

Avoiding common employment mistakes

Here is a list of common mistakes that employers make which may lead to costly lawsuits from job candidates, employees or former employees.

Asking improper (or illegal) interview questions

Ask only job-related questions. Avoid all questions related to sex, race, age, national origin, marital or family status, medical issues, or disabilities. If a candidate volunteers personal information about a disability, ask if he or she will need an accommodation to perform the essential functions of the job. Do not follow up on any other personal information a candidate volunteers.

Failing to accommodate a disability

When an employee or job candidate requests an accommodation for a disability, the Americans with Disabilities Act (ADA) requires the employer to engage in an interactive dialog to determine if a reasonable accommodation can be made. Document your efforts.

Failing to address employee complaints

All complaints of sex, age, race, or disability harassment should be fully investigated and handled according to an established process. If the complaint is valid, prompt action should be taken to prevent the harassment from recurring.

Failing to reinstate an employee after leave

Employers cannot automatically terminate an employee after he or she takes leave as allowed under the Family Medical and Leave Act (FMLA). Also, if an employee does not return to work after taking leave, the employer should find out why. The employee may need an accommodation for a disability.

Ignoring federal, state or local wage laws

Employers must comply with all applicable wage and labor laws. For example, employers must pay employees at least minimum wage, allow employees to take

uninterrupted breaks, and pay overtime or credit to all non-exempt employees who work over 40 hours per week.

Dating a subordinate employee

Employers should strongly discourage (or prohibit) supervisors from dating subordinates and train managers about the risk of dating subordinates. Managers should be prohibited from supervising a spouse, family member, or girlfriend/boyfriend.

Disclosing private information

Employers must protect employees' private health information as required by HIPAA. Do not disclose social security numbers or other personal information, such as phone numbers, without authorization. Employers should also avoid inquiring about employees' off-duty activities or lifestyle.

Terminating employees without an investigation

Employers may terminate an employee for violating a reasonable policy or rule, but the employer should investigate to determine adequate proof of guilt and document the incident. Except for the most severe violations (such as violence), an employee should be given progressive discipline and an opportunity to improve. Management and HR should be involved in any firing.

Providing negative references

Employers should direct all reference requests to human resources. Reference information given should be limited to name, titles, and dates employed. Former employees may sometimes sue for defamation if an employer provides inaccurate factual information in a reference. Juries may view poor references as retaliation or an invasion of privacy (unless a waiver is signed).

For more information, contact CTSI at 303-861-0507.

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