accounts won, contributions to a larger group, or some other work-related factor, but the key is that the measured performance be related with the job.

The problem comes in determining exactly what that word *related* means. When read narrowly, it means that the employee who looks best on paper—the one who's written the best reports, achieved the highest sales, won the most cases—will be the most deserving. When read broadly, however, the range of considerations can expand dramatically to include contributions having to do with personality, chemistry, and other characteristics tangential to nine-to-five tasks. This is where questions about going out for drinks after work start to gain traction and importance. Finally, it's not clear that after-hours socializing should be considered part of work performance, but the fact that it *can* be included shows how broad this category is.

The second consideration when weighing a promotion is **seniority**²⁴. Seniority is preference for promotion granted to the person who's been with the company the longest. A *strong* or *pure* seniority system simply reduces the choice to comparisons of time with the firm: the promotion goes to the longest-serving employee. There's a taste of fairness here since no one will be overlooked for a job because of a personal conflict with the boss, or because he doesn't smile enough at work, or because her skirt is too short or his necktie too absurd or whatever. More, there's an inherent tranquility in the fact that all employees know exactly where they stand. The connected problem, obviously, is that good work is not directly rewarded. This explains why the seniority system seems especially suited to production line jobs or any kind of labor where experience is more important than analytic skills, high-level training, or creativity. If it's true that experience is what matters on a job, then a seniority system should produce promotions that more or less dovetail with expertise and the ability to do a good job.

23. A measure of how well an employee is performing the duties of the job.

24. The ranking of employees in terms of how long they've been working in the organization.

A weak seniority system considers time with the company as a positive element, but only as one component in evaluating candidates for a promotion. The advantage of this kind of system is the encouraging of worker loyalty. The retention of good workers is nearly the highest human resources priority of any company, and rewarding seniority plus performance gives good workers a reason to stick around.

Equally important, it helps retain good, loyal workers without forcing the company to promote old-timers who've never really learned to get the job done well.

The third promotion consideration is **projected performance**²⁵, which evaluates candidates in terms of what they'll be able to do in the future. A tool used by companies to groom young people for future leadership roles, the escalation normally goes to highly qualified individuals currently working at a level beneath their ability. For example, a health insurance company may hire a college graduate with a strong premed profile and hope to keep that person out of medical school by pulling her up the career ladder at a crisp rate. She simply doesn't have the experience, however (no one does), to just *start* near the top. In order for her to play a leadership role in the future, she does need to be familiar with how the company works at every level, including the lowest. That means spending some time on the front lines, say, manning telephones, answering questions from (frequently frustrated or angry) customers. Of course it's difficult to really stand out in this kind of work, so if she's going to move up, it's going to have to be because she's expected to stand out at something more demanding later on.

Other employees are going to be tempted to resent the rapid ascension since many of them have done just as well at the same job for a longer time. Within the narrow view of performance evaluation (your job performance equals how well you do the work) their resentment is justified. The rule of equal treatment is being severely broken. But if you're in management, you have a responsibility to the company (and to shareholders if the company is public) to be successful. And you need to face the problem that highly educated and qualified young people have options. Arguably, retaining them is a higher priority—not just financially but also ethically—than keeping more replaceable talent content.

KEY TAKEAWAYS

- Work performance is defined in diverse ways, and managers may have a right to consider after-hours activities as part of that definition.
- Three common criteria for awarding promotions are seniority, work performance, and projected performance. Each contains specific ethical tensions.

25. An employee's work performance judged by predicting how well future, usually distinct, tasks will be accomplished.

REVIEW QUESTIONS

1. Why might someone's social skills be considered a factor in receiving a promotion?
2. What are some advantages and disadvantages of seniority promotion?
3. Why might a promotion be based on projected performance?

8.4 Firing

LEARNING OBJECTIVES

1. Define legal guidelines on firing employees.
2. Elaborate justifiable reasons for deciding to fire.
3. Set standards for the actual firing process.
4. Consider ways of limiting the need to terminate employees.

Optimal Level Firing

A study funded by the CATO Institute and titled “The Federal Government Should Increase Firing Rate” concludes this way: “The rate of ‘involuntary separations’ is only about one-fourth as high in the federal government as in the private sector. No doubt private-sector firing *is below optimal* as well since firms are under threat of expensive wrongful discharge lawsuits.” Chris Edwards and Tad DeHaven, “Federal Government Should Increase Firing Rate,” Cato Institute, *Tax and Budget*, no. 10 (November 2002), accessed May 24, 2011, <http://www.cato.org/pubs/tbb/tbb-0211-10.pdf>.

