

## Checklist of Important Pre-Hiring Concerns

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

### **Before Hiring:**

- Be sure that advertisements and help-wanted ads are not discriminatory.
- 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.")
- 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."
- Save copies of all ads and record the number of responses and the number of hires.
- Avoid asking discriminatory questions during job recruiting and selection.
- 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."
- Scrutinize all job requirements to insure that your company is not inadvertently screening out qualified disabled applicants.
- Review your hiring policies regarding disabled applicants to comply with the ADA.
- Avoid making guaranteed earning claims you don't intend to keep.
- 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.
- 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.
- Review employment applications, personnel manuals and work rules likely to be involved in a termination lawsuit.
- Regulate statements that recruiters, interviewers and other intake personnel make to new or prospective employees.
- Do not institute affirmative action policies without conducting a thorough statistical analysis of your workforce.
- 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.
- Do not impose pre-employment physicals even if all applicants are required to take physicals in the screening process.
- Do not request applicants to take lie detector or polygraph tests.
- Tread carefully before thinking about offering stress tests, psychological tests, and other honesty tests to applicants.
- Understand the distinction between employee and independent contractor status to comply with IRS requirements.
- Clearly understand the arrangement your company has with employment agencies and confirm the placement fee and other conditions in writing to avoid potential disputes.
- Contact your nearest office of the Department of Labor to be sure your company complies with all appropriate benefits laws affecting part-time workers.
- Be cautious when seeking to investigate an applicant's medical history.
- Always have applicants sign release forms that approve reasonable background checks

- on credit, criminal and work histories.
- Carefully evaluate "English-only" language rules before implementing such rules within your workforce to avoid potential EEOC violations.
  - Always refrain from asking for photos of applicants before hiring.
  - Avoid asking questions of females that you would not ask of males.
  - 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.
  - Understand that the Fair Debt Credit Reporting Act restricts employers from using credit reports for hiring or employment decisions.
  - Instruct all officers to avoid making any remarks regarding lifetime employment.
  - 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.