



A Down Economy – An Increase In Hiring Dangers

By Grace Horoupian and Matthew Sgnilek

(Labor Letter, November 2011)

With the unemployment rate in the United States continuing to flirt with record highs, employers are faced with a swell of job applicants and a larger pool of qualified candidates for open positions. The glut of applicants in comparison with the dearth of jobs has left many hardworking and qualified individuals unemployed for an extended period of time.

Desperate to find work and stand out from the crowd, the jobless are turning to such sites as Craigslist to advertise themselves as potential employees to anyone who needs work performed. Craigslist posts reveal that the jobless are offering to do almost anything for hire from repairing roofs to organizing storage rooms.

Often, the posts are heartwarming and detail struggles to find work in a down economy. Yet, in their zeal to find employment, the jobless sometimes reveal more about themselves than employers can typically legally obtain from the interview process. The information can pose significant dangers to employers.

Craigslist posts can reveal information about protected categories such as age, marital status, religion and even disabilities. Of course, no law prohibits employers from searching Craigslist or social networking sites to find job applicants. But if you decide to bring a candidate in for an interview based upon a Craigslist advertisement that identifies an applicant's disability, medical condition or other protected characteristic, and you later elect not to hire the individual, you could quickly be slapped with a failure-to-hire discrimination lawsuit. The risk of such lawsuits only increases in these economic conditions.

Quick And Slick Versus Tried And True

Hiring managers can often be tempted to use the Craigslist post as if it were a job application, but doing so poses additional risks. Employers will be deprived of information typically used to weed out risky job candidates such as questions about criminal convictions. Job applications require applicants to sign a statement confirming that they have been truthful in their application and that any misleading

or errant information can lead to termination. Craigslist posts provide no such protections for employers and increase the risk of a negligent hiring claim if the applicant turns out to have a history of theft or violence.

As tempting as it may be to interview and hire someone who has posted an inspiring Craigslist post detailing their need for work, doing so presents too many risks and is not the best way for employers to find employees. Instead, employers would be wise to continue to adhere to traditional principles that minimize hiring dangers.

Job Descriptions

Ensure that you have a detailed job description for the open position that details the essential job functions.

Employment Applications

Require every potential applicant to complete an employment application so that it can be examined for red flags such as "victim like" responses to questions why they left prior jobs. Also, ensure a signature attesting to the truthfulness of the application is obtained.

Scripts

Prepare a consistent script of key job-related questions that are asked of each applicant; make sure the script asks questions that are tied to the job description and are not discriminatory. As an example, it is lawful to ask if an applicant is fluent in Mandarin, if Mandarin is an essential job duty, but not to ask the applicant if he or she is Chinese. By preparing the script, employers can virtually eliminate the risk, posed by Craigslist posts, of obtaining information that could lead to discrimination lawsuits.

Although Craigslist posts seeking work may be viewed as useful to the jobless, employers should avoid using these "I Need Work" posts to find qualified applicants given the significant risks they pose. Continue to adhere to traditional hiring processes to ensure the risks of failure to hire and negligent hiring lawsuits are minimized.

For more information contact either of the authors: ghoroupian@laborlawyers.com or msgnilek@laborlawyers.com or call (949) 851-2424.