

[<< Back](#)MEMBER CENTER: [Create Account](#) | [Log In](#)



Attorneys talk about preventing lawsuits in pre-employment phase in SuperVision

Posted: Jun 22, 2012 1:16 PM EDT

Updated: Jun 22, 2012 1:43 PM EDT

By Andrea Lannom - [email](#)

Although lawsuits arising in the pre-employment stage are not as common as those in after termination, it is still important, attorneys with Spilman Thomas & Battle caution, to implement steps from the very beginning to safeguard businesses against potential future lawsuits.

Spilman's June 22 SuperVision event focused on the "Employment Life Cycle" of Pat Doe in One Day, in a "cradle to grave" scenario of issues that can come up in every stage of employment.

One of the most important steps, attorneys said, is the job description itself. Attorney Jennifer S. Greenlief said it is important to specify minimum qualifications for employment. Greenlief said it is important to ask if the particular skill is absolutely required for the job.

"If there is one thing in a job advertisement that leads to litigation it is the concept that you put up in the job that it is required to have a college degree and you hired someone who didn't have one. It may so happen that who you didn't hire (had a college degree and) was a minority, disabled or female. ... Give yourself flexibility in crafting the job advertisement," Greenlief said.

Attorney Samuel M. Brock III said it also is important to frequently update job duties in the job description and to outline things such as heavy lifting requirements.

Recent trends also caution employers to shy away from asking questions about unemployment status or prior arrest records at any part in the pre-employment stage.

Some states such as New Jersey and Oregon, Greenlief explained, have made it illegal to post a job that explicitly disfavors the unemployed.

"This is in response to the recession where there are a lot of good people out of work. They weren't fired because they were not competent. They were fired because the economy went down the tubes," Greenlief said.

Also, new legislation introduced in 2011 would not only make it illegal to ask discriminating questions about unemployment status on the job application, but it also would make it illegal to discriminate against people based on employment status.

"D.C. has amended discrimination private cause of action if someone thinks they were discriminated against because of their status as unemployed," Greenlief said. "This has not been passed in any states in our footprint, but I would be surprised if we didn't see it."

Brock said when he first started practicing law, it was very common for businesses to avoid job descriptions in advertisements so an employee couldn't come back later saying a duty was not in the job description.

Now, however, Brock said it is "bad practice" not to have job descriptions because it can have so many implications.

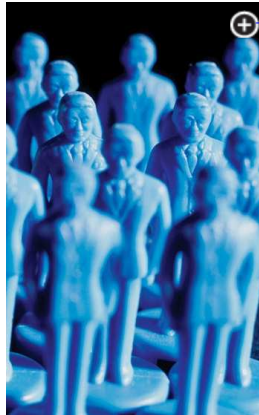
"You can put any other duties may be from time to time assigned, and that's not a problem," he said. "But I wouldn't have someone who does 50 things and only list two duties then list other duties may be assigned."

As for asking for arrest records, Spilman's attorneys noted on their slideshow that it could be proxy for racial or national origin discrimination. Attorneys also recommended employers not to ask for the applicant's photo, number of children or if the woman is pregnant, medical history or if the person smokes.

Attorneys noted that a number of other states have made it unlawful to ask if applicants smoke.

"(Other states) said you can't ask questions for information of things that are otherwise lawful," Brock said.

As social media becomes more integral in employers' lives, it becomes second nature to want to find out more about an applicant by their social media page. Attorneys said to avoid social media before interviewing a person because employers could find out information such as sex, religion or race from a person's profile page.



Attorneys also said employers will want to stay away from asking applicants for social media logins and passwords.



The State Journal
PO Box 11848
Charleston, WV 25339
350 Quarrier Street
Charleston, WV 25301

- Home
 - News
 - Opinion
 - Country Roads Journal
 - SJ Biz Lists
 - Decision Makers
 - Lifestyle
 - Contact Us
- News
 - Business
 - Energy
 - Government
 - Law
 - Health Care
 - Finance
- Opinion
 - Editorials
 - Columns
 - Letters to the Editor
 - Bray Cary's Commentaries
- Country Roads Journal
 - Country Roads Journal
- SJ Biz Lists
 - SJ Biz Lists
- News Partners
 - WBOY
 - WOWK
 - WTRF
 - WVNS

 All content © Copyright 2000 - 2012 WorldNow and WVSTATE. All Rights Reserved.
For more information on this site, please read our [Privacy Policy](#) and [Terms of Service](#).