

Rights and Duties of Employers and Applicants

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The task of hiring new employees presents multiple challenges. Underlying many of these challenges is the need to balance applicants' legal and ethical rights and duties with those of the organization. An array of federal laws faces the U.S. employer, prohibiting discrimination on a variety of bases. Additionally, ethical issues, which extend beyond legal requirements, must be considered in the hiring process. Privacy, personal dignity, and integrity are critical concerns which hiring companies and applicants must balance. This article discusses the rights and duties of employers and applicants, and demonstrates how these rights and duties can lead to better hiring decisions.

An employee has left, voluntarily or involuntarily. A new position has been approved and must be filled. Applicants, some of whom are presently employed, some of whom are recently or not so recently unemployed, and some of whom are just entering the workforce, are seeking jobs. Both the employer and the applicants have needs, but each also has rights and duties incumbent on them as the process of recruiting unfolds in seeking and screening applicants and selecting an employee.

Large companies typically have detailed procedures for recruiting including advertising or posting open positions, screening applicants, gathering information, interviewing finalists, and making employment offers. In a small company, all of these tasks may fall to a single manager who also has much else to do (perhaps including the work of the position that is open) and little training in either employment law or human resource practices. Even in a large company, line managers or supervisors with limited knowledge or skills in the hiring process often play some part in this process.

In this paper we first identify the major objectives of the hiring process. In the remainder of the paper, we outline the major legal requirements in the United States with regard to hiring, and discuss ethical considerations that go beyond the strictly legal requirements. We also consider the legal and ethical requirements placed on applicants. We accomplish this objective by applying the concept of rights and duties, which has both legal and ethical meanings. We do this, however, not from the perspective of attorneys or philosophers, but from that of the hiring manager, who must operate in the real world, is frequently harried and subjected to multiple demands while operating, and mostly just wants to get on with running the business and making money.

Objectives of the Hiring Process

It is important that each hiring choice both complies with the many laws that address this function and is fair to all applicants. However, it is insufficient to consider only each hiring decision in isolation. In a larger context, when viewed as a pattern of such decisions the overall hiring process must show legal compliance and fairness. The basic objective of the hiring process, however, is to employ the applicant who will best perform the job. If every position in a company were filled with the best person available to do that job, the company would be in a position to succeed and prosper greatly. The more this ideal can be approximated, the more successful the company will be.

Legal compliance is an important, basic goal of the hiring process. This is not a simple thing to accomplish, and as we will show below, numerous laws and regulations apply. A company that hires the right people (and then treats them well) has a strategic advantage over competitors who do not (Pfeffer 1998). A company that follows illegal hiring practices and is subsequently sued loses in several ways, regardless of the outcome of the lawsuit. Negative publicity often accompanies lawsuits for illegal hiring practices, and the cost of defending such a suit, even if the outcome is successful, is often high.

The hiring process provides an opportunity for the company to have important dealings not only with the individual it ultimately hires but also with others, sometimes many others, who are applicants. These individuals might apply again for another job, or become customers or suppliers of the company. If they feel they are treated fairly in the selection process they will likely think and speak well of the company, even though they do not get the job. On the other hand, if their experience as an applicant is bad, they will almost certainly not apply again, and may speak poorly of the company to many other individuals (Gilliland 1993). The hiring process, then, is important for a company in other ways than just selecting the best applicant for the open position.

We recognize that intelligent discrimination based on job related factors is essential in the hiring process. However, patterns of illegal or unethical discrimination in hiring are a concern of both law and ethics. Except for the case where a company is staffing a new facility or otherwise hiring many employees at once, patterns arise gradually, one hire at a time. If a given department has seven job vacancies over a one year period, and ends up hiring seven young males, there is at least the appearance of a pattern of discrimination against older applicants and female applicants. The apparent pattern did not arise from the seventh hire, but began with the second one and continued with each additional hire. Because of this, an individual hiring procedure for a single job opening must also be viewed in a larger perspective as part of a possible pattern.

