



Before beginning, prepare carefully. ~Marcus Tullius Cicero

Prepare Carefully When Hiring Employees

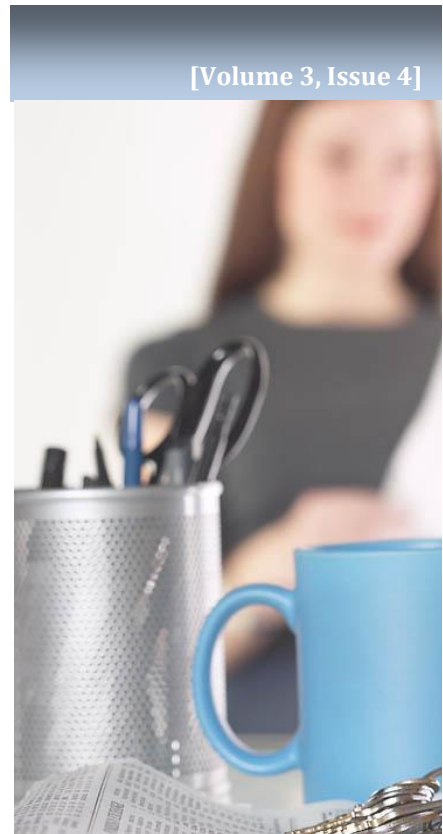
For several months, we have heard experts and pundits talking about how the economy is recovering and moving out of the Great Recession. Lately, we have seen first-hand the evidence of this, as many clients have been asking for advice about hiring either their first employee or taking on new staff. This issue of the Attenza Law newsletter will focus on what you as an employer need to know about hiring employees.

On page 2, we will look briefly at some of the record-keeping requirements that all employers should be aware of. You aren't required to keep records of employees and candidates forever, but how long should you keep them for, both as a good business practice and as a legal requirement? We will also look at different recruiting methods and how they can be discriminatory. Perhaps one of the biggest legal concerns when brining on new hires is discrimination. Employers unknowingly can be setting themselves up for claims of discrimination if their recruiting methods are not carefully examined.

Finally, on page 3 of the newsletter, we will continue the topic that we discussed in last month's newsletter: diversity programs. Companies that have diversity or affirmative action programs also have to think about the plan when making hiring decisions, as well as others like promoting and terminating. We will look at what are the legal requirements in implementing a diversity program. Good intentions to increase diversity can go astray if a plan is not well thought out.

As always, feel free to [contact us](#) with any questions about your specific situation.

Passion for Law. Passion for Business.



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Si parla italiano
Se habla español



Record Keeping and Good Business Practices

There are many statutes that state how long employers have to keep business records regarding employees and job candidates.

Federal law mandates that [I-9 forms](#), which all individuals must fill out at the time of hire to show work eligibility, should be kept for three years after hire or one year after termination, whichever is longer. I-9 forms should be kept for all active employees.

All documents regarding employment offers, hiring decisions, promotions, demotions, layoffs and transfers must be kept for one year after the employment action. The one-year requirement comes from anti-discrimination statutes such as Title VII of the Civil Rights Act, ADA and ADEA. If an individual went through the hiring process and wasn't hired, the documents about that

decision should also be kept on file for one year. If a claim has been filed, you should keep all documentation until the case is resolved.

Sometimes it becomes an issue whether a company should keep all resumes, both solicited and unsolicited, and those for candidates who were not interviewed. A prudent practice is to keep all for a year. With electronic record keeping, this is less burdensome than ever before as businesses are no longer required to have file cabinets filled with old papers.

Job advertisements and internal job postings should also be kept on file for one year from when an applicant was hired for the position. A sound business practice is to have a written policy of how long documents will be kept on file.

According to the American Management Association, the cost of hiring and training a new employee can vary from 25 to 200% of annual compensation. Hiring the right people helps reduce these costs.

Lunchtime Legal Workshops

As part of our effort to educate our clients, partners and colleagues about the law, Attenza Law and HRTechies are organizing a series of lunchtime legal workshop this winter. The series is

TATTOOS, TURBANS AND TWITTER: UNDERSTANDING HR AND LEGAL ISSUES IN THE MODERN WORKPLACE

Our last two seminars are just around the corner so sign up today to reserve your space! To RSVP call 952-921-8322 or 612-414-4537 or at <http://lunchtimeworkshops.eventbrite.com> Space is limited to 24 attendees.