There is, in other words, an *optimal level* for firing, and in both the public and private sectors it's not being met. People aren't being fired enough.

The strictly economic question here is, “What is the optimal firing level?” No matter the answer, there's an ethical implication for the workplace: firing workers is a positive skill. For managers to perform well—for them to serve the interest of their enterprise by maximizing workplace performance—the skills of discharging employees must be honed and applied just like those of hiring and promoting.

On the ethical front, these are the basic questions:

- When *can* an employee be fired?
- When *should* an employee be fired?
- *How* should an employee be fired once the decision's been made?
- What steps can management take to support workers in a world where firing is inevitable?

When *Can* an Employee Be Fired?

In the world of for-profit companies, most work contracts offer **at-will employment**²⁶. Within this scheme, a clause is written into the contract offering employment only as long as the employer desires. Stated more aggressively, managers may discharge an employee whenever they wish and for whatever reason. Here's a standard version of the contractual language:

This is an "At Will" employment agreement. Nothing in Employer's policies, actions, or this document shall be construed to alter the "At Will" nature of Employee's status with Employer, and Employee understands that Employer may terminate his/her employment at any time for any reason or for no reason, provided it is not terminated in violation of state or federal law.

The legal parameters for firing seem clear.

Things blur, however, once reality hits. As the Cato study authors note, simply the fear of a possible lawsuit does impinge to some extent on the freedom to fire, especially when the discharged worker fits into a protected group. This means older workers, foreigners, or disabled workers may protest that no matter what reasons are *given* for termination—assuming some are given—the *real* reason is their age, nationality, or disability. Further, gender protection may be claimed by women fired from largely male companies and vice versa.

Another round of blurring occurs on the state level where legislation sometimes adds specific employee protections, and so curtails employers' rights. In Minnesota, for example, firing may not be based on a worker's participation in union activities or the performance of jury duty.

These varied and frequently changing legal protections are the reason managers are typically instructed to keep detailed records of employee performance. If those can be produced to show a pattern of incompetence or simply inadequate results, they can justify a dismissal before a judge, if it ever comes to that.

Even though legal complexities mean managers are well advised to be careful about firing workers, and it's prudent to be sure that there are directly work-related reasons for the dismissal, none of that changes the fact that at-will hiring gives wide latitude to the company, and fired workers are typically left with few good avenues of protest. One way to see how tilted the table is toward the employer and away from the employee is to compare the American at-will firing system with the European model, where a reasonable cause for termination must be demonstrated.

26. The employer's right to fire any employee at any time for any reason or for no reason whatsoever.

In the United States, employers may more or less fire anyone for any reason, and the burden of showing the termination was illegal or unfair falls entirely on the worker. In Europe, by contrast, the legal burden falls largely on the *employer*. Instead of the worker having to show the firing was wrong, now the company has to show the firing was right. This is a big deal. It's like the difference between innocent until proven guilty and guilty until proven innocent. **Just cause firing**²⁷ means the company holds the burden of proof: it must demonstrate that the worker wasn't holding up his or her end of the employment contract. That's a lot harder to do than just producing some work evaluations to buttress the claim that she wasn't fired because she's Jewish or he wasn't let go because he's Asian. As opposed to the European reality, the conclusion is, employees in the United States hired at will have few recourses against a company that wants them out.

Finally, it's worth noting that elements of just cause law have been working their way into the American legal system in recent years.

When *Should* an Employee Be Fired?

Because the legal footing is usually more or less solid for American managers, the real hard questions about terminating employees aren't legal ones about what can't be done but ethical ones about what should be done.

Sometimes firing is unavoidable. **Economic slowdowns**²⁸ frequently bring furloughs and terminations. When the company's books turn red, and after all the easy cost cutting has been done, people need to be cut. Who? There are three broad philosophies:

1. Inverted seniority
2. Workload
3. Recovery preparation

Inverted Seniority occurs when the last worker hired is the first released. This works especially well for assembly-line-type labor where one worker can replace another easily. As long as replacement is possible, dismissing the most recently hired allows clear and impersonal rules to make downsizing orderly.

Workload firings focus the pain of job cuts on that part of the company suffering most directly from a falloff in business. An office furniture supply company may find its line of hospital products unaffected by an economic downturn (people keep getting sick even if they don't have a job) so layoffs are taken from other divisions.

27. The doctrine that employers have a responsibility to demonstrate that dismissed workers were failing to fulfill their duties adequately.

28. Slowdowns in the general economy.

This may mean losing workers with higher seniority or better job performance, but it minimizes cash-flow disruption.