In this paper, we will first review the paired concepts of rights and duties. We will then examine the legal rights of applicants and the duties that those rights impose on employers. After this discussion, we will extend the realm of applicant rights and employer duties to include those that go beyond strict compliance with the law, but are based in ethical theories. After examining applicant rights and corresponding employer duties, we shift our focus and consider the legal and ethical rights of employers, and the duties that those rights impose on applicants. We conclude by examining how the rights and duties of applicants and employers bear on the task of finding and hiring the best candidate for the job.

Rights and Duties

In a discussion of rights and duties, it is valuable to recognize the difference between various types of rights. Sumner (2000) distinguishes claim-rights (the right to have something done, such as being paid for services rendered) from liberty-rights (the right to do something unimpeded if I choose to do so). Both kinds of rights imply duties. A right to privacy is worthless if no one has a duty to leave me alone. Most discussions of rights focus on two sources, human rights and legal rights. The notion of human rights is that all individuals possess them, simply because they are human (Ignatieff 2001). Such rights do not depend on the laws of a country or other formal mechanisms. Legal rights are those that are granted by a government to its citizens, whether at the national, state, or local level. Unless these rights are granted, and unless one is a citizen, they are not real rights and cannot properly be claimed.

While this is the usual division of the sources of rights, it seems both useful and proper in our examination of the hiring process to recognize one additional source of rights, namely, position rights. Under appropriate circumstances, a policeman has the right to make arrests, a teacher to assign grades, and a chief financial officer to disburse company funds. These individuals have these rights because of their positions, and relinquish them when leaving their organizational positions. Table 1 summarizes the sources of rights.

Table 1: Sources of Rights in the Hiring Process

Source	Description	Applications in Hiring
Human Rights	possessed by all individuals because they are human	truth-telling, dignity (privacy)
Citizen Rights	granted by a government unit to its citizens by law	non-discrimination based on prohibited categories
Position Rights	possessed by an individual because of the position that he or she holds	fair treatment, honesty

Both the fields of ethics and law provide a treatment of rights, but ethics and law are not identical (Alder & Gilbert, 2006; Lyons 1984). If one considers the possibility of ethical wrong-doing, it is not a sufficient answer to say (as a number of executives have recently said) "I did nothing wrong, ask my lawyer!" Laws are made by legislators. Many people would be uneasy with the idea that their personal moral code was made by legislators. We do not suggest that, as a whole, legislators are corrupt. However, it may well be argued that there is less than complete overlap between our political leaders and those individuals we look to as our moral leaders.

A further consideration that shows the differences between law and ethics is illustrated by the fact that some technical violations of law, such as driving one mile an hour over the speed limit, are not seen by most people as ethical violations. There are also issues when the law is less vocal and the ethical code speaks loudly. For example, many people consider adultery to be a serious ethical matter. However, although some federal and state laws cover the issue, these laws are rarely, if ever enforced. Finally, laws vary by government jurisdiction (gambling is legal in Nevada but not in the adjoining state of Utah) or by legislative decision (alcohol production and sale in the United States were legal in the 1900's, illegal in the 1920's, and legal again in the 1940's). Most people prefer that moral codes have more stability in terms of both geography and time.

Law and ethics deal with many of the same issues, so it should not be surprising that many rights and duties embedded in a moral or ethical code should also be addressed in legal codes. As we saw above, human rights and

the duties they imply do not depend on laws. They apply to all humans, regardless of the nation or legal jurisdiction in which they live. Citizen rights apply to the citizens of a specific government, whether national or local, but not to citizens of other governments (with some exceptions).

