



The Law Offices of

Edstrom Bromm Lindahl & Freeman-Caddy

An Organization of Professional Corporations

TO: Business Planning Clients
FROM: Edstrom, Bromm, Lindahl & Freeman-Caddy
DATE: February, 2010
SUBJECT: Legalities Involving the Interview Process

In today's corporate and legal climate, it is important for business owners and operators to have a heightened sensitivity towards an interviewee's privacy during the hiring process. This is not only critical to ensure businesses attract the most well qualified prospects but also to reduce the employer's exposure to liability associated with asking questions which have been deemed illegal by state and federal fair hiring laws, meaning that employers must be cognizant of the rules and regulations of Title VII of the Civil Rights Act of 1964, the Nebraska Fair Employment Practice Act, and the Age Discrimination Act, just to name a few.

It's presently against the law for interviewers to ask personal questions that will reveal information that can lead to bias in hiring. That being said, it's not uncommon for these types of questions to come up during the interview process (whether it is intentionally or unintentionally). This is where it is especially important for interviewers to understand their legal boundaries. The following are several types of questions which an employer is prohibited from asking prior to making a conditional offer of employment:

- Where were you born? (allowed to ask if interviewee is authorized to work in the United States)
- What is your age or date of birth?
- What is your sexual orientation?
- What clubs, social organizations, or unions are you affiliated with?
- What church do you attend? (allowed to ask if the interviewee has a problem working Saturday or Sunday if it's a required work day)
- What is your national origin?
- What is your maiden name? (allowed to ask if the individual has ever worked under another name)
- What is your marital status?
- Do you have children?
- Are you widowed, divorced, or separated?
- What is or was your spouse's name and/or job?
- Have you ever filed a workers' compensation claim?
- Are you in the National Guard or Army Reserve?
- What is your current or past drug or alcohol use? (allowed to ask if they currently use illegal drugs)
- Have you ever been arrested? (allowed to ask whether they have been convicted of a crime)

- Do you have any physical impairments or disabilities that would prevent you from performing the job for which you are applying?

The later question being one of the most sensitive areas as Title I of the American Disabilities Act (ADA) lists the following as prohibited questions:

- Have you ever been hospitalized? If so, for what condition? (allowed to ask for prior attendance records as well as require the interviewee to undergo a medical exam after an offer of employment has been made)
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Is there any health-related reason that you may not be able to perform the job, with or without reasonable accommodation, for which you are applying?
- How many days were you absent from work because of illness last year?
- Are you taking any prescribed drugs?
- Have you ever been treated for drug addiction or alcoholism?

Please do not hesitate to contact one of the attorneys in our firm should you have a question as to whether your human resource department is fully equipped to handle such issues. You may also contact the Nebraska Equal Opportunity Commission (“NEOC”) at (402) 471-2024 or via their website at www.neoc.ne.gov

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