

THE RISKS IN JOB INTERVIEWS

By Attorney Michael H. Wald

Most businesses understand the value of properly conducted job interviews where qualified applicants are carefully screened to make sure they are appropriately suited for the positions open in the company.

The job interview is handled with the company in mind, with the interviewer cognizant of the hazards of bringing the wrong person in.

But few companies consider the problems they can bring upon themselves by not understanding the legal implications of the job interview process.

Yes, there is considerable legal risk in the age-old job interview, especially in the face of today's lawsuit-happy society. The idea is to keep questions fair -- related to the capabilities of the applicant as they relate to the open position. The problems come when lifestyles, physical condition, and personal feelings are addressed.

In other words, watch out and avoid discussion of these following areas:

- o Physical handicaps. If you are a manufacturer interviewing people for work on an assembly line, fine. Make sure you explain to the applicant without an arm that the job requires the use of both hands. The wheelchair-bound applicant for an office position should be interviewed as to his or her abilities as they would be used in the typing pool or on the switchboard. If the handicap would clearly affect the person's ability to carry out the job, then discuss it. If not, then don't mention it.
- o Nationality. As ridiculous as it may sound, you can get in trouble for asking what country a person comes from. Your rights allow you to ask the applicant if he or she is an American citizen,

but no further. Even an innocent question to satisfy your curiosity about a person's origin can be used against you. Interviewers cannot require anything but status of American citizenship.

- o Religion. Don't ask an applicant if his religious practices would not allow him to come to work on a certain day. Instead, tell him the hours and days he or she would be required to report. Let the applicant tell you if there would be any problem. If a conflict does arise, end the interview right then, and never discuss religion -- even yours.

- o Criminal History. You can only use a person's criminal past against him if he was convicted of a crime. Don't ask about any charges that were dropped, or about any civil suits he was involved in.

- o Financial Situation. Feel free to check out an applicant's credit record, but no more. Do not ask him or her about his home, car, or outstanding debts -- get your information from the credit bureau. The law doesn't approve of employers denying employment due to someone's financial status, regardless of how you may feel the applicant would do in the job with all the pressures of heavy debts looming above him. Keep all the questions free from areas of the applicant's personal money management.

- o Age. Watch out for this one. This is the area where most suits against interviewers originate. In terms of denying someone employment because he or she is too old, federal law protects anyone between 40 and 70 against discrimination. You can also get in trouble if an applicant is rejected because he or she is too young.

- o Race. Try not to even bring up the topic of race in any interview -- even if the applicant will be the company's first member of that particular race. If the applicant brings it up, tell him or her that you do not discuss the subject of race. Ever. Like age, this is a volatile area for interviewers.

- o Family Matters. When it comes to finding out about an applicant's lifestyle and family situation,

proceed with caution. Don't get into discussions about his or her separation, and the problems they're having with child support, custody, or child care. You can describe the job, and all the extra hours or travel that will be required, but do not ask the applicant what his or her spouse or children will have to say about it. Do not ask if the applicant is even having any family problems that may affect his or her job performance or ability to get to work on time. As with the case of handicaps, spell out the job requirements and let the applicant tell you if there are any conflicts with his family responsibilities.

As a business person, you feel the great need to fill your positions with only the best qualified, most promising employees. You look for ability, responsibility, and good chemistry. These are all valid points, but in the legal context, you have a great deal of additional considerations. Interview for the best you can find, but do it in a way that won't present any hazards.

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