There is an ethical or moral duty to obey the law, and thus to observe citizen rights and duties. Were this not so, and obedience or disobedience to the law had equal ethical value, we could not have society as we know it. If it were morally neutral whether we obeyed or disobeyed the law, then we could be ethical people and also be chronic law-breakers. A person could discriminate in hiring on the basis of characteristics that have nothing to do with the job, violate contracts freely, lie grossly in his or her marketing materials and financial reporting, and still be an ethical person. This makes no sense. Human rights and duties, then, are more basic than those granted by governments. There is also an ethical obligation to observe duties legally imposed by government.

Which rights fall under the most basic category, human rights? The United Nations Declaration of Human Rights (Donaldson, Werhane & Cording 2002) lists a considerable number of such rights, including the right to form labor unions and the right to free choice of employment and protection from unemployment. Other authors provide much shorter lists. There seems to be general agreement that all humans, by the fact of being human, have rights to life, dignity, truth-telling and property.

Some readers might debate whether the right to truth-telling is a basic human right. While it is clearly also an ethical right, the authors contend that it is more fundamental than that. A moment's reflection will show that if lying and truth-telling are equally valid ways of dealing with others, we could not have society as we know it (Bok 1989). Promises and contracts could never be relied on, and trust would have no basis. Human rights are especially important in the consideration of ethical practices, because they are present, with concomitant duties, regardless of the laws or regulations of a given political unit, and they do not require laws or a certain position for their existence.

Citizen rights are numerous and variable. At the national level, even when a law is passed granting or restricting rights, there is often a great deal of ambiguity about how the law applies in various situations. For example, the law prohibiting employment discrimination based on gender provides virtually no guidance as to what kind of actions are or are not covered. It has taken decades of regulation, litigation and interpretation to explain this law, and many would say that it is still not clear precisely where the boundaries are (Halbert & Ingulli 2006). Because these rights and corresponding duties are imposed by specific laws and /or regulations, attorneys are usually more knowledgeable than managers when specific questions arise.

Position rights and duties in business are typically granted by the organization in which the position exists, although some are spelled out by law. Title VII of the Civil Rights Act of 1964 specifies that job applicants have a right to be treated in a non-discriminatory manner as to age, religion, gender and other characteristics. Hiring managers, because of the position they hold, have duties to those in the position of applicants. Companies typically determine whether final power to make an employment offer rests with the hiring manager or a human resources representative. In some cases, the decision is made by the hiring manager, but to assure that all legal and regulatory concerns are met, the formal offer of employment is made by a human resources representative.

Human Rights of Applicants

In this section we will consider the human rights of applicants, those that each applicant possesses as a human being, regardless of the laws of a particular jurisdiction. As we discussed previously, all humans have the right to be told the truth, and the right to have their dignity respected. These are moral rights. They are often reflected in citizen rights (sometimes called legal rights), but citizen rights can vary from country to country or state to state. Moral human rights belong to everyone. As part of the right to be told the truth, applicants have a right to accurate information pertaining to aspects of the organization and the job that will personally affect them.

Thus applicants have a right to know the duties, working conditions, and general pay range of the jobs they are applying for. Applicants further have a right to know what qualifications are required of successful job-seekers in a given case. This knowledge can save them the time and effort involved in applying for jobs for which they are not qualified. A clear statement of minimum qualifications can also save employers from the effort of screening out applicants who might otherwise apply even though they are not qualified. Finally, applicants also have the right to know whether the job for which they applied has been filled.

It is important to note that not every applicant has a human right to be told all the truth about a company. Most applicants have no need to know, and no right to know, the specifications of a new product to be introduced next month, or the names of all employees who have been terminated over the last three years.

Applicants also have a human right to dignity, which includes privacy. Indeed, the right to privacy has been a cherished ideal for centuries (Alder et al., 2007; Warren and Brandeis, 1890). Safeguarding applicants' privacy is important for both ethical and business effectiveness reasons. Alder et al. (2007) found that perceptions of

privacy invasion related negatively to employees' perceptions of the appropriateness of human resource programs. Research indicates that privacy and fairness correlate strongly with each other (Bies and Moag, 1986; Eddy et al., 1999; Stone and Kotch 1989). Procedures that violate expectations of privacy undermine perceptions of fairness (Alge, 2001; Eddy et al., 1999; Stone and Kotch, 1989). In turn, perceptions of fairness influence applicants' views toward the hiring organization, their job choice decisions, and their attitudes and performance after being hired (Gilliland, 1993).

