

Intentional or Accidental:

Hiring Discrimination is Illegal — Here's
How to Prevent It

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Today's Agenda

- Language to avoid when advertising and recruiting
- Precautions to take with overlooked applicant pools
- Checklist of right and wrong interview questions
- How to ensure your job application is fully compliant
- Considerations when conducting background checks
- Ways to help hiring managers avoid unintentional bias

THE U.S. LABOR SHORTAGE

U.S. Labor Shortage

- Both large and small companies are reporting extreme difficulty finding workers
- Nearly 4.3 million workers voluntarily quit their jobs in August 2021, up from 4 million in July
- This is by far the most in two decades since the DOL has been collecting data
- As of August 2021, there are 10.4 million job openings in the United States
- Many companies are hastily hiring and/or putting inexperienced supervisors in charge

LEGALLY COMPLIANT JOB ADVERTISEMENTS

Job Advertisements

- Placing a job ad on a website is the most popular method of recruiting today
- But in doing so, you must be careful with the wording
- Federal laws prohibit any type of employer preference or bias based on sex (including pregnancy, sexual orientation and gender identity), race, color, religion, national origin, age, genetic information or disability
- If your job ad isn't worded appropriately, you could appear discriminatory without even realizing it

Avoiding Gender Discrimination

Steer clear of stating any gender preferences for the position, and make sure to use neutral job titles. For example:

- Don't specify you're looking for a new "salesman," but rather, a "sales representative"
- "Waitress" implies a preference for female candidates, while "wait staff" or "server" show no gender preference
- Instead of a "stock boy," advertise for a "stock clerk"

Avoiding Religious Discrimination

- Religion shouldn't be referenced in job postings unless it is absolutely necessary for the job
- If you're a conservative company, be extra cautious with the language you use to convey this
- "Christian values" is obviously illegal, but terms like "wholesome," "traditional," or "family values" should also be avoided

Avoiding National Origin Discrimination

- You can't require applicants to be U.S. citizens unless it's necessary for the job
- Indicate that successful applicants will be required to complete an I-9 to verify their eligibility to work in the U.S.
- If the job requires English language skills, phrase it along the lines of "having an excellent command of the English language"
- If the job requires speaking a different language, make sure the emphasis is on the skills ("must speak Spanish" is okay, but "must be Hispanic" is not)

Avoiding Disability Discrimination

Don't use phrases like "able-bodied," "strong" or "in good health." Instead, include precise job descriptions that state the exact tasks required, such as:

- Position requires lifting up to 50 pounds
- Employee needs to travel to different job sites
- Position requires use of a ladder
- Employee must be able to stay in a stationary position during the entire shift (avoiding the term "stand")

Avoiding Age Discrimination

- Avoid any age-related terms in your job listings
- It's okay to ask for applicants with a “fresh outlook” or “high-energy” but you can't specify “young professional”
- Advertise your “entry-level” jobs, but don't use the words “recent graduate”
- Never use the terms “junior” and “senior” unless they're part of the job title

What You Can Say

In every ad, include the statement, “We are an equal opportunity employer.” Beyond that, incorporate these elements:

- Job title/position
- Primary duties
- Necessary skills and experience
- Company background
- How to respond

LEGALLY COMPLIANT JOB APPLICATIONS

Employment Applications

The job application can include questions about a candidate's background and qualifications. However, it should never include questions that reveal:

- Gender
- Age
- Race or National Origin
- Religion
- Disability
- Marital status

Employment Applications

Make sure you're using an application that:

- Asks job-related questions regarding skills, education, employment history and reasons for leaving previous jobs
- Contains equal employment opportunity language
- Includes an EEOC-approved question regarding the applicant's ability to perform the job, with or without accommodation

Employment Applications

- Features the Equal Employment recommended general non-harassment clause
- Reinforces that employment is “at-will”
- Establishes an expiration date, so the candidate knows the application won’t be held indefinitely
- Authorizes employment references
- Complies with all federal and state laws, including the latest “ban-the-box” laws

Ban-the-Box Laws

- To date, more than 30 states and 150 cities/counties have passed laws to reduce hiring barriers for individuals with criminal histories
- Ban-the-box laws prohibit the question on job applications, “Have you ever been convicted of a crime?”
- The laws restrict employers from asking this question until later in the hiring process

Salary History Ban Laws

- A handful of states and cities now prohibit employers from asking applicants about their salary history
- The purpose of the law is to discourage unequal pay between men and women — and people of different races
- In affected states and cities, employers can't ask, “What was your starting/ending rate of pay?”