Recovery preparation takes the long view on an economic slowdown: firings and layoffs are executed not so much to compensate for the present downturn but to sharpen the company for success when the economy bounces back. Staying with the office furniture supply company, the owner may see better long-term opportunities for profits in the nonhospital units, so the downsizing may occur across the board. The idea is to keep those slow-moving units at least minimally prepared to meet new demand when it eventually comes.

Sometimes economic slowdowns don't reflect a problem with the larger economy, they're the result of **fundamental changes in the market**²⁹, frequently brought on by technological advance. For example, the popularization of digital photography has shrunk the market for old fashioned film. Seeing this coming, what can a company like Kodak do? They're probably going to let workers from the old film side go to create room for new hires in the digital division. This is potentially unfair to terminated workers because they may be doing exemplary work. Still, it would be unfair—and financially disastrous—to the company as a whole to not change with the times.

Rank and yank³⁰ is a management philosophy promoted by former General Electric Company CEO Jack Welch. Every year, he counsels, the entire workforce should be ranked and the bottom 10 percent ("There's no way to sugarcoat this," he says) should be fired to make room for new employees who may be able to perform at a higher level. Here, the responsibility to the company is being weighed far heavier than the one to the employee because, theoretically at least, those in the bottom 10 percent may be doing fine on the job—fulfilling their responsibilities adequately—it's just that others out there who could be hired to replace them *may* do it better. In the hope they will, workers who've done nothing wrong are sacrificed. Allan Murray, "Should I Rank My Employees?," *Wall Street Journal*, accessed May 24, 2011, <http://guides.wsj.com/management/recruiting-hiring-and-firing/should-i-rank-my-employees>.

29. Basic and far-reaching changes in consumer demands.

30. The management practice of ranking employee performance and dismissing those near the bottom even when they are fulfilling their duties adequately

31. Employee actions breaking the organization's rules or norms.

There are two main criticisms of this practice. First, it's a betrayal of employees who are fulfilling their contractual obligations (they're just not overperforming as well as others). Second, it's counterproductive because it lowers morale by drowning workers in the fear that even though they're doing what's being asked, they may end up in that dreaded bottom 10 percent.

Employee misbehavior³¹ is the least controversial reason to fire a worker. Here, the ethics are relatively clear. Employees aren't being mistreated when they're

dismissed because it's their own actions that lead to their end. Standard definitions of misbehavior include

- rudeness toward clients or customers,
- drinking or drugs on the job,
- theft of company property or using company property for personal business,
- frequent and unexplained absences from work,
- entering false information on records,
- gross insubordination,
- fighting or other physical aggression,
- harassment of others (sexual, sexual orientation, religious, racial, and similar).

How Should an Employee Be Fired Once the Decision's Been Made?

At the Friday all-staff meeting the office manager stands up to announce, "The good news is the following people have *not* been fired!" He reads a list of seventeen names. There are nineteen people at the meeting.

That's from a (perhaps unemployed) comic's stand-up routine. Unfortunately, people have written into the *CNNMoney.com* with real stories that aren't so far removed:

- An employee received news of her firing in a curt letter delivered to her home by FedEx.
- A man tells of being halted at the building door by security and being humiliatingly sent away.
- People report that they arrived at their office to find the lock changed and their stuff thrown in a box sitting on the floor. "Worst Ways to Get Fired," *CNNMoney.com*, September 6, 2006, accessed May 24, 2011, <http://money.cnn.com/blogs/yourturn/2006/09/worst-ways-to-get-fired.html>.

All these are inhumane firings in the sense that no flesh and blood person took the trouble to present the bad news.

It's easy to understand why inhumane firings occur: not many people enjoy sitting down with someone and telling them they're out. So it's tempting to yield to cowardice. Instead of facing the worker you've fired, just drop a note, change the

lock, talk to security. On the ethical level, however, firing an employee is no different from working with an employee: as a manager, you must balance your duties to the company and the worker.

How can the **manager's duty to the organization**³² be satisfied when terminating a worker? First, to the extent possible, the fired person should leave with a positive impression of the organization. That means treating the employee with respect. No mailed notices of termination, no embarrassing lockouts, just a direct, eye-to-eye explanation is probably the most reliable rule of thumb.

Second, the terminated employee should not be allowed to disrupt the continued work of those who remain. If deemed necessary, security personnel should be present to ensure the ex-worker leaves the premises promptly. Also, if the worker is involved in larger projects, a time for severance should be found when their contribution is minimal so that other members of the team will be able to carry on near normally. (It may be recommendable to arrange the termination to coincide with the finishing of a larger project so that everyone may start fresh with the new, substitute employee.)

