A Hiring Tip That Can Keep You Out of Court

In a down economy, it's no secret that it can be hard for jobseekers to find new employment. And, as a result, rejected candidates might be more likely to put up a fight—and file lawsuits. So it's more important than ever for employers to make sure they're doing everything right.

What's the best way to protect yourself from hiring claims? Make sure that everything you say and do—and require—is job-related. Mike Moye and Sandra Rappaport drove this point home to attendees at the 2008 California Employment Law Update, held last week at the Westin St. Francis hotel in San Francisco. Moye and Rappaport are partners at the San Francisco office of law firm Hanson Bridgett, LLP.

According to Moye and Rappaport, ensuring that inquiries and requirements are job-related makes it less likely that the hiring process will be challenged as discriminatory or invasive of an individual's privacy.

Take this example: The job requires physical activity, such as lifting heavy objects. Can the interviewer ask if an employee has a history of back or neck problems that would interfere with lifting? Rappaport said that employers should think about what information they are getting and what they plan to do with that information. Asking applicants if they have back problems won't provide the information needed to determine if the person can lift. The better question is, "This job requires you to lift 25 pounds. Are you able to do it?"

Or, what if a manager asks a female applicant whether she has small children? The manager defends this question on the grounds that the job is demanding and it's important to know how someone will juggle childcare responsibilities with work. But, said Rappaport, the child issue isn't job-related and could lead to a gender bias lawsuit. The manager could instead elicit what he needs to know about job commitment by describing the job hours, travel, etc. and asking if the candidate is willing and able to meet those requirements.

How do you steer the interview process along the job-related track when you have a number of people in your organization involved in the interviews? Have an interview plan—and avoid just "winging it," which can lead to inconsistency and
inappropriate questions being asked. The plan should focus on eliciting information about a candidate’s performance and experience. Use open-ended questions, rather than those that simply require a yes or no response. And, Moye advised, stay away from inquiries that could take you off topic. For example, "If you were a dessert, what dessert would you be?"

Rappaport said employers should make sure managers are trained on the plan and ask the same questions of all applicants for the job. Also, be sure to give managers a question template to follow along with a score sheet to keep track of applicant responses. The good news is that there’s an added benefit to having a consistent plan: you’ll have an easier time comparing applicants when it comes time to make your selection decision.

And, finally, make sure you have detailed job descriptions, keep them updated, and tailor interview questions to gather information you’ll need to determine whether a job candidate meets the qualifications for the position.

How to Create Lawsuit-Resistant Job Descriptions

Job descriptions can be a powerful tool to help you manage your workplace. As mentioned above, they can help you keep the hiring process in line, as interview questions can—and should—be tailored to gauge whether an applicant meets the position requirements as specified in the job description. Job descriptions can also be an indispensable aid for ensuring you comply with a variety of federal and state laws and regulations, including the Americans with Disabilities Act and the California Fair Employment and Housing Act. But your organization will not reap these benefits if your job descriptions aren't properly drafted or you don't use them.

That's where we come in. Our comprehensive Job Descriptions Employer Guide takes you step-by-step through the process of drafting job descriptions. We've included practical information on why job descriptions are important to have in place, which details you should—and should not—include in them, and how to make sure your job descriptions stay up-to-date. You'll also find a handy drafting checklist and sample job descriptions.

For more information, please contact:

Jahmal T. Davis, Partner
415-995-5815
jdavis@hansonbridgett.com