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Frequently Asked Questions Regarding Hiring Laws

Hiring a new employee can be an exciting and daunting task. Compliance with a host of hiring laws requires that you know generally which laws apply to you and what kind of conduct is generally prohibited. Below are some of the most common questions employers have when hiring a new employee.

What laws do I generally need to follow when hiring a new employee?

There are a host of potential hiring laws to consider when bringing on a new employee, but here are the most common hiring laws that employers can run afoul of:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin
- The Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination
- The Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older
- Title I and Title V of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments
- The Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination
- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee

In addition, the IRS has many laws and regulations that employers must follow, such as reporting wages paid and taxes withheld for each employee. Finally, federal law requires employers to verify an employee's eligibility to work in the United States. Within three days of hire, employers must complete an Employment Eligibility Verification Form, commonly referred to as an I-9 form. See the article here regarding I-9 forms:

smallbusiness.findlaw.com/employment-employer/employment-employer-other/developments-on-verifying-eligibility.html

Should I have the new employee sign an employment contract?

Not necessarily. There is no requirement that employers make written contracts with their employees, but it may make sense for higher-level workers or in employees in complex working arrangements. Specifying each party's rights and obligations can be helpful, but restrictive, so balance the needs of each party before having a new employee sign a written employment contract.

Are there any special rules I need to consider when hiring foreign worker?

Yes. It is illegal to discriminate against applicants and employees based on their national origin or citizenship, so never ask a potential employee where he or she comes from. Instead, ask whether the potential employee is legally authorized to work in the United States on a full-time basis.

In addition, the U.S. Department of Labor (DOL) is responsible for certifying positions for temporary and permanent employment of foreign workers. Foreign labor certification programs permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy. You must contact the DOL and submit an application for certification.

Once the application is certified by the DOL, the employer generally must petition the U.S. Citizenship and Immigration Services (USCIS) for a visa on behalf of the foreign worker. The foreign worker must also establish that he or she is admissible to the U.S. under provisions of the Immigration and Nationality Act (INA).

Are there any special rules I need to consider when hiring an independent contractor?

Yes. First of all, you need to ensure that your perspective hire is really an independent contractor. The IRS treats taxation of employees and independent contractors differently. See this article on determining whether a potential hire is an employee or independent contractor:

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Alternatively, you may also file a Form SS-8 with the IRS to get an official determination as to the potential hire's status. If you misclassify your worker as an independent contractor and the IRS believes the worker is an employee, you may be liable under the Fair Labor Standards Act, owe back taxes, owe workers' compensation benefits, and owe employee benefits.

Are there any special rules I need to consider when hiring someone with a disability?

Yes. The Americans with Disabilities Act (ADA) has two major effects on hiring an employee with a disability. First, the ADA prohibits you from discriminating against people with disabilities in the hiring process. See the article here for tips on how to avoid discriminating against people with disabilities and maintain compliance with the ADA:

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Second, the ADA requires an employer with 15 or more employees to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship. A reasonable accommodation is any change in the work environment, or in the way a job is performed, that enables a person with a disability to enjoy equal employment opportunities.

Are there any special rules I need to consider when hiring teens/students/children?

Yes. Employing students and teenagers requires compliance with the Fair Labor Standards Act (FLSA). Generally, the FLSA sets the minimum age for employment (14 years for non-agricultural jobs), restricts the hours that children under the age of 16 may work, and prohibits children under the age of 18 from being employed in hazardous occupations. Child labor laws can vary greatly by state for specific occupations, so be sure to review your state's labor laws.

Can I run a credit check on a potential new employee?

Under the Fair Credit Reporting Act (FCRA) employers must get an employee's written consent before seeking an employee's credit report. If you decide not to hire or promote someone based on information in the credit report, you must provide a copy of the report and let the applicant know of his or her right to challenge the report under the FCRA. Some states have more stringent rules limiting the use of credit reports.

Can I run background checks on a potential new employee?

Employers often want to run a background check on a potential hire, but you need to be extremely careful if you do so. Here are some general types of background checks employers often want to run and some information on each type:

- **Criminal records:** This varies greatly state to state, so check your state's laws before running a criminal records check. Many states will only allow you to run such a test if it is related to the job (such as when hiring a security guard).
- **Lie detector tests:** The Employee Polygraph Protection Act prohibits most private employers from using lie detector tests, either for pre-employment screening or during the course of employment.
- **Medical records:** Generally you cannot get an employee's medical records without the employee's consent, and generally it is illegal to even ask for them. For example, under the Americans with Disabilities Act employers may inquire only about an applicant's ability to perform specific job duties and cannot request an employee's medical records. In addition, many states also have laws protecting the confidentiality of medical records.
- **Bankruptcies:** Although bankruptcies are a matter of public record and may appear on an individual's credit report, the federal Bankruptcy Act prohibits employers from discriminating against applicants because they have filed for bankruptcy.
- **Workers' Compensation records:** Although workers' compensation appeals are part of the public record, employers may only use this information if the employer can show the applicant's injury might interfere with his or her ability perform required duties.
- **School records:** Under the Family Educational Rights and Privacy Act and similar state laws, educational records are confidential, and cannot be released unless the applicant consents.

Military service records: Military service records may be released only under limited circumstances, and consent is generally required. The military may, however, disclose name, rank, salary, duty assignments, awards, and duty status without the member's consent.

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