Third, the financial costs of the termination should be minimized. This means having clear reasons for the termination and documents (pertaining to worker performance or behavior) supporting the reasons to guard against lawsuits. Also, there should be clear understandings and prompt payment of wages for work done, as well as reimbursements for travel expenses and the full satisfaction of all monetary obligations to the employee. This will allow the human resources department to close the file.

With duties to the company covered, how can the **manager's duty to the employee**³³ be satisfied? Consultants—both legal and ethical—typically share some bullet-point answers. First, the employee should be addressed honestly and directly with a clear explanation for termination. Speak firmly, the advice is; don't waver or provide any kind of false hope. Further, the termination should not come as a total surprise. Previous and clear indications should have been given concerning employee performance along with specific directions as to what areas require improvement. Many companies institute a structure of written warnings that clearly explain what the employee's job is and why their work is not meeting expectations.

Second, getting fired is embarrassing, and steps should be taken to minimize the humiliation. The employee should be the first to know about the discharge. Also, the severance should occur in a private meeting, not in view of other workers. To the extent possible, the employee should have an opportunity to say good-bye to

32. The manager's ethical responsibility to protect the interests of the organization.

33. The manager's ethical responsibility to protect the interests of his or her employees.

workmates or, if this is the preference, to leave discreetly. For this reason, a meeting late in the day may be chosen as the appropriate time for notice to be given.

Third, to the extent possible and within the boundaries of the truth, an offer should be extended to provide a recommendation for another job.

Fourth, make sure the employee gets all the money coming for work done, without having to jump through hoops.

What Steps Can Management Take to Support Workers in a World Where Firing Is Inevitable?

One response to the inescapable reality that firing happens is preemptive; it's to reduce the moral uncertainty and hardship *before* they arise. Two strategies serve this purpose: actions can be implemented to minimize the occasions when firing will be necessary, and steps can be taken to reduce the severity of the firing experience for employees when it happens.

In her book *Men and Women of the Corporation*, Rosabeth Moss Kanter generates a list of measures that corporations use to diminish firings, and reduce the professional impact for those who are let go. Here's an abbreviated selection of her recommendations, along with a few additions:

- Recruit for the potential to increase competence, not simply for narrow skills to fill today's slots.
 - Rotate assignments: allow workers to expand their competence.
 - Retrain employees instead of firing them.
 - Offer learning opportunities and seminars in work-related fields.
 - Subsidize employee trips to work-related conferences and meetings.
 - Provide educational sabbaticals for employees who want to return to school.
 - Encourage independence and entrepreneurship: turn every employee into a self-guided professional.
 - Keep employees informed of management decisions concerning the direction of the company: What units are more and less profitable? Which ones will grow? Which may shrink?
 - Ensure that pensions and benefits are portable.
- List adapted from Rosabeth Moss Kanter, *Men and Women of the Corporation* (New York: Basic Books, 1993), 330–31.

KEY TAKEAWAYS

- At-will firing grants employers broad legal latitude to discharge employees, but it does not erase ethical concerns.
- Justifiable worker firings include cases where workers bear none, some, or all of the blame for the discharge.
- The act of firing a worker requires managers to weigh responsibilities to the organization and to the ex-employee.
- Steps can be taken to limit the need for, and effects of, employee discharge.

REVIEW QUESTIONS

1. What's the difference between at-will and just cause firing?
2. How might fundamental changes in the marketplace require a company to fire workers?
3. What is *rank and yank*?
4. When managers fire employees, what duties do they hold to the organization, and what are the duties to the dismissed worker?
5. What are some steps organizations can take to protect their workers from the effects of discharge if firing becomes necessary?

8.5 Case Studies

Fashionable



Source: Photo courtesy of Ralph Aichinger,
<http://www.flickr.com/photos/sooperkuh/3275153928/>.

In her blog *Love This*, MJ (full name not provided) relates that she's been an aspiring clothes designer since she started sewing tops for her Barbie dolls. Things weren't going well, though, as she tries to break into the industry. One thing she notices is that there aren't a lot of female fashion designers out there—Vera Wang, Betsey Johnson, and a few more. Not many. So she starts trying to figure it out with questions like these:

- Do women want straight guy designers to dress them because they dress to please the men? It could make sense: what that designer likes, the man in her life is going to love too.
- Do women prefer gay men to dress them because gay men are their new girlfriends? Gay men are usually more receptive to trends and physical appearances too.
- Do women prefer women designers because she knows a woman's body better?
- Do men have the same issue? Do some men prefer a lesbian designer? Would they balk at being dressed by a gay designer? "Sexual Orientation in the Fashion Industry," *Love This!* (blog), accessed May 24, 2011, <http://lovethis.wordpress.com/2007/07/28/sexual-orientation-in-the-fashion-industry>.

