

Help Wanted: 'Seeking Fun Dude I Would Want To Have A Beer With' And Other Things You Shouldn't Advertise

Labor & Employment Law Update

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The New Year is here! Economic signs are trending up, and indicate that hiring will be picking up in 2016. Because federal and state employment laws prohibit discriminatory job postings, and the administrative agencies are cracking down on both unintentional and intentional discrimination, care must be used to avoid drawing the attention of the government and other opportunist inquiries by simple "help wanted" posts.

What's wrong with the 'cool dude' request?

It implies that the preferred candidate is: male, younger, a drinker, and has free time. This discriminates against, at bare minimum, females (Title VII); older workers (Age Discrimination in Employment Act); recovering addicts (Americans with Disabilities Act); certain religions (also Title VII); and perhaps marital/family status (many state laws). It could also imply *quid pro quo* sex discrimination – "if you spend time with me, you will get this job." All that from a fairly innocuous statement? Yup.

EEOC guidance provides that it is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information. Federal law also protects veteran status, arrest records, and use of credit/background checks.

State and local laws also protect these classes and add additional protected classes – such as marital status, number of children/dependents, medical history, ancestry, citizenship status, and even unfavorable discharge from the military.

Can I Never State a Preference?

It depends. Some employment laws provide very limited exceptions for *bona fide* occupational qualifications. These include the disability-related "direct threat" and the age-related need for a younger person (e.g., hiring an actor to play a

child). These limited exceptions rarely apply, and the employer has a significant burden to prove them.

On the other side, in certain narrow circumstances, laws permit advertising and/or intentionally recruiting traditionally marginalized protected classes. This would include preferring to hire military veterans or qualified individuals with disabilities over other candidates.

What Can I Advertise?

Generally, employers should advertise the essential functions of the job, as well as the knowledge, skills, and abilities a successful employee must possess. For example, advertise that a *"relevant bachelor's degree from accredited college is required"* (which indicates basic knowledge), but not *"recent college graduate"* (which implies younger candidates are sought). Well drafted and accurate written job descriptions containing these requirements are given substantial weight by employment administrative agencies, especially when they exist prior to the beginning of the employment relationship.

Hopefully, 2016 brings cheer, prosperity, and increased hiring – without the headaches associated with the increasingly regulated employment atmosphere.

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