Common to most definitions of privacy is the importance of control over personal information (Alder et al. 2007). For example, Sundstrom et al. (1980) suggested that privacy includes control over transmission of information about oneself to others. Westin (1967, p. 7) argued that privacy is, "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others." Thus, the applicant's right to privacy precludes a hiring company from disseminating information gathered in the hiring process beyond those who have a need to know.

Stone-Romero et al. (2003) conclude that there is reason to believe that variants in the application of the same general hiring technique may differ in terms of their invasiveness. That is, the same selection practice may be considered more or less invasive depending on the context and how the technique is applied. One important factor here may be the trade-off between the degree of invasiveness and the organization's need for the information gathered. In this regard, a company that required drug tests of all applicants, and not just of those who are finalists for a job, might well be violating the applicants' moral right to privacy. The information gathered from a potentially invasive drug test is more critical at the decision stage than at the applicant screening stage. Similarly, a company that routinely gathers information from applicants that it may not use in hiring decisions (religious or political affiliation; sexual orientation) would be violating its duty to respect the privacy of applicants.

Under the right to dignity one could argue that applicants also have a moral right to be treated with respect. An employment process that fails to keep applicants informed of the status of the job search for long periods of time, or fails to notify them promptly when they are no longer under consideration for a job does not show respect for applicants. Equally important, in addition to violating an applicant's rights, such a process is bad business. Highly qualified applicants who are left waiting indefinitely will likely accept jobs elsewhere thereby diluting the quality of hiring for the original company (Hickens 1998). Additionally, as noted earlier, applicants who are not chosen for a job but who feel that they have been treated well in the process are more likely to think favorably of the company than those who are treated disrespectfully. Such applicants may be or become customers or suppliers of the company, or may apply for subsequent job openings.

Citizen Rights of Applicants

While laws vary from one jurisdiction to another, major employment law in the United States is Federal in nature. Because of this, we will discuss relevant United States laws and regulations governing employment. Legislators pass laws, and regulators working within the scope of these laws promulgate additional regulations. In the U.S. legal system, many laws that are passed by legislators are relatively brief. Regulatory agencies, such as the Equal Employment Opportunity Commission, promulgate much more detailed regulations that basically have the same force as the original law. Court decisions interpreting these laws in specific cases also add to the meanings of original laws. Thus the citizen rights of applicants (and duties of employers) regarding the employment application process are spelled out in a number of key laws.

Among the most important of these laws are the Civil Rights Act of 1964 (Title VII), amendments to this Act passed in 1991, the Age Discrimination in Employment Act, passed in 1967 and amended in 1987, the Pregnancy Discrimination Act, passed in 1978, and the Americans with Disabilities Act, passed in 1990. These laws prohibit discrimination in employment and in other job-related actions based on a variety of applicant characteristics. The Equal Employment Opportunity Commission (EEOC) was created by Congress originally to enforce provisions of Title VII of the Civil Rights Act of 1964 (EEOC Website).

The laws referenced above are often recognized for their use in protecting minorities, and some of them obviously do so. For example, only a minority of citizens at any point in time are pregnant. However, Title VII of the Civil Rights Act of 1964 prohibits discrimination based on an individual's race, color, religion, sex or national origin. Clearly all applicants will be of some race, color, sex, and national origin. Thus these laws give some degree of legal or citizen rights to all job applicants. Concomitantly, these laws impose duties on employers not to use prohibited characteristics as the basis for employment decisions. These laws also give rights to hired employees in such areas as compensation and promotion, but these issues are beyond the scope of the present article.

