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In With The New – Resolving To Conduct A Non-Discriminatory Job Interview

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Given the often frenzied pace of December due to year-end obligations many businesses face, in addition to the typical mad rush of the holiday season, many employers delay personnel decisions and look to hire new employees at the start of the new year. But whenever those decisions are made, it is always important to keep federal and state employment laws in mind when vetting a prospective new hire or risk running afoul of anti-discrimination laws.

Under New Jersey's Law Against Discrimination ("LAD") and federal law, employers are prohibited from discriminating in the hiring process. Specifically, the LAD makes it unlawful to refuse to hire an individual because of his or her membership in a protected category. Examples of such protected categories include: race, national origin, disability, age, marital status, familial status, sexual orientation and gender identity. An employer may not consider a prospective employee's membership in any of the protected categories when making a hiring decision—including at the interview stage—and even appearing to do so may subject an employer to liability.

It may be obvious that an employer should not directly ask a potential employee if he or she is a member of a protected group because the potential employee may, even if mistaken, believe that the employer based its hiring decision on the fact that the employee is in a protected group. However, there are other interview questions which may get an employer into trouble because they indirectly ask for the same information. An employer should stay away from the following questions to make sure there is no basis for an employee to question whether the hiring process was from discrimination. For some examples, see the questions below:

What kind of last name is that?

National Origin or Ethnicity:

Is your hair naturally curly?

Where are you from?

Do you think you can be sensitive enough, as a man, to do this job effectively?

Gender:

Can you be tough enough, as a woman to be effective at this job?

Are you sure you can work with all these men? (or women, depending on the composition of the work force)

Familial Status:

Do you have children?

Are you going to have any problems with daycare?

Do you plan on having children soon?

Do your children live at home with you?

Who lives with you?

Pregnancy:

Do you plan on having children soon?

When are you due?

What is your date of birth?

Age:

What year did you graduate from college?

How old are your children?

Religion:

Is there any day of the week you can't work because you have to go to worship service?

Do you always have to wear that ____? (fill in religious garb)

How many sick days did you take last year?

Disability:

Have you ever filed a workers' compensation claim?

Are you taking any medications?

Do you have problems with your back?

What do you do in your free time?

Miscellaneous:

What are some of your hobbies?

Do you belong to any clubs?

All of the above questions have the potential to elicit answers which relate to a prospective employee's membership in one of the protected categories. It is a good idea to avoid them when interviewing to prevent possible claims of hiring discrimination.

Attorney

- Stephanie D. Girona