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Legal Issues You Need to Consider in Your Recruiting Process

4-5 minutes

When starting the recruiting process, it is important to be aware of certain legal issues in order to minimize risk. Job postings, interview questions, checking references and making job offers all need to be done in a way that meets legal requirements.

In some cases, you could be asking unlawful or even discriminatory questions without even knowing it. Many of the mentioned items require some basic knowledge of the [BC Human Rights Code](#).

JOB POSTINGS

According to the BC Human Rights Code ([Discrimination in employment advertisements](#)), you must not publish job postings or advertisements that give preference to:

- Race
- Colour
- Ancestry
- Place of origin
- Political belief

- Religion
- Marital status
- Family status
- Physical or mental disability
- Sex
- Sexual orientation
- Gender identity or expression
- Age

The Interview

Once you are ready to begin your interviews, there are a few key points to keep in mind when designing questions. You need to ensure your interview process is not intentionally or unintentionally asking questions on prohibited grounds (see [Discrimination in employment](#) provisions). It is important to describe the job and requirements in a way that gives all applicants a chance to apply. For example, if a position requires regular overtime and has an irregular schedule, **do not ask:**

- “Do you have children?” as you would be assuming a person with children could not work longer hours.

To ensure the candidate can work the schedule you need, **you should ask:**

- “This job requires regular overtime and has an irregular schedule, can you meet this requirement?”

If a job requires heavy lifting, **do not ask:**

- “Do you have a bad back or any medical issues?” as you might be discriminating against a candidate with a disability.

To ensure the candidate can meet the physical requirements for the role, **you should ask:**

- “This job requires periods of heavy lifting for most of the day. Are you able to do this?”

CHECKING REFERENCES

It is important to note that you cannot ask questions that are illegal during any stage of the recruitment process including your interview or while conducting reference checks. For example, just as you cannot ask a candidate about a disability in the interview process, you cannot then ask their former employer, “How many sick days did they take last year?” However, you can ask if they were reliable and punctual.

MAKING THE OFFER

According to the BC Human Rights Act ([Discrimination in wages](#)), it is important that you not “discriminate between employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.” You must ensure that differences in wages when offers are being made are based on “the concept of skill, effort and responsibility, seniority systems where unions exist, merit systems and systems that measure earnings by quantity or quality of production.”

In all steps of the recruiting process (job postings, interviews, checking references and making the offer), remember the

prohibited grounds and make sure all questions are asked in a way that gives all applicants a fair chance to respond based on your job needs. Doing so will minimize the risk and chance that you might be charged with discriminatory hiring practices. Good recruiting is also good ethical and business practice, which will foster your positive reputation and make it easier for you to recruit. Remember that every interview you conduct is like an advertising opportunity. Every candidate should leave wishing they would have the opportunity to work for you.

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