

Checklist of Important Pre-Hiring Concerns

Remember: Avoid litigation through proper planning and execution. The time to defend against the termination lawsuit begins **before** you hire. **Before Hiring:**

1. Be sure that advertisements and help-wanted ads are not discriminatory.
2. Avoid using descriptions in advertisements and brochures implying that the job being offered is secure (i.e., listing words such as "long-term growth," "permanent," "secure," or "career path.")
3. Minimize the inference that long-term tenure is being given in advertisements and brochures by using preferred words such as only "full-time" or "regular."
4. Save copies of all ads and record the number of responses and the number of hires.
5. Avoid asking discriminatory questions during job recruiting and selection.
6. Instruct all personnel in charge of hiring never to tell or admit to an older applicant that they are "overqualified" or lack "formal education credits."
7. Scrutinize all job requirements to insure that your company is not inadvertently screening out qualified disabled applicants.
8. Review your hiring policies regarding disabled applicants to comply with the ADA.
9. Avoid making guaranteed earning claims you don't intend to keep.
10. Properly investigate an applicant's references and statements on the employment application but be careful not to violate defamation or privacy rights when investigating references.
11. When preparing job criteria, do not set a higher requirement than is needed for the job simply to attract a better caliber of applicant to avoid discriminating against a particular class of applicant.
12. Review employment applications, personnel manuals and work rules likely to be involved in a termination lawsuit.
13. Regulate statements that recruiters, interviewers and other intake personnel make to new or prospective employees.
14. Do not institute affirmative action policies without conducting a thorough statistical analysis of your workforce.
15. Be familiar with the technical aspects of The Immigration Reform and Control Act of 1986 and comply with all aspects of this law when hiring workers.
16. Do not impose pre-employment physicals even if all applicants are required to take physicals in the screening process.
17. Do not request applicants to take lie detector or polygraph tests.
18. Tread carefully before thinking about offering stress tests, psychological tests, and other honesty tests to applicants.
19. Understand the distinction between employee and independent contractor status to comply with IRS requirements.
20. Clearly understand the arrangement your company has with employment agencies and confirm the placement fee and other conditions in writing to avoid potential disputes.
21. Contact your nearest office of the Department of Labor to be sure your company complies with all appropriate benefits laws affecting part-time workers.
22. Be cautious when seeking to investigate an applicant's medical history.
23. Always have applicants sign release forms that approve reasonable background checks on credit, criminal and work histories.
24. Carefully evaluate "English-only" language rules before implementing such rules within your workforce to avoid potential EEOC violations.
25. Always refrain from asking for photos of applicants before hiring.
26. Avoid asking for clergy references before hiring.
27. Avoid asking questions of females that you would not ask of males.
28. Pay special attention when inquiring into arrests (not convictions) since arrests are often overcome by acquittal, dismissal, or withdrawal of charges and such questions in most cases are illegal.
29. Understand that the Fair Debt Credit Reporting Act restricts employers from using credit reports for hiring or employment decisions.
30. Instruct all officers to avoid making any remarks regarding lifetime employment.
31. If you decide to screen applicants for drug or alcohol use, adopt a plan and record it in work rules, policy manuals, employment contracts and/or collective bargaining agreements.
32. Understand that lawsuits commenced by employers to enforce restrictive covenants in employment agreements are not always successful.
33. To increase the chances of enforcing a restrictive covenant, be sure the clause is clearly drafted in writing, is short in terms of geographic location and time constraints (i.e., no more than one year) and additional consideration was offered as a fair inducement for the employee to sign a contract containing such a clause.