Navigating Your Onboarding Process: Employment Law Basics for the Early Stage Company

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Introduction

I. Laws Prohibiting Discrimination in Hiring

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Introduction, cont’d.

- Offer letters
- Onboarding Agreements
- Fundamental Handbook policies
Laws Prohibiting Discrimination

- Title VII
- Equal Pay Act
- Age Discrimination in Employment Act
- Americans with Disabilities Act
- Immigration Reform and Control Act
- Comparable State Laws
Lawful Questions

- **General Rule**: Employers should ask only for information prior to hire that is necessary for making a hiring decision. Acceptable areas of inquiry include education and training, and past work experience.
The Application Process

- Employment Application
  {State law restrictions/Ban the Box legislation}
- Reference Checks
- Other Pre-Employment Inquiries
Marital and Family Status

- **Not O.K.**
  - What is your marital status?
  - Check one:
    - Mr.____ Mrs.____
    - Ms.____ Miss ___
  - Name of spouse?
  - What was your maiden name?
  - Do you have children?

- **O.K.**
  - Other names you have been known by (if a background check requires this information)?
  - Will you be able to work overtime as needed?
  - Can you meet the travel requirements of the job?
Age

- **Not O.K.**
  - Age?
  - Date of Birth?

- **O.K.**
  - Are you over the age of 16/18?
  - If hired, will you be able to prove your ability to legally work in the United States.
National Origin

- **Not O.K.**
  - Are you a U.S. Citizen?
  - Place of birth?
  - What is your native language?

- **O.K.**
  - If hired, will you be able to prove your ability to legally work in the United States?
  - List the foreign languages that you speak fluently (only if the job requires a foreign language).
Arrest and Conviction Records

- **Not O.K.**
  - *Have you ever been arrested?*

- **O.K.**
  - Have you ever been convicted of a crime? If so, please explain, listing date, city, state, and type of offense. (A conviction record is not necessarily a bar to employment, and factors such as the age of the offense, the nature of the violation and the degree of rehabilitation will be considered.)

* Always check state law variations.
Discharge from Military

- The EEOC has stated that employers should not, as a matter of policy, reject applicants with less than honorable discharges since minority service members receive a higher proportion of general and undesirable discharges than similarly situated non-minorities.
Height and Weight

- This information is generally not relevant and the EEOC has found that many height and weight requirements have an unlawful disproportionate impact on women and other protected classes.

- Permissible only if minimum height and weight requirements are essential to the safe performance of the job.
Memberships and Charitable Activities

- List any professional or trade organizations you consider relevant to your ability to perform the job.

- Generally questions about memberships and activities should include a statement informing applicants not to list activities that would disclose the applicant’s race, religion or national origin.
Other General Unacceptable Questions

- Have you ever filed for bankruptcy?
- Do you own a car?
- Do you own or rent?
- How long have you lived at your current address?
- Have your wages ever been garnished?
More “Don’ts”

- Attach Photograph!!!!
The ADA – Pre-Employment Inquiries

- General Rule – No pre-employment inquiries about an individual’s disabilities.
- Interviews must focus on an applicant’s ability to perform the job, not on the disability.
- Employers may ask about the ability to perform all tasks not just the essential functions.
Sample Questions

- **Not O.K.**
  - Have you ever had or been treated for the following conditions?
  - Did you have any recent illnesses or operations?
  - How many days were you sick last year?
  - Have you ever filed for workers’ compensation?

- **O.K.**
  - Can you perform the functions of this job with or without reasonable accommodations?
  - We will require the following hours of work. Will you be able to meet these requirements?
Generally Acceptable Questions

- Educational Background
  - educational institutions attended
  - field of study
  - whether the applicant graduated
  - degree received
Generally Acceptable Questions (cont’d)

- Work History
  - Names and addresses of previous employers
  - Positions held
  - Job duties
  - Dates of employment
  - Rate of pay*
  - Reason for leaving
  - Names and phone numbers of supervisors

* Note: States starting to enact prohibitions on asking for pay history.
Employment Applications

- Employment at Will
- Release/Authorization for References
- Applicant Certification
Releases

- Broad releases signed by an applicant that authorizes reference checking can help protect employers
Fair Credit Reporting Act (FCRA)

- Criminal Background Checks/Credit Checks

- Types of Reports
  - Consumer Reports
  - Investigative Consumer Reports
Employer Responsibilities

- Disclosure to Applicant
- Authorization from Applicant
- Certification to the Consumer Reporting Agency
- Prior to Taking Adverse Action
  - Employer must give the applicant (1) a copy of the report; and (2) a description in writing of the rights of the applicant.
- Adverse Action Letter
Excluded Obsolete Information

- Bankruptcy cases that are more than 10 years old
- Suits and judgments more than 7 years old/until statute of limitations has expired
- Paid tax liens that are more than 7 years old
- Accounts placed for collection more than 7 years old
- Records of arrest, indictment, or conviction of crime that are more than 7 years old.
Offer Letters

- Connecticut and other states require written offer letters that contain, at a minimum:
- Rate of pay; expected work hours; how often they will be paid (e.g., weekly; bi-weekly) (bi-weekly required per statute)
- At-will language
Additional Requirements

Employers must make available via writing or posting policies/practices re:

- wages; vacation pay; sick leave; health and welfare benefits; and comparable matters.

The employer must provide notice to the employees if it makes any changes to these policies or practices.
Onboarding Agreements

- Confidentiality
- Restrictive Covenants
- Work-for-Hire
- Arbitration Agreements
Critical Handbook Policies

- At-Will/no contract
- Guidelines Only
- Anti-discrimination/harassment/retaliation policy and complaint procedure
- Ownership of electronic systems
Handbook policies, cont’d.

Policies/postings required by law/depends on employee population (important trigger=50, e.g.)

Benefit Descriptions

Important Policies:

Performance management/Termination
Handbook policies, cont’d.

- Social Media
- Workplace violence/use of controlled substances
- PTO/Use it or lose it
- Job Classifications
Questions?
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