April 5, 2011: Employee privacy and monitoring

May 3, 2011: Defensive writing, documentation and performance evaluations

11:30am – 12:45pm
Conference Room - Lower Level
8500 Normandale Lake Blvd.
Bloomington, MN 55437

Stay tuned for news about our next exciting series of Lunch & Learns!

Recruiting Methods Under Scrutiny

When asked, most employers would say that they want a diverse workforce. As we explained in [last month's newsletter](#), it makes good business sense. However, an examination of recruiting methods can often reveal if a company will ever acquire that sought-after diversity, or potentially be liable for discrimination. Unless an employer's recruiting methods reach a broad spectrum of the available workforce and do not exclude some protected classes, the selection process will not result in a diverse workforce and in an equal employment opportunity.

Word-of-mouth hiring seems to be more common than ever. There are numerous networking groups and companies are reluctant to spend money on ads, both in print and online. Yet relying on word-of-mouth hiring can result in discrimination if a workforce is already racially homogeneous. People tend to associate with others who are like them, especially in terms of race. An employer who relies heavily on word-of-mouth or networking should first scrutinize the racial diversity of its workforce.

Want ads and job announcements are another common way of recruiting new employees. The first step in making sure that they do not result in any claims of discrimination is examining the language. Avoid sex-linked job titles like "waitress," as that implies that an employer is expecting to hire a woman. Avoid as well terms like young people or recent college graduates, as they too imply that the workplace is hostile to older workers. Companies, especially those that are following an affirmative action or diversity program, often place ads in papers or publications aimed at certain ethnic groups or state that applications from women and minorities are welcome. These statements are not, per se, discriminatory.

All job announcements should be disseminated, both within a company and to the general public. Although there is no legal requirement to do so, not publishing it makes the hiring process look suspect. Courts have found companies liable for employment discrimination when job announcements were written up but communicated to a select few and not posted, either within the company or to the general public.

Finally, although Internet job postings are more common than ever, employers should be aware that even though the gap is narrowing, minorities are online and use computers less than whites. Using only online hiring procedures could have an unintended discriminatory effect on minority candidates.



Affirmative Action Programs

Affirmative action is defined as “a policy designed to redress past discrimination against women and minority groups through measures to improve their economic and educational opportunities.” (Princeton University WordNetWeb) It is also a management tool that can ensure equal opportunities to women and minorities, those groups that have historically been victims of discrimination in the workplace. Affirmative action has come under [strict scrutiny](#), as critics claim that it is “reverse discrimination” and no longer necessary in today’s world.

Any companies that contract to sell goods or services to the federal government, and also many state and local governments, are required to have affirmative action programs in place. Other employers, when ordered by a court or through a settlement agreement as a result of a discrimination claim, are required to have affirmative action programs. Otherwise, employers can voluntarily adopt affirmative action programs, or diversity programs.

The first step for employers wishing to set up an affirmative action program is *reasonable self-analysis*. This includes an **organizational profile** and a **workforce analysis**. The organizational profile will show the staffing patterns within an organization, including the employees demographics such as sex, race and ethnicity. A workforce analysis will require the company to examine the job titles and pay level for the positions.

The reasonable self-analysis is an important part of determining whether in fact discrimination does exist within the organization. Statistics show that women are still paid about 79% of what men are paid for the same position, while Hispanics earn about 48% less than whites. A company also might learn that women are underutilized in certain jobs and are instead concentrated in traditionally female job groups (office, clerical), or that there are significantly fewer minorities than thought.

Armed with this information, a company can then make a plan to remedy the problems that have been identified. Recruiting might be an area to examine and change, or a mentoring program for female or minority executives could be another answer. There is no one solution for all companies.

When beginning an affirmative action (or EEO) program, be sure to consult with legal counsel to make sure that you aren’t unknowingly creating legal troubles for yourself.



Meet one of our trusted partners

We have many trusted partners that we refer our clients to when they have business needs outside our areas of expertise. [Pam Ricker of Ricker and Associates CPA](#) is one of those partners.

Pam is a CPA who knows how to take care of her clients. Pam has been in public accounting since 1980 and obtained her CPA certification in 1992. She has always worked with firms specializing in small business accounting and income taxes. From 1996 through 2001 she had the position of corporate controller for a group of rental stores. Pam and her team are more than just accountants. They are also strategic advisors that help you create a strategic tax plan for your business.



Disclaimer: This newsletter most likely contains legal advice. However, that does not mean that you should rely on it without consulting an attorney, whether us or another one, about your specific situation. That the newsletter is legal advice doesn’t mean that an attorney-client relationship exists without a agreement signed by you and Attenza Law.

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