

## Conducting Employee Interviews – Ask the Right Questions or Face Litigation

by Robert P. Rudolph, Esq.

Federal and Massachusetts laws guarantee that no person shall be denied the right to work based on characteristics such as race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability/handicap, criminal record and genetic information (including family medical history). In order to comply with the law, employers should generally not ask on a job application or during an interview a question that: (i) identifies a person as being within a protected category; (ii) results in the screening out of members in a protected category; or (iii) is not a valid basis for predicting successful job performance.

As a general rule, employers should limit questions to those directly related to the applicant's ability to perform the job for which he or she is applying. In April 2020, the Equal Employment Opportunity Commission ("EEOC") filed suit against United Precision Products Co., Inc. ("United Precision"), a supplier of aerospace components based in Dearborn Heights, Michigan, for violating federal law by refusing to hire a qualified older applicant.

According to the EEOC lawsuit, a 64-year-old, qualified applicant applied for a position at United Precision. During the interview with United Precision, the company's plant superintendent asked the applicant his age and date of high school graduation, which the applicant reluctantly supplied. The superintendent also asked for and received the applicant's driver's license and twice commented about how good he looked for his age. United Precision rejected the applicant for the position, claiming the superintendent believed the applicant lacked the commitment to work long-term. The superintendent also ignored a follow-up

e-mail, which stated that the applicant intended to work for at least another 10 years.

The EEOC's lawsuit alleged that United Precision's conduct violated the Age Discrimination in Employment Act of 1967 ("ADEA"), which protects individuals who are 40 years of age or older from employment discrimination based on age. The EEOC had tried to reach a pre-litigation settlement with United Precision through its voluntary conciliation process but was unsuccessful in doing so. As a result, the EEOC sought injunctive relief prohibiting the employer from discriminating against applicants based on age, as well as monetary relief, including backpay and liquidated damages, and other relief for the applicant.

After almost a year of litigation in federal court, the EEOC announced in February 2021 that United Precision had agreed to pay \$60,000 and provide other relief to settle the lawsuit. In addition to the monetary payment, United Precision agreed to a two-year consent decree that provides for injunctive relief, training on the ADEA, reporting to the EEOC, and revisions to United Precision's discrimination policy.

This case exemplifies why it is critical to properly train employees on prohibited and permissible questions when meeting with job applicants. Employees conducting interviews should understand that they must limit their questions to those directly related to the applicant's ability to perform the essential functions of the job. Written company policies and procedures outlining job roles and identifying questions that can and cannot be asked during an interview can help prepare employees conducting interviews in order to avoid costly mistakes.

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