QUESTIONS

1. Assume MJ is right when she hypothesizes that most women like straight male designers because straight guys are the ones they're trying to impress, so they want clothes straight guys like. Now imagine you've been put in charge of a new line of women's clothes. Your number one task: sales success. You've got five applicants for the job of designing the line. Of course you could just ask them all about their sexual orientation(s), but that might leave you open to a discrimination lawsuit. So could you devise a test for new applicants that's fair—that gives everyone an equal chance—but still meets your requirement of finding someone who produces clothes that straight guys get excited about?
2. Four standard filters for job applicants are
 - education level,
 - high-risk lifestyle,
 - criminal record,
 - flamboyant presence in social media.

Which of these might be used to winnow out applications for a job as a clothes designer? Explain in ethical terms.

3. MJ wonders whether women might prefer women designers because she knows a woman's body better. Is there a bona fide occupational qualification for a women's fashion company to hire only women designers? Is there a difference between a BFOQ based on sex and one based on sexual orientation?
4. MJ asks, "Do women prefer gay men to dress them because gay men are their new girlfriends?" Assume you think there's something to this. Could you design a few behavioral interview questions that test the applicants' ability to become girlfriends (in the sense that MJ means it) with their clients? Would these be ethically acceptable interviews, or do you believe there's something wrong and unfair about them?

God at Work



Source: Photo courtesy of Geoff Stearns, <http://www.flickr.com/photos/tensafefrogs/1523795/>.

The University of Charleston is a private, nonreligious institution with a very particular job opening: the Herchiel and Elizabeth Sims “In God We Trust” Chair in Ethics. According to the job description, the successful candidate for this job as a professor “must embrace a belief in God and present moral and ethical values from a God-centered perspective.” Rob Capriccioso, “Divinely Inspired Bias?,” *Higher Ed*, March 1, 2006, accessed May 24, 2011, <http://www.insidehighered.com/news/2006/03/01/charleston>.

QUESTIONS

1. You're in charge of getting applicants for this post and you've got a small advertising budget. What ethical responsibilities should you consider when determining where to place the ad? How broadly should you advertise the position?
2. According to Erwin Chemerinsky, a law professor at Duke University, "The description that 'candidates must embrace a belief in God and present moral and ethical values from a God-centered perspective,' violates the Civil Rights Act as religious discrimination in employment." Rob Capriccioso, "Divinely Inspired Bias?," *Higher Ed*, March 1, 2006, accessed May 24, 2011, <http://www.insidehighered.com/news/2006/03/01/charleston>. Imagine you're in charge of every step of the process of filling this job. How could you respond in terms of
 - bona fide occupational qualifications (BFOQs),
 - testing,
 - interviewing?
3. You're the university president. The person who currently holds the In God We Trust Professorship has, by all accounts, been doing a mediocre to poor (but not directly unacceptable) job. One day you happen to trip across the person's blog page and notice that your professor claims to be a sadist and practices a mild form of devil worship (also, the prof's favorite movie is *The Omen*). Right now the In God We Trust Professor of ethics is down the hall lecturing to seventy-five undergrads. You sneak to the door and listen from outside. The professor sounds just like always: dull and passionless, but the talk is about the Bible, and nothing's being said that seems out of line with the job description. Still, you decide to terminate the relationship.
 - In a pure at-will working environment, you can just fire the professor. But imagine you want to demonstrate just cause. How does this change the way you approach the situation? What would your just causes be?
 - The professor's classes are passionless because he doesn't believe in what he's teaching. Still, his teachings are not directly *wrong*. Does this case show why a manager may be

ethically required in certain situations to implement a strategy of *rank and yank*? Explain.

Testing Baseball Players' DNA



Source: Photo courtesy of
katkimchee,
[http://www.flickr.com/photos/
midwestkimchee/206762729/](http://www.flickr.com/photos/midwestkimchee/206762729/).

The *New York Times* reports that there's a "huge difference between sixteen and nineteen years old," when you're talking about prospects for professional baseball. A kid whose skills knock your socks off for a sixteen-year-old just looks modestly good when he practices with nineteen-year-olds. Michael S. Schmidt and Alan Schwarz, "Baseball's Use of DNA Raises Questions," *New York Times*, July 21, 2009, accessed May 24, 2011, <http://www.nytimes.com/2009/07/22/sports/baseball/22dna.html?hp>.

