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Keep It Legal: Interviewing and Hiring on the Right Side of the Law

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Some workplace lawsuits are commonplace, the court cases where employees take legal action against their employers—from workers compensation claims to harassment issues to cases of unjust firing. There is a growing trend, however, of litigation involving people who never were employees. Job candidates who were passed over for jobs and feel that they were treated unfairly or were victims of discrimination during the interview process are now suing.

“These lawsuits focus on bias, inequity, and violation of the law when company representatives and potential employees first meet,” said Philippe Weiss, National Director of Seyfarth Shaw at Work, a training subsidiary of Seyfarth Shaw LLP, a Chicago-based international law firm. “If employers aren’t setting the right standard at the start—during the interview and hiring period—they are probably making several dangerous and potentially costly mistakes throughout the employer/employee relationship.”

Weiss admits this new type of litigation may be frightening to company leaders, but there are steps that can be taken to minimize, or even circumvent, risk. “The first step in protecting companies is understanding where their leaders and hiring managers are going wrong,” said Weiss. How are organizations making themselves vulnerable? The following are common mistakes hiring managers and other company representatives make during the interview process, including strategies from Seyfarth Shaw at Work on how to avoid them:

The Not-So-Subtle Dangers of Inference

We can all think of blatant discriminatory remarks that would be unacceptable in the workplace, such as any kind of inflammatory racist or sexist statements. There are, however, more subtle comments that can be construed as prejudiced. For example, an interviewer speaking with a prospect who has a large family may say, “Wow! Four kids! You’ve really got your hands full!” These types of observations can come back to haunt hiring managers because they may be perceived as implying that the candidate isn’t capable of doing the job.

While it is best to only broach those topics that directly relate to the job and the candidate’s skills and performance, this doesn’t always happen during an interview. The tricky part is navigating the middle ground—those subjects that might be okay to discuss (or maybe not). Avoid even trying to traverse these “middle ground” topics and play it safe!

Steer Clear of the Personal

Scrutiny of a prospect's personal life is off-limits altogether. Therefore, interviewers should stay away from any of these taboo topics: race, gender, religion, marital status, sexual orientation, medical status, family life or disability. Some candidates may talk about their personal life unprompted. In these cases, the conversation should be directed back to the job and the organization.

There are so many "meaty" topics to cover during the interview process, hiring managers needn't ask about candidates' personal lives. Instead, they should focus on performance. What are the physical, technical and behavioral requirements of the position and does the candidate meet them? Does the person demonstrate effective communication, leadership and time-management skills? How will this new hire benefit the company?

The Trap of Inconsistency

Inconsistency is another pitfall in the hiring process. This is particularly common during "crisis hiring," when companies are so anxious to fill positions they may bend the rules to do so. Inconsistency can also creep in when multiple people are involved in the interview process, or when first time managers are doing the interviewing and hiring.

All company representatives must follow the same protocol for all positions, and give equal credence to internal and external hires. If the requirement is to interview three people for each position, the hiring manager should interview three—no matter how strapped they are for time. Anything else can look like favoritism.

One option for companies looking to avoid lawsuits stemming from faulty hiring practices is to invest in a training program. But participating in training alone won't absolve companies from litigation. "Look for high-impact programs with hands-on instruction that engage participants and teach practical skills," said Weiss. "It is also important to have company-wide buy-in about the program. Hiring managers should be part of the training, but it also makes sense to have senior leadership participate to build awareness at all levels of the company."

Weiss strongly recommends training programs that connect hiring to other management practices and that have been both third-party vetted and reviewed and approved by an enforcement agency in the context of actual litigation or a consent decree.

Hiring managers and company leaders shouldn't be paralyzed with fear at the thought of their next interview. These best practices will help them interview effectively and within the law. Additionally, the mistakes that plague the interview process are most likely the same ones that creep into other workplace relationships. If they can be avoided at the start, it can create a more comfortable and successful work environment for everyone!