
Reducing Your Risk: Hiring Tips (Part I)

Note: This is the part one in a three-part series. See also:

Reducing Your Risk: Employee/Employer Relationship Tips (Part II)

Reducing Your Risk: Termination Tips (Part III)

In generations past, many employers considered employees replaceable parts of production. If and when those employees spoke, they spoke through a collective bargaining voice. Over the last few decades the relationship between employer and employee has changed dramatically. Although union memberships are on the decrease, the voice of employees is heard through individual lawsuits. Any employer would be remiss in not recognizing the rights of employees and their obligations as an employer in this new environment.

Today, there is no reluctance to enforce employee rights. An employee who has been wronged by an employer can easily find a lawyer willing to lead the charge. Some have complained that the ambulance chasers of the past have been replaced with the plaintiff's employment lawyers of the present. While that harsh statement may not have a basis in fact, the filings in both state and federal court evidence that wronged employees hardly shy from the courtroom and almost without exception are able to retain highly talented lawyers.

The courtroom is no place for the employer to learn of employees' rights. Each employer should invest time and energy in learning the basic "dos and don'ts" of employment law. This three-part article series will serve as a checklist of information, designed to assist employers in avoiding some of the pitfalls that exist in the employee/employer relationship. We begin by examining the "pre-employment" relationship: from application through interview.

ANALYZE YOUR APPLICATIONS

Many employers have an application form. Review the application to ensure that it does not ask for information prohibited under the applicable state or federal statutes. Delete any reference to characteristics, such as age, race, religion, national origin, gender, disability, sexual orientation or marital status, or any other items later set forth in this outline.

INVESTIGATE YOUR INTERVIEWS

Seldom does one person make a hiring decision. Due to the sophistication of many employees, and the complexity of business, often the potential employee is introduced to a number of different employees. While this practice may result in hiring the most qualified employee, multiple interviews may also lead to problems if the interview process is unmonitored. Some tips you may wish to keep in mind include the following:

Seeking the Right Employee: Advertising & Job Description.

Ascertain that all recruiting materials accurately describe the job and omit non-job related criteria. Avoid including extraneous or unnecessary information. Most

importantly, avoid any statements regarding protected classes (see below). For example, use statements like "Qualified candidates should possess a minimum of five years experience and a BA/BS degree" instead of statements like "He should have a BA/BS degree and have at least five years, but no more than ten years experience."

As you can clearly see the second statement may suggest you are seeking a young male applicant.

Investigate the Interviewee.

While honesty may be the best policy, it is not always followed in employment applications. Either through insecurity or through the pressures of a competitive environment, interviewees or job applicants often fib on job applications. Be aware of this. Check references and other relevant background information. Request written confirmation of certificates, degrees and other credentials.

DON'T HIRE ANYONE UNDER THE AGE OF 14

Federal law prohibits employment of people under the age of 14. Some employers with an eye on profits and not on public policy ignore this rule. Don't be one of them.

KNOW THE PROTECTED CLASSES

Race: Applicants/employees should not be treated differently because of their race. Examples of racial groups include African Americans, Caucasians, Asians, American Indians, Eskimos, and Native Hawaiians.

National Origin: The country of origin of an applicant should have no place in the employment decision.

Religion: Applicants/employees should not be treated differently because of their religion. If someone needs a modified work schedule to comply with a religious observance, the employer must make reasonable efforts to accommodate. If accommodation would cause the employer undue hardship, he/she can refuse work around scheduling needs without liability for religious discrimination. However, do what you can and go the extra mile.

Gender/Sex: Gender is off limits! Applicants/employees should not be treated differently because of their gender or sexual preference.

Health/Disability: Avoid asking questions about medical conditions or disability. Although an employer can inquire whether an applicant can perform the functions of a job and can ask an applicant to demonstrate the ability to do so, more detailed questions can give rise to liability. Questions about a person's medical condition, disability, medication, hospital stays, among other things, may violate the Americans with Disabilities Act.

ESTABLISH AN AT-WILL EMPLOYMENT POLICY

The predominate rule in the United States and in California has been that an employee hired for an indefinite term can be discharged "at will" by the employer with or without notice for good or bad reasons, or no reason at all. The right to terminate the employment relationship without legal recourse is generally known as the "employment at-will doctrine". Obviously, there are exceptions to the at-will doctrine that have been carved out over the years. However, the at-will doctrine, while under attack, remains the rule in California. It is a rule advantageous to the employer. Take advantage of it! Include at-will language in all employment applications, offers, letters, employment agreements, confidentiality

agreements, stock option agreements, employee handbooks or other information which covers the employee/employer relationship.

COORDINATE COMMUNICATIONS

All communications to a prospective employee should be consistent. If your company has a Human Resources Department, use its expertise. If your company does not have an HR Department, consult legal counsel to review the information given to your employees. All written and oral statements regarding the terms and conditions of employment should be consistent. Avoid making promises that cannot be kept.

CONCLUSION

For the most part, employee/employer relationships are mutually beneficial. It is imperative the relationship starts off on the proverbial right foot. Like any contract agreement, a "win-win" situation for both parties is likely to create a fruitful, long-term relationship.

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For additional information, contact Joe Dworak, joseph.dworak@berliner.com, or Christine Long, christine.long@berliner.com, Berliner Cohen attorneys, or 408.286.5800.

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