

Hiring Hazards: How to Avoid the 7 Most Common Legal Landmines

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Avoiding Hiring Hazards

Welcome! Before we get started...

- Use the chat box on the left to ask questions
- Audio for today's webinar will come through your computer speakers. Please be sure your speakers are turned on and you have the volume turned up.
- If you are signed on more than once, please locate the duplicate log-in and close it. This will create a better audio experience.
- All attendees will receive a link to the presentation and slides in a follow up email.

What We'll Cover

- How to ensure your job application is legal
- What questions NEVER to ask candidates
- How to legally conduct pre-employment testing
- How to properly construct a job offer
- Why job classification matters
- How to legally complete new hire paperwork
- Why you should communicate workplace policies to new hires

Legal Landmine #1

Asking Illegal Questions on Your Job Application

Job Application Compliance

- Illegal questions can lead to lawsuits
- Laws like the ADA and GINA protect both employees and applicants
- Job Applications must comply with both federal and state laws
- A sound job application is the first step to fair and non-discriminatory hiring

Make Sure Your Job App...

- Asks probing job-related questions regarding skills, education, employment history and reasons for leaving previous jobs
- Contains airtight equal employment opportunity language, including an EEOC-approved question regarding applicant's ability to perform the job with or without accommodation
- Features the EEOC-recommended general non-harassment clause

Make Sure Your Job App... (Cont'd)

- Authorizes employment references
- Reinforces that employment is at-will
- Establishes an expiration date, so candidates know applications won't be held indefinitely
- Complies with all federal and state laws, including “ban the box” laws

Ban-the-Box Laws

- Restrict you from asking about criminal history on the employment application
- More than 30 states and 150 cities/counties have passed ban-the-box laws
- Goal is to give people with criminal records a fair shot at getting a job
- You can still conduct background checks but it has to be later in the hiring process

Salary History Questions

- Cities and states are increasingly passing laws to prevent businesses from asking candidates about salary history
- The reason for the ban is due to concerns about gender and race-based wage discrimination
- Laws prevent employers from using past compensation as a basis for current salary
- Employers in affected areas should remove salary history questions from all forms in the hiring process

Legal Landmine #2

Asking Candidates Discriminatory Interview Questions

Conducting the Interview

- Avoid any questions or conversation about personal issues
- Keep the interview focused on job-related topics
- If the candidate brings them up, change the subject
- If a question isn't directly related to the candidate's suitability or qualifications, it shouldn't be asked
- Ask questions that focus on past performance

Off-Limit Questions

DON'T: How old are you?

DO: Are you of legal age to serve alcohol?

DON'T: Are you a U.S. Citizen?

DO: Are you authorized to work in the United States?

DON'T: Are you pregnant? Do you have children?

DO: Will extensive travel be a problem? Will working overtime be a problem?

Off-Limit Questions (Cont'd)

DON'T: Are there any religious holidays you can't work?

DO: Can you work all the days and hours required?

DON'T: How many sick days did you take last year?

DO: Are you able to meet the attendance requirements?

DON'T: Are you in good health?

DO: Can you perform the essential duties required by this job with or without a reasonable accommodation?

DON'T: Do you do drugs?

DO: Would you be willing to undergo drug testing?

Additional Interview Tips

- Don't ask yes/no questions: Instead ask probing questions that encourage applicants to share their experiences
- Do take notes ... but not on the application: The application is an official employment record subject to recordkeeping requirements
- Don't make promises, implied or otherwise (e.g., "let's go meet your future coworkers," "in two years, you'll be ready for a promotion")

Legal Landmine #3

Administering Pre-Employment Tests in a Non-Compliant Manner

Why Pre-Employment Tests?

- Helps take the guesswork out of measuring skills and aptitudes
- Helps you hire the most qualified people and lower employee turnover
- Eliminates risk of choosing the wrong person for the position

Types of Tests

- **Skills Tests:** Used to target employees who are strong in basic skills, such as math, written communication and problem solving
- **Integrity Tests:** Help determine if applicants are trustworthy
- **Personality Tests:** Measure traits such as helpfulness, dependability, creativity and leadership

Best Practices for Drug Tests

- Only conduct after a conditional offer
- Give candidates written notice of your drug testing policy
- Include a consent form
- Outline what happens if a test comes back positive
- Keep all results confidential
- Require candidates to sign a release form
- Know your state laws; local laws vary