This is a significant problem in the Dominican Republic, which produces excellent baseball players but little in the way of reliable paperwork proving who people really are and when they were born. The Cleveland Indians learned all about that when they gave a \$575,000 bonus to a seventeen-year-old Dominican named Jose Ozoria, only to later find out he was actually a twenty-year-old named Wally Bryan.

This and similar cases of misidentification explain why baseball teams are starting to apply genetic tests to the prospects they're scouting. Typically, the player is invited to provide a DNA sample from himself and his parents to confirm that he's no older than he claims. The player pays for the test and is reimbursed if the results show he was telling the truth.

QUESTIONS

1. Many experts in genetics consider testing an unethical violation of personal privacy.
 - What does it mean to “violate personal privacy”?
 - Can a utilitarian argument (the greatest good for the greatest number should be sought) in favor of DNA testing in the Dominican Republic be mounted? What could it look like?
2. In the baseball world, other tests that clearly *are* allowed as part of the hiring process include testing a player's strength and speed. Is there anything in the fair application of these tests that may ethically allow—even require—that baseball teams extract DNA to confirm the age?
3. Assume you accept that testing a prospect's age is a bona fide occupational qualification (after all, the job is to be a *prospect*: a developing player, not an adult one). Once you accept that, how do you draw the line? Couldn't teams be tempted to use DNA facts for other purposes? The *Times* article interviews a coach who puts it this way:

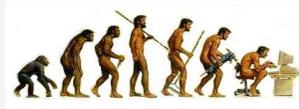
I know [the baseball teams taking the DNA samples] are looking into trying to figure out susceptibility to injuries, things like that. If they come up with a test that shows someone's connective tissue is at a high risk of not holding up, can that be used? I don't know. Michael S. Schmidt and Alan Schwarz, “Baseball's Use of DNA Raises Questions,” *New York Times*, July 21, 2009, accessed May 24, 2011, <http://www.nytimes.com/2009/07/22/sports/baseball/22dna.html?hp>.

Can you formulate an ethical argument in favor of teams secretly using DNA tests to do just that, check for as many yellow and red flags as possible in the young prospect's genetic code?

4. Baseball scouting—the job of hiring excellent future players and screening out mediocre ones—is very competitive. Those who do it well are paid well; those who don't are cycled out quickly to make room for someone else. You have the job, you have the DNA sample. What do you do? Why?

5. You decide to do the test in question four. The problem is people aren't trees; you can't age them just by counting genetic rings—you also need to do some cross-testing with the parents' DNA. You do that and run into a surprise: it turns out that the young prospect's father who's so proud of his athletic son isn't the biological dad. Now what?
 - Is there an argument here against DNA testing, period? What is it?
 - Remember, the family paid for the test. Do you have a responsibility to give them these results? Explain.
6. Lou Gehrig was the first athlete ever to appear on a box of Wheaties. From 1925 to 1939 he played for the Yankees in every game: 2,130 straight appearances, a record that lasted more than fifty years. He was voted into the baseball Hall of Fame in 1939. He died in 1941 from a genetic disorder—yes, Lou Gehrig's disease—that today's DNA tests would identify. Is there an ethical argument here against DNA testing of prospects or one in favor? Or is the argument about this more theoretical—should the rules be decided regardless of what has actually happened at some time or place? Explain.
7. In a different sport, the sprinter Caster Semenya won the world eight-hundred-meter challenge in 2009 with a time that few men could equal. She looked, in fact, vaguely like a man, which led the International Athletics Federation to run a genetic gender test. She is, it turns out, neither a woman nor a man; she's a hermaphrodite: a little bit of both. Does the fact that genetic tests don't always return clean, black-and-white results make their use less advisable from an ethical perspective? Why or why not?

Windfall at Goldman



Source: Photo courtesy of Manuel Cernuda, <http://www.flickr.com/photos/melkorcete/180238980/>.

Goldman Sachs is an expansive financial services company. Many clients are institutional: private companies and government organizations wanting to raise cash seek Goldman's help in packaging and then selling stock or bonds. On the other side, private investors—wealthy individuals wanting to multiply their riches—receive a hearty welcome at Goldman because they have the cash to purchase those stocks and bonds. Ultimately, Goldman Sachs is a hub where large companies, governmental powers, and wealthy people come and do business together.

