

Rehiring ex-employees? Be wary of hidden legal risks

Issue: Many organizations rebounding from the economic slump are rehiring former employees.

Risk: You face special legal dangers when bringing back people who were laid off, fired or quit on their own.

Action: Minimize the potential for legal claims with the following rehire strategies.

As the economy roars back to life, you may be returning some familiar players to your roster.

While rehiring may be a good strategy, it carries some special legal and practical implications. For instance, when rehiring, it can be easier to inadvertently run afoul of federal laws that make it illegal to discriminate on the basis of race, color, religion, sex, national origin, age and disability.

Craft rehire policy with care.

You can minimize the potential for rehire legal claims by following these strategies:

1. Study your state laws, union pacts and existing policies. Contractual obligations may require you to recall laid-off employees if they're covered by a collective-bargaining agreement or bound by an employment contract. Also, state or local laws may also bind you to rehire certain laid-off employees.
2. If you have no policy on recalling employees, set one. To avoid potential liability, your rehire policy must be reasonable, nondiscriminatory and applied consistently. The policy should:
 - A. Place the responsibility on the employee to contact you to express interest in job vacancies. This takes the burden off you to make the call and identify positions for which former employees would be qualified.
 - B. Put a time limit on any preferential consideration for rehire. This will silence an employee's claim that your organization was required to hire him or her on a preferential basis indefinitely.
 - C. Retain the right to consider employees' skills and your business needs ahead of seniority in deciding whom to recall. Give yourself the discretion to decide your recall order.
3. Describe the terms and conditions of rehire. Barring any agreement with an employee, and assuming you have legitimate, nondiscriminatory reasons for your rehire decisions, you're free to dictate the terms you offer a former employee you rehire.

Clearly spell out whether or not the job is a temporary call-back, and its compensation and benefits.