

The Legal Strategist

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TEXAS ESOTERIC FACTS

** According to Texas law, in some cities, running a bakery is considered to be an "agricultural business."

** According to the Texas Department of Transportation, one person is killed annually painting stripes on the state's highways and roads.

Employers are operating in an increasingly complex legal environment, made all the more difficult by the tough economy. Hiring has emerged as a particular trouble spot. Your business needs to hire and maintain a skilled and productive workforce, but you must watch out for the legal liability that can surface in the process. The topic this quarter offers some practical advice for protecting your business when hiring a new employee.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in our newsletter, which can be viewed on [The Legal Strategist](#) tab of our web site, please contact our office to set up a consultation.

Scott Barrett

FEATURE TOPIC: **HIRING EMPLOYEES WITHOUT INVITING A LAWSUIT**

JOB DESCRIPTION: Although no law requires employers to maintain job descriptions, it's a good practice. Thorough descriptions help applicants understand the job's requirements and discourage poorly suited applicants from applying.

Here are some tips for drafting job descriptions:

- ◆ List the "essential functions" of the job—the fundamental job duties;
- ◆ Identify the skills, knowledge and abilities required to perform the essential functions and any special requirements for the job;
- ◆ Include a summary of nonessential functions that an employee may be asked to perform occasionally or intermittently;
- ◆ Include descriptions of the work environment, equipment and expected work habits;
- ◆ Include a disclaimer that the job description does not constitute an exhaustive list of responsibilities and that management may revise it at any time;
- ◆ Review and update descriptions as needed so they remain accurate.

APPLICATIONS AND INTERVIEWS: Written job applications and face-to-face interviews help hiring managers gather applicant information and assess their qualifications. But asking for some kinds of applicant information may violate anti-discrimination laws. Stick to questions that assess a candidate's skills, ability or qualifications.

Avoid questions that may trigger stereotypical assumptions about protected class status:

- ◆ **Marital Status:** Are you married? Is that your maiden name or your married name?
- ◆ **Age:** How old are you? When did you graduate from high school?
- ◆ **Disability:** Do you have any disabilities that would impair your ability to work? How often were you out sick in your last job?
- ◆ **Religion:** Which church or synagogue do you attend? What religious holidays do you observe?
- ◆ **Gender/Sex:** Are you pregnant? What will you do with your children while you are at work?
- ◆ **National Origin/Race:** Where were you born?

BACKGROUND CHECKS: Federal and state laws limit employers' ability to obtain background reports and demand pre-employment medical examinations. Before checking an applicant's references, notify the applicant in writing that you will do so, and obtain the applicant's written consent to the reference checks. When checking references, ask only for job-related information.

OFFERS AND OFFER LETTERS: Beware of inadvertently making promises you don't intend to keep. Enthusiastic employers often make statements to applicants suggesting long-term or permanent employment, or indicating that, "you will always be treated fairly." Those statements can easily become ammunition in later breach-of-contract litigation. Avoid making unintended promises, either verbally or in written communications such as offer letters, employment handbooks and personnel policies. That way, you will retain flexibility to respond to personnel issues in the most appropriate way, given the circumstances.

If you would like more information on the impact of your hiring processes, please contact [Scott Barrett](#) to set up a consultation.