

'Overqualified': Legit phrase or lawsuit bait?

Unemployment last month hit its highest level since 1983, and a national unemployment rate over 10% for several months is “certainly within the realm of possibility,” says Federal Reserve Chairman Ben Bernanke.

One side effect: HR is receiving a flood of résumés whenever it does post a job. Many applicants have far more experience and education than the job requires.

But be alert: Advise hiring managers to avoid using the term “overqualified” in front of job candidates or in any written description of them. *Reason:* Rejected applicants could view the term as an age-related code word, thus sparking an age discrimination lawsuit.

Job-related chat rooms have been buzzing about the topic for months. Last month, “Hank from New Jersey” on the Indeed.com discussion group nominated “You’re overqualified” as “the excuse of the year.” He added, “I’m starting to think that ‘you are overqualified’ is just another way of saying ‘you’re too old.’”

The federal Age Discrimination in Employment Act (ADEA) makes it illegal to discriminate against anyone age 40 or older in hiring, firing, promotions or pay. That could include making assumptions that an experienced older applicant wouldn’t have any interest in a lower-level job.

“One risk of telling candidates that they’re overqualified is that it may preclude the company from later saying that it hired the ‘most qualified’ candidate,” says Maria Danaher, an employment law attorney with Ogletree Deakins in Pittsburgh. *(On April 23, Ms. Danaher is hosting an audio conference on making legally wise terminations. Go to www.theHRSpecialist.com/events.)*

Danaher says employers often defend themselves in hiring-bias lawsuits by arguing that they based the hiring decision on the “most qualified” candidate, and not on a protected characteristic (age, sex, race, etc.). But telling an applicant that he or she is “overqualified” takes away your ability to make the “most qualified” argument if you actually end up hiring someone with less skill or experience.

Case in point: A few years ago, a 49-year-old accountant sought an entry-level auditor’s job in the New York City Audit Bureau. A manager refused to hire him, saying he was overqualified.

The accountant sued for age discrimination. The city tried to get the case tossed out on summary judgment, but the court let the case proceed to trial, saying “overqualified” could be considered “a code word for too old.” *(Hamm v. New York City Office of Comptroller)*

Bottom line: Using the “o” word won’t automatically trigger an age bias lawsuit and it won’t mean you’ll lose one in court. But it could flip the “Hey, that’s unfair” switch in the person’s brain—which often leads to messy, expensive litigation.

Advice: For tips on turning down applicants the legal way, see [Rejection letters under scrutiny: 7 do’s and don’ts](#).

6 tips to legal job offers

For advice on how to offer a job without stepping on legal land mines, read our white paper, ["How to Make Legally Smart Job Offers."](#)