These laws and the regulations interpreting them spell out legal or citizen rights of applicants and duties of employers in the United States. Some individual states provide, through their laws, additional rights to applicants and

corresponding duties to employers. Other countries obviously provide such rights through their own legal systems. One way to consider non-discrimination is to think of it as providing fair treatment to applicants. Fairness is a term with many meanings (Alder and Gilbert 2006). One such definition, applicable to the hiring process, is that fairness means treating similarly situated people in similar ways regarding both process and outcome and with a sense of proportionality.

It is useful here to differentiate between discrimination and legality. Although the term discrimination holds a negative connotation for most management scholars and practitioners, it is important to remember that discrimination per se is not illegal, immoral, or unethical. To discriminate is to distinguish or differentiate among like objects by discerning or exposing differences (Merriam-Webster, 1996). Employers may (and indeed must) discriminate whenever there is more than one applicant for a position. Unless a manager opts to make hiring decisions with a dartboard or a roll of the dice, he or she must do so by exposing differences among candidates. Thus, managers must discriminate every time they make a hiring decision. Indeed, discrimination in this sense is the heart and essence of selection procedures.

The key legal and ethical question, then, centers not on whether a manager discriminates in the hiring process but rather on the basis for discrimination. Laws and regulations as well as ethical mores specify several bases that may not be used to discriminate between or among applicants. Often a key distinction is whether the basis for discrimination is a necessary quality for effective job performance. For example, it is legally fair and necessary to discriminate against the sightless if one is hiring airline pilots, or against those who are unable to lift and carry packages of a certain weight if one is hiring delivery truck drivers. In these instances, the hiring organization is distinguishing and discriminating among applicants. However, the discrimination is morally and legally acceptable because the discrimination is based on elements and requirements that are essential to the job. On the other hand, it is not legally fair to require that truck drivers be white or male or Catholic or under forty years old because these requirements are not necessary to perform the job. Any discrimination in the selection of employees must respect the rights granted by these laws and regulations, and must be based on job-related characteristics.

The various anti-discrimination laws cited above do not provide applicants with a right to a given job. Obviously if there are thirty applicants and one job, the employer does not have a duty to hire more than one applicant for that job. The laws, and the regulations interpreting them, do grant to job applicants in the United States the right to be treated fairly. They specify various forms of unfair treatment (discrimination based on non-job-related factors such as age, gender, ethnic background or disability) and impose duties on employers to observe the rights of applicants not to be excluded from a job based on any of these factors.

Position Rights of Applicants

When a person applies for a job, he or she obtains certain rights as an applicant. Many of these rights are reinforced by the legal system, because they are also citizen rights as discussed above. However, they only become relevant when an individual applies for a job. All citizens have a right to keep their life or their property, with some limitations. These rights, granted by the government, are universally applicable. Only those citizens who apply for a job have the right, in any practical sense, to be considered for the job without regard to their race or gender or age.

When an applicant is hired for a position, and thus no longer has the status of applicant, some of their rights as applicant no longer apply. Regulations prohibit employers from asking applicants their age. New employees who are eligible for benefits must provide this information for insurance and other benefit purposes. Applicants have a right not to be subjected to random drug testing; employees, at least under certain circumstances such as safety-related positions, no longer have this right. Once an individual's position changes from applicant to employee, both that individual's rights and the employer's duties change in some respects. As we will see below in our discussion of the rights of companies, finalists for positions, while they are still applicants, are in a different situation than the general applicant pool. Finalists may be required to successfully complete drug tests, physical exams, and sometimes other forms of background checks.

