

# Avoid Discrimination When Hiring

by Quenda Behler Story

A variety of laws make it illegal to base hiring decisions on age, gender, ethnic origin, religion, or handicaps. It sometimes happens, however, that a person who fits one of these categories is not hired for legitimate reasons. In this case, you can't prove that you had a legitimate reason for not hiring the applicant by lifting off the top of your head and letting people look inside. Lawful or unlawful intent can only be discovered by examining what you actually said or did.

To find a good hire without running afoul of the antidiscrimination laws, prepare in advance by learning what is and isn't permissible. The key is to know what qualifications and skill levels are required for the position you need to fill, then concentrate on those criteria exclusively throughout the hiring process.

## Careful Questions

The initial hiring interview is the place where people most often get into trouble. Asking the wrong question can be prima facie evidence of illegal discrimination, unless you have a genuine work-related need to know the answer. That's why the questions you ask — and don't ask — in the hiring interview are so important.

Legitimate questions are always specific and always relate to the skills required to do the job. For example, let's suppose you ask the applicant "Do you speak Spanish?" If you work in a community where some homeowners speak only Spanish, or if some of your crew speaks only Spanish, then you have a work-related reason for the question. Being bilingual would be useful to

good communication on the job site. But without such a work-related basis for the question, asking potential hires what languages they speak might look like you're trying to identify their ethnic origin.

Similarly, asking the applicant if he or she will be able to work weekends or holidays is legitimate if working on those days is a necessary part of your company's normal course of business. But if the question is directed at finding out if the applicant belongs to a religion that prohibits working Saturdays, then it is not legitimate and could get you in trouble. In other words, while it's perfectly legal to refuse to hire an applicant who can't work weekends if weekend work is an essential part of the job description, it is illegal to refuse to hire the applicant because he or she belongs to a religion that does not permit working on Saturdays.

These subtle distinctions also apply when the applicant looks a little too old to do the work. You can't come right out and ask the person's age, because that question assumes that someone over a certain age cannot do certain kinds of work. But you can ask questions that specifically relate to the requirements of the particular job the person is applying for. For example, you can ask the applicant to demonstrate that he or she can lift a sack of cement and carry it 20 feet. However — and this is very important — this demonstration must be directly related to the requirements of the job. The question is appropriate if you're interviewing for a mason's job, but if you're interviewing someone for an electrician's job, what

difference does it make if the applicant can't lift a sack of cement?

## Employment Tests

The same principles apply to any tests you require applicants to take. Aptitude tests and other types of employment tests are legitimate to the extent that they're actually job-related, but you have to be careful that you are testing what you think you're testing. If you ask an applicant to take a written aptitude test, for example, and the applicant does not do well on that test because his or her reading skills are poor, what have you proved with your test?

Before you use a written test, you have to determine that the job in question requires the reading skills that the test requires. The answer is critical, because people with poor reading skills are often people who have attended disadvantaged schools conducted in another country using a different language.

If your written aptitude test is related to sales, where the ability to read or to speak the customer's language fluently is critical, then a written test could be fairly complex and still be legitimate. But if your test is directed at making sure the applicant can read, understand, and follow power tool safety instructions, the test does not need to go beyond that subject matter. If the test goes beyond the requirements of the particular job, it could be interpreted as being discriminatory on the basis of ethnic origin. The key here, as always, is the extent to which the test is related to the needs of the job.

It is also important that any tests, questions, or demonstrations that you use to determine job qualifications be directed at everyone applying for the same position. If Arnold Schwarzenegger applies for your brick-laying job, and you made the young lady who also applied demonstrate that she could climb a ladder while carrying a load of bricks, it could be a big mistake not to ask Arnold to do the same thing.

## Paper Trail

When it comes to hiring, carelessness and a cavalier attitude can get you in

trouble. To avoid problems, take these simple steps:

### ☑ **Develop accurate job descriptions.**

Without a written job description for the various positions in your company, it will be difficult to prove that any questions, tests, or demonstrations you require of job applicants are job-related.

☑ **Make sure that everything you say or do** during the hiring process is based on the description for a particular job. Many jobs require a variety of skills and it's okay to investigate an applicant's abilities in all of these areas. But don't include skills that are required only occasionally or, worse yet, merely hypothetically.

☑ **Document everything.** Keep the applicant's job application, as well as your notes and records about the extent to which applicants did or did not meet the job's requirements. And keep these records on file whether or not you hire the person. You never know when you might need to prove your reasons for not hiring someone.



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*Quenda Behler Story has practiced and taught law for 25 years. She and her husband are partners in a remodeling company in Okemos, Mich.*