Executives at Goldman Sachs are among the world's highest paid. According to a *New York Times* article, "At the center of Goldman's lucrative compensation program is the partnership. Goldman's partners are its highest executives and its biggest stars. Yet while Goldman is required to report compensation for its top officers, it releases very little information about this broader group, remaining tightlipped about even basic information like who is currently a partner." Susanne Craig and Eric Dash, "Study Points to Windfall for Goldman Partners," *New York Times*, January 18, 2011, accessed May 24, 2011, <http://dealbook.nytimes.com/2011/01/18/study-points-to-windfall-for-goldman-partners/?hp>.

The rest of the article investigates this shadowy partnership. The conclusions: "Goldman has almost 860 current and former partners. In the last 12 years, they have cashed out more than \$20 billion in Goldman shares and currently hold more than \$10 billion in Goldman stock."

This tally of accumulated wealth in Goldman stock doesn't even include the standard salary and cash bonuses the partners receive, but leaving that aside, here's the math: \$30 billion divided by 860 divided by 12 should give some sense of the wealth each of these corporate stars is accumulating over the course of a

year. To give a provisional idea of how large the number of dollars is here, when you try plugging \$30 billion into an iPhone calculator, you find the screen can't even hold a number that long. Using a different calculator yields this result: \$2.9 million per partner every year.

The 2.9 million can be compared with the salary earned by the average American: \$50,000 a year. The Goldman partner gets that in less than a week. This huge money explains the clawing fight that goes on inside Goldman to become a partner. The odds are long. Each time the books are opened to admit a new class, only 1 of 330 Goldman employees makes the cut. It is, in the words of one former partner, "a very Darwinian, survival-of-the-fittest firm."

In the public comments section of the *New York Times* story about Goldman, a person identified as GHP picks up on the firm's characterization as a "Darwinian, survival-of-the-fittest" place. He wrote, "The French revolution was also very Darwinian, let's give that a try." During the French Revolution, the wealthy and powerful were rewarded with a trip to the guillotine.

Probably, GHP isn't just annoyed about how much money executives at Goldman make, he, like a lot of people, is peeved by the fact that the company was bailed out by the federal government during the 2008–9 financial crisis. Had the taxpayers (people making \$50,000) not kicked in, Goldman might've gone bankrupt, and all that money its partners accumulated in stock would've vanished. As it happens, the US government's bailout was masterminded by US Treasury Secretary Henry Paulson. His previous job was CEO (and partner) at Goldman.

QUESTIONS

1. Goldman is dominated by a “Darwinian, survival-of-the-fittest” mentality. What does that mean?
 - In ethical terms, how can this mentality be justified?
 - Would a company dominated by this mentality, whether it's Goldman or not, be more likely to announce job openings to a limited public, or as a massive public announcement? Why?
2. Describe the advantages of a “behavioral interview.” If you were in charge of hiring for a company seeking employees who flourish in a survival-of-the-fittest environment, what kind of question might you ask in a behavioral interview? Why?
3. One contributor to the *New York Times* comments section writes, “There are sure to be lots of pointed, angry posts about how unfair it is that these guys make so much money etc. But if we are honest, there is a fair amount of envy and pure remorse that we weren't bright enough to go down that path! And these guys are very bright.”

How could these comments be construed to explain why high wages and big bonuses are used by Goldman to motivate its workers? What is it that makes big money (or the possibility of big money) function as a powerful motivator to encourage employees to work hard and well? Ethically, how can this use of big money be justified?

4. One difference between offering an employee a wage increase and offering a bonus is that the latter doesn't come automatically the next year. The employee has to earn it from scratch all over again.
 - Why might managers at Goldman award their best workers with a bonus instead of a wage increase?
 - By appeal to an ethical theory, could you make the case that, in general, employees should be paid mainly through a bonus system? How would the theory work at two extremes: wealthy Goldman executives and waitresses at a corner diner?

5. Given the kind of work that's done at Goldman—bringing wealthy people and powerful organizations together to make deals—why might party aptitude (the ability to mix socially after hours) be considered when deciding who does and who doesn't make partner at Goldman? How could that decision be justified ethically? How could it be criticized ethically?
6. Make the case that in theoretical terms, managers at Goldman have an ethical responsibility to institute the process of rank and yank.

The Five O'Clock Club



Source: Photo courtesy of C.P. Storm, <http://www.flickr.com/photos/cpstorm/140115572/>.

A *Washington Post* story about firing employees relates that some companies use “the surgical method: terminations that last about 15 seconds, after which former employees are ushered off company property.” Eli Saslow, “The Art of Letting Employees Go,” *Washington Post*, August 9, 2009, accessed May 24, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/08/AR2009080802659.html?hpid=topnews>.