Citizen Rights of Employers

We have been discussing the employment process in companies that already have a number of employees. We have considered the company to be the employer, and not the individual or individuals within the company who actually engage in the process. However, individuals representing the company post jobs, screen applications, conduct interviews and/or make offers. A hiring manager, in that capacity, represents the organization. In a real sense, the hiring manager's actions are the actions of the organization. A hiring manager who behaves unethically undermines the organization and its pursuit of moral responsibility. In contrast, a hiring manager that acts ethically

promotes the ethical values of the organization. Thus, it is essential that organizations develop clear guidelines and hiring procedures that adhere to legal and ethical principles and ensure that each hiring manager is carefully trained in these procedures. At the same time, it is imperative each hiring manager seriously consider his or her role as an ambassador for the organization with both those individuals who may ultimately join the organization as well as those who may either be denied that opportunity or turn it down in the application process. This requires that hiring managers take into account the organization's various rights and duties.

Corporations are legal persons: they have legal rights and legal duties. As described above, these may be referred to as the corporation's citizen rights and duties. They are also sometimes described as having moral or ethical duties, although their moral rights are less often discussed. A corporation's citizen/legal rights and duties are related to its moral and ethical duties. It is useful to think of moral and ethical duties as a pyramid with legal considerations at the base. There is an ethical or moral duty to obey the law, and thus to observe citizen rights and duties. The law is the starting point. However, to complete the pyramid of ethics and morals, it is essential to go beyond the legal code.

In terms of duties, corporate social responsibility is a concept that has been widely discussed in recent years. Its precise meaning varies from author to author, and no generally agreed upon definition has emerged. The broad notion is that corporations owe duties not just to their owners, the stockholders, but also to a variety of additional people and entities including the environment.

There is broad overlap between corporate social responsibility and stakeholder theory. The antithesis of corporate social responsibility was spelled out in a famous article by Milton Friedman (Friedman 1970). In it, he maintains that the only duty of corporate managers is to the company's stockholders, and that any other use of corporate resources is wrong. The only limiting factors mentioned by Friedman are that corporations should act within the bounds of the law and of ethical standards. He does not elaborate on what he means by ethical standards. Beginning in the 1980's an alternate theory was proposed. According to stakeholder theory, an organization's stakeholders include those individuals and entities that can affect or are affected by the company's actions (Freeman 1984). Stakeholder theory maintains that in modern times corporations have obligations to their multiple and varied stake holders.

Whether one accepts Friedman's limited view of corporate duties or the broader views of stakeholder theory and corporate social responsibility, corporations do have some moral duties. As we explained earlier in this paper, duties and rights go together. We have already discussed the rights of applicants and the duties that those rights impose on employers. We now turn to the rights of corporations and the duties imposed by those rights on applicants.

As stated above, the most inclusive category of rights is human rights. While corporations are considered under the law as legal persons, they clearly are not human. Hence it does not make sense to speak of the human rights or duties of corporations. A corporation receives its status as a legal person when its charter is approved by a State. This means that a corporation can sue and be sued within the framework of the law. It has both citizen rights and duties under the law. For example, not every corporation has the legal right to conduct a criminal background check on an individual, but a corporation considering the individual as an applicant for a sensitive position does have this right.

As legal persons, corporations have citizen rights, or rights granted by law, with respect to applicants for employment. Among these rights are those pertaining to information-gathering. When a corporation is trying to hire someone to fill a position, it has the legal right to gather relevant information about those who apply for the job. A corporation could not legally pick someone from a group of people passing by its offices and demand that they submit to a drug test. However, it can legally require one or several finalists from a pool of applicants to undergo drug testing. The individual involved does not have to take a drug test, but if they refuse to do so, the company can refuse to hire them for the open position and it will be legally justified in doing so. Similarly, companies have the right to ask applicants to provide information relevant to the selection process. An applicant can refuse to provide the information and withdraw from the pool of applicants, but cannot gain a legal judgment against the company for seeking the information.

Whether the information requested of applicants pertains to work or educational history, to past criminal convictions, or to the ability to perform physical tasks required by the job, the company has the legal right to the information in the sense that it breaks no laws by asking. The company also has the legal (citizen) right to verify information provided by verifying past employment, running a criminal background check, or requiring the candidate to undergo drug testing.

