

**MICHIGAN TOWNSHIP
PARTICIPATING PLAN**

**Human Resources:
Planning To Avoid Litigation**

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Employment Lawsuits

- || Discrimination
- || Retaliation
- || Wrongful Discharge
- || Other

Discrimination

- Unjustified Dissimilar Treatment of Protected Employees
 - Similarly Situated
 - Legitimate Reasons

Protected Classes

- || Race
- || Color
- || Religion
- || National Origin
- || Sex
- || Gender Identity & Expression
- || Age
- || Physical or Mental Disability
- || Veteran Status
- || Genetic Information
- || Citizenship
- || Height & Weight
- || Marital Status

Retaliation

- || For making a claim
- || For opposing a violation of law
- || For participating in a legal proceeding

Wrongful Discharge

- || At-Will
- || Just Cause
- || Public Policy

Disability Claims

- || Cannot discriminate
- || Must accommodate
- || Interactive process

Other Employment Lawsuits

- FMLA
- FLSA
- Workers' Compensation

Avoiding Litigation Throughout The Term of Employment

- || Job Postings
- || Applications
- || Interviews
- || Employee Handbooks
- || Evaluations/Discipline
- || End of Employment

Job Posting Best Practices & Pitfalls



Job Posting Best Practices & Pitfalls

- It is illegal for an employer to publish a job advertisement which discourages someone from applying for a job because of a protected classification.

Job Posting Best Practices & Pitfalls

- Beware of language in job postings that might discourage protected classes of individuals from applying
- Use non-discriminatory methods and questions, **NOT**:
 - Looking for “intelligent, pugnacious” female
 - Seeking “young, energetic” workers, “recent graduates,” etc.
 - Recruiting “able-bodied” workers
 - Relying solely on word-of-mouth recruiting

Job Posting Best Practices & Pitfalls

- The EEOC promotes word-of-mouth recruiting with a “racially-diverse” workforce
- But, “the same method of recruiting in a non-diverse workforce is a **barrier to equal employment opportunity** if it does not create applicant pools that reflect the diversity in the qualified labor market”

Job Posting Best Practices & Pitfalls

|| Essential Job Functions

Job Posting Best Practices & Pitfalls

- “Employers often impose educational requirements out of their own sense of desirable qualifications
- Such requirements may run afoul of Title VII if they have a disparate impact and exceed what is needed to perform the job”
- EEOC Compliance Manual

Job Posting Best Practices & Pitfalls

Does this posting pose an issue under the law?

- Computer technician – looking for highly motivated digital native to fill immediate opening in our Redmond office. \$1,000 signing bonus, great benefits and competitive salary. Contact B. Gates at (425) 882-8080.
 - A. Yes
 - B. No
 - C. Maybe
 - D. Don't know, when is lunch?

Job Posting Best Practices & Pitfalls

- Here, age is implicated because “digital native” indicates a preference for someone who grew up immersed in technology, instead of someone who learned it later in life

Application and Interview Do's and Don'ts



Application for Employment

We accommodate persons with disabilities in the hiring process. If your disability is not listed, please let us know, and we will provide assistance.

Date of Application		Date of Birth
First Name	Middle Initial	Last Name
City	Are you 18 years of age or over?	
Yes <input type="checkbox"/> No <input type="checkbox"/> If No, Date of Birth		Education



Application and Interview Do's and Don'ts

Ban The Box



- The EEOC **recommends** that employers do not ask about criminal convictions on employment applications
- If employers do ask, such inquiries be limited to convictions for which exclusion would be job-related and consistent with business necessity

Application and Interview Do's and Don'ts

- Employers are required to provide reasonable accommodations to employees who need them
- They are even required to start the interactive process to determine an appropriate reasonable accommodation
- But, asking about specifics this early in the hiring process raises a question of whether the hiring decision was based on the applicant's disability
- It is better to ask if the applicant can perform the essential functions of the job with or without reasonable accommodations

Application and Interview Do's and Don'ts

- Reasonable accommodations include changes to the job application process
- Such changes may include:
 - providing written materials in accessible formats, such as large print, braille, or audiotape
 - providing readers or sign language interpreters
 - ensuring that recruitment, interviews, tests, and other components of the application process are held in accessible locations
 - providing or modifying equipment or devices
 - adjusting or modifying application policies and procedures