INTERVIEW QUESTIONS

Interview Questions

- **Don't ask:** Are you a U.S. citizen?
Do ask: Are you eligible to work in the United States?
- **Don't ask:** Are you in good health?
Do ask: Can you perform the essential duties required by this job, with or without a reasonable accommodation?
- **Don't ask:** Do you have children?
Do ask: Will working overtime be a problem?

Interview Questions

- **Don't ask:** Are there religious holidays you can't work?
Do ask: Can you work all the days and hours required by the job?
- **Don't ask:** How many sick days did you take last year?
Do ask: Are you able to meet the attendance requirements of this job?
- **Don't ask:** When did you graduate?
Do ask: Can you tell me about your education?

ACCOMMODATING DISABLED APPLICANTS

Interviewing Disabled Applicants

- Conduct interviews in accessible locations
- Honor requests for a reasonable accommodation
- Inform candidates of pre-employment tests ahead of time
- Treat applicants with disabilities with the same respect and dignity you treat all applicants
- Focus on the essential functions of the job

CONDUCTING BACKGROUND CHECKS

Background Checks

A background check is a particularly wise move if the employee will be:

- Driving on the job
- Handling money
- Doing your company's bookkeeping
- Working with sensitive data (such as customer financials)
- Working on your company's computers

Background Checks

Background-checking companies can help confirm information the candidate provides on the resume and job application such as:

- Previous employment
- Job titles
- Hiring and termination dates
- Education or credentials

Background Checks

- To comply with federal and state regulations, use a qualified background-checking company that is familiar with the latest legal requirements
- Obtain written consent from the applicant
- If you decide not to hire a candidate due to the background check, you must give the applicant written notice and offer him or her a chance to dispute the information

MANAGING UNCONCIOUS BIAS

Understanding Unconscious Bias

- Unconscious bias is the human tendency to make quick judgments about other people without even realizing it
- Unconscious biases toward other people can be based on social norms and stereotypes and on our own personal life experiences
- The judgments we make based on our biases can happen so quickly that we aren't even aware of them
- It's important to understand that we all have unconscious biases that directly affect our behavior

Types of Unconscious Bias

- **Gender bias:** This involves having either a positive or negative perception of an individual based on their gender
- **Affinity bias:** This is the tendency to gravitate toward people who are similar to us in some way
- **Beauty bias:** This is the tendency to gravitate toward people we find attractive
- **Cultural bias:** This is the tendency to judge the world on a narrow view of your own culture, or your perceptions of other cultures

Unconscious Bias and Discrimination

- An older job candidate is told he “doesn’t fit the culture”
- Candidates with ethnic-sounding names are placed in the “no” pile
- A supervisor ignores the skills and experience of a candidate and selects an equally qualified — yet more attractive — applicant
- A manager prefers one candidate over another simply because the first one seems like someone who would be fun to hang out with after work
- A hiring supervisor checks resumes for addresses in more affluent zip codes

Managing Unconscious Bias

- **Make unconscious bias conscious:** You can't get rid of them, but awareness is the first step in overcoming them.
- **Audit internal processes:** Look at job advertisements, job descriptions and your resume screening practices.
- **Be more equitable:** Make sure all applicants are treated equally and fairly.

SOLUTIONS TO PROTECT YOUR BUSINESS

Fill-and-Save™ HR Form Library: Hiring & Onboarding

- **Electronic Fill-and-Save™ Forms** — Simply download the exact form you need, when you need it. Includes 11 forms to support the hiring and onboarding process. The fillable PDF feature makes it easy to route, complete and save completed forms.
- **Unlimited Downloads** — Use the forms as often as you need for a full year. You'll never again have to replenish paper forms, discard outdated forms or worry about using a noncompliant form.
- **Automatic Updates** — All forms are attorney-approved and guaranteed to comply with federal and state employment laws. The annual fee includes ongoing legal monitoring and automatic updates to ensure forms remain 100% compliant throughout the year.

HRdirect Smart Apps

- **Job Application Smart App:** You'll start with the most current, state-compliant job application. Whenever there's a change to your state's requirements, you'll be notified, and your application will be updated to reflect the most up-to-date, compliant version. With one click, generate a link to your job application or email it directly to a candidate.
- **Applicant Tracking Smart App:** The app will guide you through the appropriate stages of hiring covering all the bases such as Interviews, Employment Testing, Reference Check, and more. If preferred, you can assign different stages to hiring managers and skip over the ones you don't need.

THANK YOU!