A corporation also has the legal or citizen right to determine the minimum qualifications for a position, as well as the salary. An applicant who is offered a position can request a higher salary than that offered, but it is the company and not the applicant who has the legal right to decide. The same is true of benefits offered for the position. A company's rights in this area are limited by various laws such as minimum wage provisions, but within the limits of the law the company has the right to determine compensation provisions.

Position Rights of Employers

Corporations also have position rights. Not every corporation has the right to do a criminal background check on an individual, but a corporation considering the individual as an applicant for a sensitive position does have this right. In this section, we consider the position rights of corporations with regard to applicants. While a corporation does not have a human right to be told the truth, and may not have a citizen right to truth-telling (for the most part, lying on an employment application is not illegal), by its position as prospective employer it does have some rights which impose duties on applicants to tell the truth that would not otherwise be present. Since there is usually no contractual relationship between an applicant and a corporation, contract rights are not relevant here.

By its position of prospective employer, a company has the right to truthful answers to the questions it asks of applicants. It is not illegal for an applicant to lie on an application. Companies do not sue applicants who are found to have lied. However, a company can refuse to hire an applicant who lies on an application, or terminate an applicant who has been hired and subsequently has been found to have lied on the application. A company does not have this same right to truthfulness from the public at large, so the position of prospective employer does give the company moral rights it would not otherwise have.

These rights impose duties of truthfulness on applicants that would not otherwise exist. The applicant has no duty to truthfully disclose his educational background or criminal record to any company that asks, but does have such a duty to the company which is his prospective employer. The rights of corporations in the hiring process are less extensive than those of applicants, but they do exist and their existence explains some procedural aspects of the ways in which applicants provide information and companies verify it. The rights of corporations are limited by various laws and regulations. As a general rule, companies may not request information in the application process which they cannot legally use in making the employment decision. Thus it is acceptable for an application form to require that an applicant provide information about previous employers, but not about churches attended, unless the applicant is applying to be a minister of the church. Once again, the questions simply need to be directly job-related.

SUMMARY AND CONCLUSION

We have seen that both the law and ethics each provide rights and corresponding duties. These are sometimes but not always the same rights and duties. Ethical rights can arise from law; this is the class of rights that we have called citizen rights. They can also arise from the fact that one is a human (human rights) or from the fact that one holds a certain position, such as applicant (position rights). The range of ethical or moral rights and duties is wider than that of legal rights and duties.

In the United States, there is an extensive body of laws, regulations, and court decisions that govern the hiring process. Other countries have such laws, regulations and court decisions also, but their content varies from one country to another. Human rights, such as truth-telling and dignity should apply to job applicants and to employers no matter what country they are in.

We stated earlier that the primary purpose of the hiring process is to select the best available applicant for the job that is open. Different companies take different approaches to accomplishing this goal. Stability in the hiring process can help to provide fairness in the way that applicants are treated (Alder & Gilbert 2006). Such fairness is important in respecting the rights of both applicants and the company. Put another way, all applicants have certain rights, as well as duties, in the hiring process.

Some of these rights and duties are spelled out by law. We have developed the argument that there are additional rights and duties present in the hiring process, and that these can be identified as ethical or moral rights and duties. If an employer wishes to establish, or to review, its hiring process, the notion of position rights is quite useful in thinking about standard practices such as information-gathering and communication with applicants.

Permissible and impermissible actions within the hiring process are determined by law and ethics, with ethics providing a broader framework than law. This framework forces attention to work-related characteristics of the applicants, and to prudent checking of information provided by applicants and used in the decision process. Such a process makes it more likely that the best available candidate will be hired, and whenever this is accomplished the business as well as the candidate benefits.

Whether an individual is hired for the position or not, if they complete the process feeling that their rights have been respected and having acted honorably in their duties toward the hiring company, the individual, the company, and observers of the process will all recognize that business has been conducted well.

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