Hiring New Employees – A Primer



What laws must I follow when hiring new employees?

A variety of state and federal laws govern what you can and cannot do during all phases of the hiring process, which includes advertising, interviewing, investigating, testing and selecting new employees.

Generally, you must:

- avoid illegal discrimination
- respect the applicant's privacy rights
- refrain from making promises you can't keep
- observe the legal rules for hiring immigrants, and • observe the legal rules for hiring young workers.

Do I have to advertise open positions?

If you are a private employer, the law does not require you to advertise open positions. You can fill them any way you like.

Nonetheless, there are two very compelling reasons for advertising:

- you gain a larger pool of applicants from which to choose your new employee, increasing the chances that you will find a great person for the job, and
- you avoid unintentional discrimination. (For example, if you rely solely on word of mouth for your hires, and if you only know people of your race and class, then your hiring process may be discriminatory – even though that is not your intention.)

When I hire someone, do I have to give them a written employment contract?

No. The law does not require you to use a written employment contract. However, there may be times when using a contract is wise.

Can I hire someone who is younger than 18 years of age?

There are some restrictions on whether you can hire someone younger than 18 years of age. These restrictions relate to:

- the nature of the job (for example, whether it is agricultural or

hazardous) • the hours of the job (for example, whether it is full-time or part-time), and
- your relationship to the applicant (for example, whether you are the applicant's parent).

In addition, you will want to check your state's specific laws regarding employment of minors.

Is it ever acceptable to consider someone's disability when filling a position?

Yes. You can consider an applicant's disability if it makes him unable to perform an essential function of the job. For example, you can refuse to hire someone who is unable to lift things if one of the essential functions of the job is heavy lifting.

If I know that an applicant has a problem with drugs or alcohol, can I refuse to hire him on that basis?

Yes. You may refuse to hire someone solely because of their current use of alcohol or drugs.

If I know that an applicant used to have a problem with drugs or alcohol, can I refuse to hire him on that basis?

No. A federal law (42 USC § 12114(b)) prohibits you from discriminating against applicants:

- who are successfully rehabilitated from past abuse of alcohol or drugs and who no longer abuse alcohol or drugs
- who participate in a rehabilitation program and who no longer abuse alcohol or drugs, or
- who are rumored to have abused alcohol or drugs but did not actually abuse them and do not currently abuse them.

Because you are not allowed to consider past abuse of alcohol and drugs in making your hiring decision, you should not ask about past abuse on a job application or in a job interview.

Am I allowed to ask someone if they are an illegal alien?

Not in so many words. However, you can ask if the worker is legally authorized to work in the United States on a full-time basis.

Beyond that, however, you should not explore the details of an applicant's citizenship, because it is illegal to discriminate against people based either on their national origin or on their lack of U.S. citizenship.

Will I get into trouble if I accidentally hire someone who is not legally permitted to work in the United States?

No. The law only prohibits you from knowingly hiring an unauthorized alien. Reasonable mistakes will be forgiven.

Can I refuse to hire someone just because I don't like him or her?

Yes. There are numerous intangibles that will factor into whether you want to

hire someone to work for you, and your personal impressions of the person, including whether you like him or her, will doubtless be among those intangibles.

Be sure, however, that you aren’t letting prejudices enter into whether you like someone. If you do so, you may run afoul of the anti-discrimination laws.