Making the Right Hire: Effective Recruiting and Hiring Practices

Webcast Training
March 26, 2015 • Columbia, SC
“Building Stronger Counties for Tomorrow”

South Carolina Association of Counties

Making the Right Hire: Legal Considerations

Linda Pearce Edwards
Gignilliat, Savitz & Bettis, LLP

South Carolina Association of Counties

Who Is An Applicant?

• County should define

• Best practice – accept applications only when there is a vacancy
  – Hard copy and/or on-line
  – Include a statement re: false or misleading information and omitted information as grounds for disqualification or termination if hired
Rule

• Do not ask a question unless you have a job-related reason to know the answer

  – If you have to ask yourself “should I ask this question?” -- do not ask the question.

Legal Concerns

• Title VII of the Civil Rights Act

  – Race
  – Color
  – National Origin
  – Gender
  – Religion

• Age Discrimination in Employment Act

  – Persons 40+

• Americans With Disabilities Act

• Workers’ Compensation Act

• Bankruptcy Protection Act
**Interview**

- Most questions are not illegal *per se*. However, asking them may lead to claims of discrimination in the event an applicant is not hired.

**Do Not Ask**

- Applicant’s age or date of birth
- Name of church; name of priest or minister
- Whether the applicant owns a car (unless owning a vehicle is a job requirement)
- Whether the applicant has filed for bankruptcy

**Do Not Ask**

- Arrest
  - May ask about convictions and pending charges
- Military obligations
- Club memberships
- Prior work-related injuries or illnesses
  - May ask “post job offer”
Do Not Ask

• “Maiden” name
  – May ask “what other names” have you used

• About an applicant’s surname, e.g. what country are your ancestors from

Do Not Ask

• Marital status

• Number/ages/names of children; who will care for children; are you going to have children

Do Not

• Write anything on the application form; do not “code” anything.
Drug Screening

• After a tentative offer is made

• Safety sensitive positions

Background Checks

*After the tentative decision to hire:*

• SLED, including sex offender registry

• Credit checks, if handling money
  – Must follow guidelines

• Driving record

Background Checks

• Social media and internet searches – it is all fair game.

• But do not ask for passwords
  – Facebook
  – Twitter
  – Instagram
Reference Checks

• Try to obtain. Most employers provide only neutral references.

• Friends, clergy usually not helpful. The applicant lists only persons who will say something good.

Job Offer

• Be sure to state in the letter that the offer is not a contract of employment.

Rule

• Do not ask a question unless you have a job-related reason to know the answer

  – If you have to ask yourself “should I ask this question?” -- do not ask the question.