

Job Announcements: Can More Details = Fewer Lawsuits?



Back in the olden days—say, before the mid-1990s—job-seekers had to make the “Should I apply?” decision based on only a few lines in a newspaper want-ad. Now, information about open positions is just a click away. Yet many employers provide skimpy details on their websites about job openings, as if they’re still paying by the word.

The legal problem: Less information can lead to a higher number of unqualified applicants. And when applicants have to speculate at the reasons they’ve been rejected, they’re more likely to sue.

That’s why your job announcements should include specific information about minimum requirements of the job. For example, if a particular performance review score is required for promotion, say so. Don’t pull out that score later as a reason the applicant wasn’t hired.

Case in Point: Peter, a patient care associate at a Texas hospital, was interested in a job opening at the hospital, so he went to talk to his boss. But, according to Peter, the supervisor told him he was “too old” for that job. The supervisor also allegedly said the manager of that position was “not comfortable” supervising someone as old as Peter.

As you can expect, two substantially younger co-workers were promoted. Weeks later, Peter was terminated after he was arrested and missed work due to his legal troubles.

Still, Peter sued, alleging that age discrimination was the true reason he didn’t get the promotion.

The hospital countered, saying the alleged ageist conversation never took place and that it passed over Peter because he failed to meet the minimum performance-review score on his last review. The two younger co-workers each achieved the score.

The trouble with the hospital’s argument was that it had never listed a minimum review score in its job description or announcement.

Result: The judge sent the case to trial, saying that if Peter’s account of what his supervisor said was accurate, he had direct evidence of age discrimination. A jury will decide whether the supervisor made the comments and whether the hospital really had a minimum score requirement—or if it manufactured that reason to cover up age discrimination. (*Obasogie v. Harris County Hospital District*, No. 4:12-cv-3172, SD TX, 2013)

3 lessons learned ... without going to court

1. Create accurate job descriptions that reflect the job as it actually is performed. Set careful requirements

for promotions, including exact minimum standards for eligibility and publicize those requirements so there is no question about them. Then hire or promote based on which candidates meet at least the minimum requirements.

2. Consistency is your friend. Your best legal protection is to treat every single hiring decision, promotion and termination seriously and professionally. DITO-DITA... Do It To One, Do It To All.

3. Don't try to justify decisions after the fact. Document the process as it unfolds, beginning with the job description and job announcement. Don't wait until someone sues to justify the hiring or promotion decision.