

Talk Isn't Cheap: The Legal Risk of Relying on 'Word of Mouth' Recruiting

Does your organization recruit via "word of mouth?" While companies may be spending less on recruitment efforts during these difficult economic times, be careful. A new court ruling says that relying too heavily on this hiring tactic could, in fact, trigger a discrimination lawsuit ...

Case in Point: Daryal T. Nelson applied for a Wal-Mart truck driver position but was rejected. He sued for racial discrimination under the federal Civil Rights Act of 1964. *His main complaint:* Fewer minorities were hired due to the company's word-of-mouth strategy for hiring drivers.

Under company policy, Wal-Mart recruited its approximately 8,000 drivers almost exclusively through having its current drivers distribute "1-800 cards" to potential applicants. The card lists the minimum qualifications for drivers and provided a toll-free phone number to call for an application.

In addition to handing out recruiting cards, current Wal-Mart drivers also conduct initial interviews. Then, applications would go through a series of hands until a local general manager and personnel manager made the final selections. Those managers were given tremendous latitude in determining who gets hired because the company has no written criteria to guide decision makers.

Nelson brought statistical evidence to court to support his race-bias case. It showed that blacks accounted for about 8.4% of Wal-Mart's truck driving staff. In comparison, blacks constituted about 15% of the total U.S. truck driver workforce, according to an American Trucking Association study using 2002 Census data. Further, an expert for Nelson testified that the proportion of black drivers hired in 34 of 39 offices was less than the expected proportion based on their presence in the workforce.

In its bid to get the case tossed out on summary judgment, Wal-Mart argued that these stats were unreliable and irrelevant, and that the company's "word-of-mouth approach effectively reaches out to the African American driver community." (*Nelson v. Wal-Mart Stores Inc.*, E.D. Ark., Jan. 13, 2009)

What happened next and what lessons can be learned?

The court sided with Nelson, sent the case to trial and granted it a class-action status. The court ruled that Nelson's statistical evidence satisfied the burden to show that Wal-Mart intentionally treated black drivers less favorably and had a regular policy of discrimination.

The court took note that the company did not track, evaluate or analyze the subjective criteria its current employees use in recruiting and hiring. The court added that, "Multiple courts have found word-of-mouth recruitment discriminatory when the practice carries forward racial imbalances."

3 Lessons Learned ...Without Going To Court

1. Train all interviewers. Everyone involved in the interviewing process must be trained on relevant EEO laws

in order to prevent discrimination in hiring and promotions—even employees who conduct interviews while on the road.

2. Draft formal processes and policies. Every organization needs such controls to minimize employment risks.

3. Take a picture. What does your workforce really look like? A snapshot might just make your jaw drop.