Application and Interview Do's and Don'ts

Website Accessibility Standards

- || “Being unable to access web sites puts individuals at a great disadvantage in today's society, which is driven by a dynamic electronic marketplace and unprecedented access to information”

- DOJ Statement of Regulatory Priorities (2015)



War Story 1

Drive By ADA
Surf By ADA

Application and Interview Do's and Don'ts

Job Applications

- Review applications on a regular basis
- Scrutinize applications for potentially illegal questions
- Avoid improper questions
- Update and maintain job descriptions

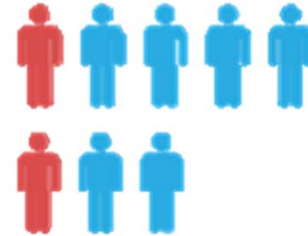


War Story 2

“Do you want this job or not?”

Application and Interview Do's and Don'ts

Illegal Interview Questions



- According to a 2015 CareerBuilder Survey:
 - 1 in 5 employers has **unknowingly** asked an illegal interview question
 - At least 1 in 3 employers are **unsure** about the legality of certain interview questions

Application and Interview Do's and Don'ts

Unlawful Pre-Employment Questions

How old are you? What's your date of birth?

Have you been arrested?

Are you a naturalized or native-born citizen?

Do you have any physical/mental conditions

What is your maiden name?

What nationality are you?

Lawful Pre-Employment Questions

v. Are you over 18?

v. Do you have any convictions?

v. Are you authorized to work in the U.S.?

v. Can you perform the essential functions of the job?

v. Are you known by any other names?

v. What languages do you speak?

Application and Interview Do's and Don'ts

Unlawful Pre-Employment Questions

Identify a **relative** to be notified in case of emergency

What organizations do you belong to?

Do you plan on having children?

What is your race/religion/gender?

How tall are you? How much do you weigh?

Are you married? Do you go by Ms. or Mrs.?

Do you have any children?

Lawful Pre-Employment Questions

v. Identify **someone** to be notified in case of emergency?

v. Are you a member of any industry-organizations?

v. What are your long-term goals?

v. **Not permissible question**

v. **Not permissible question**

v. **Not permissible question**

v. **Not permissible question**

Common Handbook Mistakes



Employee Handbook: Common Mistakes

- || “This is not a contract”
- || “At-Will” Disclaimer
- || Anti Harassment Policy
- || Discipline Process
- || Acknowledgment Page
- || Inconsistent Application
- || Failure to Review/Revise Regularly

Common Handbook Mistakes

Not Reviewing/Revising the Handbook Regularly



Common Handbook Mistakes

Not Having It Reviewed by Legal Counsel

- * Example: Acknowledgement Pages
- * Example: Shortened Limitations Period

Employee Discipline and Termination



Employee Discipline and Termination

Common Management Mistakes

(that often result in employment litigation)

1. Ignoring unacceptable behavior until it can no longer be ignored
2. Over-reacting
3. Reacting too quickly
4. Inconsistent enforcement of rules/penalties
5. Treating befriended co-worker poorly

Employee Discipline and Termination

Common Management Mistakes

(that often result in employment litigation)

6. Informing the employee of the discipline or termination by phone, letter, email, text or wrong person informing the employee
7. Not giving the employee a reason for the termination
8. Fighting the employee's receipt of unemployment benefits
9. Refusing to provide information/documentation that the employee requests regarding the termination or employment history
10. Not clearly defining expectations

Employee Discipline and Termination

- || Benefits of progressive discipline:
 - Clear Consequences
 - Less harsh
 - Opportunity to improve
 - Fairness

Employee Discipline and Termination

- Cons of progressive discipline:
 - Rigid
 - Exceptions Look Discriminatory
 - At-Will
 - Time Consuming

War Story 4

|| Inconsistent Explanations

- Face-to-Face
- Writings
- Unemployment/Workers' Compensations Answers
- Answer to Lawsuit
- Interrogatory Answers
- Depositions

Questions?

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