

From the courtroom: Hiring do's and don't's

Hiring for a new position in your company can be a daunting task. As these recent court cases prove, it can also be a legal minefield. Take a lesson from these real-life scenarios before you begin interviewing.

You must consider internal applicants

Before you open a job listing to outside applicants, make sure you consider current employees. Ignoring them—especially those who possess the required experience and qualifications—can be a risky proposition.

For example, hiring an outsider who is younger or less experienced (or who belongs to a different protected class) than the internal candidates you passed over may trigger a lawsuit.

Recent case: The Tucoemas Federal Credit Union in California launched a search for a new chief executive officer after the incumbent announced she was retiring. The credit union's retiring CEO encouraged three women on her executive staff to apply. They were:

- Sherry Belcher, the chief financial officer, age 50
- Cynthia Seymour, vice president of lending, age 60
- Cindy Summers, vice president of HR, age 55.

All three met the stated minimum qualifications for the job. All three applied, and all were interviewed.

Meanwhile, the credit union had also invited outside candidates to apply.

After the first round of interviews, the credit union hired a younger male applicant, Brice Yocum, to fill the job.

Belcher then filed an EEOC complaint. Yocum, now in place as the CEO, asked her whether she was "gunning for him." According to Belcher's complaint, he said he could not work with people he did not trust. She denied she was trying to undermine him.

Yocum then had Belcher meet with the supervisory committee, members of which allegedly asked her why she complained to the EEOC. They allegedly suggested Belcher could lose her job for going to the EEOC. She quit. Seymour was soon fired.

The EEOC sued on behalf of all three women, who alleged age and sex discrimination, as well as retaliation. Ultimately, the EEOC negotiated a settlement of the case, with a payout of \$450,000 for the three women. (*EEOC v. Tucoemas Federal Credit Union*, ED CA, 2019)

Keep careful notes about every job interview

Always document what applicants tell you during job interviews. If you reject the candidate and she later claims she revealed protected information during the hiring process, you will have records to counter her claims.

Recent case: Tatyana worked for about six weeks for a Veterans' Administration medical center. She was fired

for missing work, an absence she never explained. In fact, she had gone to Russia to attempt *in vitro* fertilization.

About a year later, she applied for a job at a different VA facility. She told interviewers she needed to return to Russia for a health-related reason. They didn't hire her.

Tatyana sued for pregnancy discrimination, alleging the VA rejected her because she was trying to get pregnant.

The court dismissed her case, noting she never mentioned pregnancy and therefore couldn't have been rejected because of pregnancy discrimination. (*Drevaleva v. Wilkie*, ND CA, 2019)

OK to revoke job offer for false application

When you find a promising candidate for an opening, make your offer contingent on passing a background check. If that investigation reveals disturbing information such as including false information on the application, you may revoke the offer.

Recent case: Tarek worked for an information technology consulting firm at the American Museum of Natural History. He applied for a permanent position with the museum and received an offer contingent on passing a background check. Around the same time, he attended a social event and told a co-worker who was intoxicated that he should stop behavior Tarek believed constituted sexual harassment.

The background investigation revealed possible misrepresentation of credentials Tarek had included in his application. The museum revoked its job offer. According to the museum, Tarek's reaction to the revocation raised concerns about his potential volatility and continued access to the museum's IT systems.

It told the company that had assigned Tarek to the museum that it should terminate his contract and revoke his assignment to the museum. The company did.

[Tarek sued](#), alleging that the museum had retaliated because he had opposed his co-worker's alleged sexual harassment.

The museum countered that it always withdrew offers if it discovered intentional misrepresentation in application materials. It also denied having heard anything about the reported harassment. That was enough for the court to toss out Tarek's case. (*Ahmed v. American Museum of Natural History, et al.*, 2nd Cir., 2019)

Final note: Courts look for consistency. If you make conditional offers contingent on passing a background check, do so for all similar positions. Set clear rules about how you use the information you collect. For example, define falsification and always revoke offers when you uncover it. However, you may distinguish intentional falsifications from inadvertent mistakes. That gives you flexibility.