

Interviewing: Is there potential liability before you've even hired an employee?

The answer is “**Yes**”. Applicable Federal and State laws prohibit discrimination on the basis of an applicant's race, color, national origin, religion, sex, genetics, age and/or, but not limited to other factors such as disability, family/marital status and in some states, sexual orientation.

Lawsuits and discrimination claims by employees and applicants have been at record high levels. Business owners and supervisors/managers are at the front line making decisions which may, without intention, create opportunities for lawsuits in employment areas such as pay raises, promotions/demotions, terminations, work assignments, and one of the most legally dangerous of all those areas, interviewing potential job candidates.

One simple misguided question may cause an applicant to think he or she did not get the job because of an illegal reason. The burden of proof remains on the potential employer to show the action was not discriminatory. In the absence of a good reason otherwise, a jury may legally *presume* discrimination bringing liability to both the business and the individual supervisor/manager.

So how do you avoid liability before you've even hired a job applicant?

First and foremost, make sure your business has developed written policies & procedures with regard to the interviewing & hiring process, and train your managers. Also, ask questions consistently among applicants which are specific to the applicant's ability to perform the job functions and meet job qualifications.

Second, if you and/or your company are presented with an allegation of discrimination under one of the Federal or State statutes such as Title VII and you have less than 15 employees, those statutes may not apply to your business and it is important to notify the investigating agency your business is not covered.

There may also be additional liability as a matter of fair employment practices, so here are some questions you should never ask:

1. How old are you? When did you graduate from High School?
2. What does your husband or wife do?
3. This job requires you work extra hours. Do you have children or other obligations which would cause a problem?
4. Do you own or rent a home?
5. What church do you attend?
6. Have you ever been arrested?
7. From what country are you a citizen?
8. Do you have any debt?
9. Do you suffer from any illness or disability?
10. Have you ever been treated for drug addiction?
11. Tell me about yourself? – Open ended and invites personal information

These among many other questions may be considered illegal and support a claim of discrimination. Be thoughtful as to how you ask questions and consider legal ways to identify the candidate best suited for the available position.

If an applicant begins to volunteer personal information, it is best to politely stop them and let them know the personal information they shared will not be part of the decision making process.



For answers to questions you may have and all your Human Resource needs, feel free to contact Mike at m Dobert@hrinalignment.com or 281.494.2985.

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