

## **Protect Your Business by Hiring Right**

Years ago, few employers could have imagined how complicated hiring would become in the 21st century. Today's corporate recruiters, human resource personnel and small business owners must adhere to a strict set of rules and regulations governing how they hire and fire employees. To complicate matters, the rules of the game aren't as clear as they once were. There are detailed and often subtle nuances to the laws governing fair hiring practices that can be vague and confusing.

Unless you keep up with the latest legislation and judicial decisions regarding privacy rights, illegal discrimination, negligent hiring and wrongful termination, even the most well-intentioned employers may face expensive law suits or other legal consequences because of a simple lack of knowledge.

The question then arises: How do you hire right and protect your business from potential employment-related litigation? According to Attorney Arthur Bourque, a member of the Phoenix law firm of Stewart & Bourque, P.C., whose practice focuses on employment, real estate and construction law, the best way to protect your business is to establish an "organized, diligent management team committed to creating, implementing, and enforcing policies and procedures that instill morale, consistency and fair treatment for all employees."

In relation to hiring, this means focusing on job requirements and giving candidates an equal chance to meet those criteria. Begin by clearly defining the open job position, its duties, responsibilities and requirements. A clear concept of what the job will entail makes selecting the best candidate for the job easier. This also helps protect against accusations of disparate treatment. Disparate treatment is, in essence, treating some applicants less favorably than others because of race, color, gender, religion or national origin. "When litigation arises relating to this issue," Bourque advises, "the central question that is posed is whether or not an employer's actions were motivated by discriminatory intent.

"For example, a female employee applying for a job in a department store's warehouse is told the job is 'man's work,' and she would be better off applying in the jewelry department. That is an example of direct disparate treatment. "Disparate treatment can also be indirect. For instance, say no woman has been hired to work in that same department store's warehouse for many years. That could be a case of indirectly disparate treatment against female applicants." So, when you establish a list of hiring criteria, be sure your questions don't rule out any particular groups based on race, gender, religion or national origin.

Now, it's time to narrow the field of applicants. Review each resume you receive for presentation, neatness and readability. Look for applicants who don't meet the job's minimum experience, education and skills requirements. Look for

unexplained gaps in employment, frequent job changes and other red flags. Rule out any candidates who don't meet your selection criteria.

Before the interview begins, start with some standard paperwork. Have each applicant complete an application form. A good application form is consistent with company policy and provides information to applicants about your business. If, for example, your company has a zero tolerance drug use policy, put that in writing on the form.

If a criminal background check is required for a position, be sure to obtain written consent from the applicant before running a check. Bourque says Arizona law does not prohibit criminal background checks. "However," he reminds us, "federal law, such as the Fair Credit Reporting Act, may affect the nature and scope of a background check." Consult with an attorney to be sure you are acting within the law. The application should also include a clause by which the applicant agrees that if a background check reflects information that contradicts that provided on the application, the applicant will not be hired, or if already hired, will be terminated immediately. If the applicant refuses to provide consent or to sign the form, he or she may not be hired on that basis.

Another difficult area of the law is drug testing. "Drug testing in Arizona," Bourque says, "should be performed pursuant to a written policy that clearly places employees on notice of the circumstances under which employees or applicants may be tested. The Arizona legislature has promulgated specific laws that govern drug testing so that employers can be protected by, for example, claims of defamation or invasion of privacy (ARS 23-493, et seq.). The federal government also has laws that govern drug testing."

During the actual interview, break the ice by asking each candidate to summarize his or her work history and educational background. Then, run through your list of objective, job-related questions. Upon completing all the interviews, follow up with reference checks. Here, again, we turn to Bourque for advice: "I believe checking references is worth the small expenditure it takes to conduct them. This small cost substantially outweighs the cost you may pay by making a bad hire. "Even though most prior employers are reticent to release information about previous employees, your call will, nevertheless, confirm, at the very least, that the applicant did, in fact, work at the referenced business.

"Checking references is particularly important when a prospective employee will be in a position that could jeopardize the health, safety or welfare of fellow workers or the public at large. If you plan to entrust a daycare provider with the supervision of young children, you should thoroughly check the applicant's background."

Overall, if you have good intentions and attempt to treat applicants fairly and follow the law, most courts or juries will recognize your good intent and take that into consideration should an employment-related lawsuit arise.

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