



Law Offices of Mary L. Topliff

Workplace Wave



Hiring the Best Qualified: It Takes More Than a Mantra

By Mary L. Topliff, Esq.

Consider this scenario: Your Human Resources Recruiter worked long and hard to find a well-qualified candidate only to get an angry call from the hiring manager, upset that a visibly pregnant woman clearly could not be hired since she would just turn around and be gone for months.

Of course, hiring managers are not always this blatant in the reasons for rejecting candidates – so how do you guard against making biased hiring decisions?

Almost every employee handbook ever written includes a statement that the employer hires the best qualified candidate for each job regardless of race, color, religion, gender, disability or other characteristics protected by law. If a manager decides not to hire an applicant because of the person's pregnancy, not only is this employer's policy violated, but so is the California Fair Employment and Housing Act (FEHA) if the employer has five or more employees, and Title VII of the Civil Rights Acts of 1964 (Title VII).

Hiring managers must understand the ramifications of their decisions and the possibility that an applicant may challenge

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Public Speaking

Ms. Topliff will be teaching a full-day workshop on "All About Time Off and Leaves of Absence," presented by the Northern California Human Resources Association on June 10, 2008 in San Francisco.

Ms. Topliff will be presenting a webcast on the "Top Ten Termination Tips" on July 8 and July 17, for the Employer Resource Institute.

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the decision. Too often, decisionmakers assume that they can come up with some after-the-fact rationalization as to why an applicant was not hired, thinking that it will never be an issue. In the scenario presented, the manager may believe that his or her decision is based on a legitimate criteria of workload demands that a pregnant employee would not be able to perform at some point. However, the manager would not have the concern about the workload if the applicant was not pregnant and thus, the decision not to

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hire is due to the pregnancy. Moreover, any applicant may know someone in the company with personal knowledge of who was hired, and that person's qualifications. With the growth of employee referral award programs, this becomes an ever more real possibility. Therefore, never assume that the applicant will not find out what happened.

Another concern is consistency with interview questions. For example, a manager may believe that questions about child care are important to determine the applicant's dependability and availability. However, if only female applicants are asked these questions, this will likely be problematic if males are routinely hired over females.

The best way to avoid these problems and, more importantly, to ensure that the best candidate is hired is to have well-trained interviewers who use a structured interview process. This entails a detailed analysis of each job which is used to draft interview questions that are consistently asked of each applicant. It keeps the scope of each interview focused on gathering information that is job-related and thus, valid and justifiable.

If more than one person is interviewing the same candidate, make sure that each interview is consistent and set up a system for rating the candidates. This will help guard against interviewers discussing inappropriate criteria after the interviews.

The success of a structured process depends on how it is implemented. Training the interviewers is the key.

However, simply providing a list of questions that should not be asked in an interview is not enough. In fact, the law does not prohibit an applicant from being questioned about a pregnancy or age. The reasons to avoid these questions are twofold: (1) questions that are personal in nature do not reflect one's ability to perform the job; and (2) it is difficult to show that the personal information was not considered part of, or even the basis for, the hiring decision.

Any training should include examples to demonstrate why personal, non-job-related questions do not reveal important information. If possible, training should also cover the impact of hidden biases that can hinder the best decision making. These biases are often not based on race, gender or other protected classes, per se, but reflect preferences based on geography (e.g., applicant is from the same vs. different part of the U.S.), education (e.g., applicant attended private vs. public school) or social class (e.g., applicant has wealthy parents vs. little or no family support) that can be deeply ingrained. One training workshop will not likely effectuate a perceptible shift in thinking. However, introducing these concepts to interviewers is important so that they have a heightened awareness and will guard against biases influencing a hiring decision. It will also bring the message home to truly hire the best qualified candidates based on the requirements of the job.

A modified version of this article by Ms. Topliff was originally published by the Employer Resource Institute in its California Employment Law Answers newsletter. It can be viewed online at: <http://www.ca-answers.com/members/378.cfm>.