Conducting Background Checks

- Helps you select the best person for the job
- Eliminates dangerous or unsuitable candidates from the hiring process
- Different types are available (e.g., criminal background, credit history, driving record)
- Employers should obtain authorization from applicants before requesting any type of report

Legal Landmine #4

Not Constructing Your Job Ad and Job Offers Correctly

Placing a Job Ad

- Emphasize your company's equal employment opportunity policy
- Be careful how you word ads; accurately describe what the job entails and minimum requirements
- Ad should contain only these elements: job title, general duties, company background, necessary skills, required experience and education
- Avoid any suggestion of discrimination in the terms you use (e.g. "stockboy" or "waitress")

Creating Your Job Offer

- Include at-will language
- Make sure your offer includes all the basic terms
- Avoid phrases that promise employment for a particular duration such as “after two years, you will be promoted”
- Include a disclaimer that states, “this offer is not meant to state contractual terms and does not constitute a contract”

Legal Landmine #5

Not Classifying Your Workers Correctly

Exempt vs. Non Exempt

Non-Exempt (or “hourly”) employees:

- Overtime pay required, at the rate of one and one-half times regular rate, for all hours worked over 40 in a workweek
- Must be paid at least minimum wage for all hours worked
- Accurate time records must be kept

Exempt (or “salaried”) employees:

- Overtime pay not required
- Time records not required
- Paid on a salary basis for all hours worked
- Common examples include executives and high-level managers

When Can Employees Be Exempt?

To qualify for an exemption, an employee:

- Must be paid on a salary basis
- Must meet the minimum salary threshold (currently \$455/week)
- Must meet a duties test for an exemption

Employee must meet minimum salary level AND satisfy specific job duties tests to be exempt

Types of Exemptions

- White collar exemptions
 - Administrative
 - Executive
 - Professional
 - Creative
 - Outside Sales
- Business owner
- Highly compensated employees

Job Duties Tests

Executive Exemption Test	Administrative Exemption Test	Professional Exemption Test
<p><u>THE EMPLOYEE MUST:</u></p> <ul style="list-style-type: none">• Manage a team or department• Direct the work of two or more employees• Have authority to hire and fire	<p><u>THE EMPLOYEE MUST:</u></p> <ul style="list-style-type: none">• Perform non-manual work• Manage “back-office” general business operations• Have decision-making authority on significant matters	<p><u>THE EMPLOYEE MUST:</u></p> <ul style="list-style-type: none">• Perform tasks requiring advanced knowledge• Have advanced education or special training• Be specialized in a field of science or learning

Legal Landmine #6

Making Errors During the Form I-9 Process

Common Form I-9 Mistakes

- Not using the correct version of the form
- Requiring specific documents (e.g. a passport or “green card”)
- Leaving out basic information
- Not reviewing physical documents
- Not completing the form by the deadline
- Storing Form I-9s in personnel files

Legal Landmine #7

Not Communicating Workplace Policies

Policies Companies Should Have

- **Code of Conduct:** Answers questions about ethics or compliance, such as dress code
- **Nondiscrimination:** Employees are protected against discrimination based on protected characteristics
- **Harassment:** States your workplace has zero tolerance for harassment and gives reporting procedures

Policies Companies Should Have (Cont'd)

- **Attendance:** Covers working hours, break rules, time off, leave policies, scheduling, etc.
- **Compensation & Benefits:** Covers pay-related inquiries, such as required deductions and overtime
- **Employment & Termination:** Includes at-will employment, employee classifications, etc.

Policies Companies Should Have (Cont'd)

- **Safety & Security:** Describes how your company creates a safe, secure workplace, including any relevant OSHA laws
- **Computers & Technology:** Addresses appropriate computer and software usage, as well as security or confidentiality requirements for electronic information

Quick Review

- The importance of compliant job applications
- Off-limit interview questions
- Pre-employment testing and how to properly administer
- Placing compliant job ads and making offers
- Classifying employees correctly
- Common Form I-9 mistakes to look out for
- The importance of communicating company policies

HR Solutions



I-9 & W-4



Job Applications

- Web-based solution
- Easy-to-use and implement
- Affordable for small businesses
- Comes with FREE Employee Records App
- For more info visit www.hrdirectapps.com



- 30 different tests to choose from
- Available in paper or online
- Quantity discounts available
- All tests professionally designed by experts in employment and skills testing



Essential Workplace Policies

- One-off policies

Gradiance Handbook Manager

- Handbook creator
- Both federal and state
- Automatic updates

Both products contain Attorney-written policies

Questions



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