

Stable employment history is a legitimate hiring criterion

Hiring and training employees are expensive propositions—and providing benefits isn't cheap either. That's one reason most employers value applicants they believe will stick around for the long haul.

You can use stable employment history as a legitimate selection criterion—if you do it right. The key is to allow employees to explain interruptions in their employment histories, ignoring those that could lead to a discrimination lawsuit. For example, you probably wouldn't hold education gaps against an applicant. But what about child-rearing gaps? The safest course is to ignore that gap, too. Otherwise, the applicant may charge sex discrimination.

As the following case shows, stable employment is a legitimate concern, and refusal to explain that gap is a legitimate reason to reject the applicant.

Recent case: Jearledean Thomas applied for a job as a welder with a company that makes trailers. She had lengthy, unexplained gaps in her employment history and no recent welding experience. The company didn't hire Thomas, while it hired the next seven men who applied.

Thomas sued, alleging sex discrimination. But the company said six of the seven men had recent welding experience, and the seventh (who didn't have recent experience) had training in a special welding technique the company needed. None of the seven had unexplained employment gaps.

The 11th Circuit Court of Appeals dismissed Thomas' case. It reasoned that the company's two stated reasons for not hiring Thomas were legitimate ones—no recent welding experience and an unstable employment history. It also pointed out that Thomas had not explained the employment gaps. (*Thomas v. Utility Trailer Manufacturing Company*, No. 07-12614, 11th Cir., 2007)