It doesn't have to be that way, though. For about \$2,000 per fired employee, the outplacement company Five O'Clock Club will help employers manage the actual termination moment more compassionately. Later on, the fired worker receives a year of career coaching to help get back on track.

What does the Five O'Clock Club recommend managers do at the critical moment when giving the bad news? To answer, according to the *Post*, they offer a booklet titled *How to Terminate Employees While Respecting Human Dignity*, which “asks managers to approach layoffs with the understanding that, ‘unlike facilities and equipment, humans have an intrinsic worth beyond their contribution to the organization.’” Eli Saslow, “The Art of Letting Employees Go,” *Washington Post*, August 9, 2009, accessed May 24, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/08/AR2009080802659.html?hpid=topnews>.

Then some catchphrases are provided for managers to use:

- George, you've been a trooper. I'm sorry that this organization has moved in a different direction.
- George, you have made many good friends here. We hope those friendships will continue.
- George, you have made considerable and long-lasting contributions and they are acknowledged and appreciated. Eli Saslow, "The Art of Letting Employees Go," *Washington Post*, August 9, 2009, accessed May 24, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/08/AR2009080802659.html?hpid=topnews>.

Five O'Clock Club vice president Kim Hall—who downs a lot of Tylenol and coffee on the job—relates several other phrases that may be helpful:

- I know this is hard, but you'll get back on your feet.
- The timing could actually work in your favor. A lot of people take vacation in the summer. There's no competition for job hunters.
- Maybe this is a chance to begin your dream career. Follow your heart. Eli Saslow, "The Art of Letting Employees Go," *Washington Post*, August 9, 2009, accessed May 24, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/08/AR2009080802659.html?hpid=topnews>.

In sum, the Five O'Clock Club helps workers feel better when they're fired, and helps them get on with their lives. Meanwhile, employers get a hedge against lawsuits. The outplacement service, according to the Five O'Clock Club literature, "can redirect anger or anxiety away from the organization and...encourage the newly-fired to sign their severance agreements so they can get on with their lives." Eli Saslow, "The Art of Letting Employees Go," *Washington Post*, August 9, 2009, accessed May 24, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/08/AR2009080802659.html?hpid=topnews>.

QUESTIONS

1. The Five O'Clock Club charges \$2,000 per firing. If you were fired, would you prefer to receive the compassionate end the Five O'Clock Club provides, or just get shown the door but also get to keep that \$2,000 for yourself?
 - If you're the boss, do you have the right to decide this for the fired employee? Why or why not?
 - If you're the boss, do you have the *responsibility* to decide this for the fired employee? Why or why not?
2. According to the Five O'Clock Club, "Unlike facilities and equipment, humans have an intrinsic worth beyond their contribution to the organization."
 - Does this sound like utilitarian ethical thinking to you, or is it more in line with the notion of an ethics guided by basic duties and rights? Why?
 - Probably, everyone agrees that humans aren't just machines that can be installed and replaced. But can an ethical argument be made to *treat people in the workplace as machines*—that is, to abruptly hire them when they're useful and fire them when they're not? What ethical theory (or theories) could help you make the case?
3. In general terms, here are three firing situations:
 - an economic downturn (good workers are sacked because the company can't afford to keep them)
 - rank and yank (workers are fulfilling their duties but not as well as most of the others)
 - misbehavior (a worker is fired directly because of something done or not done)

Looking at these three contexts and the Five O'Clock Club, do you think their services should be hired in all three situations? Do the ethics of firing change depending on *why* the person is being fired? Explain.

4. Recall some of the Five O'Clock Club's prepacked firing sentences:

- George, you've been a trooper. I'm sorry that this organization has moved in a different direction.
- George, you have made many good friends here. We hope....
- George, you...are acknowledged and appreciated.
- Maybe this is a chance to begin your dream career. Follow your heart.

The contrasting method of firing employees—the surgical method—is to look the person in the eye, say you're fired, and have security march the ex-employee out the door, all in less than a minute.

- Is it possible to make the case that the surgical method is actually more compassionate and respectful?
 - Is there a place for compassion in business? From a manager's perspective, how should compassion be defined within a business context?
5. Maybe the Five O'Clock Club gets hired because a company really wants to help and support fired employees. *Or* maybe the company doesn't really care about them; all they want is to avoid wrongful termination lawsuits. Ethically, does it matter *why* the company contracts the Five O'Clock Club? Explain.