

HIRING AND FIRING: Playing Within The Legal Boundaries

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MISSION OF PRO BONO PARTNERSHIP OF ATLANTA

To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

PRO BONO PARTNERSHIP OF ATLANTA ELIGIBILITY & OTHER INFORMATION

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit organization.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- Host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website

LIABILITY FOR UNLAWFUL EMPLOYMENT PRACTICES

- Company to pay \$3.13 million and provide job offers and training to resolve allegations of race discrimination related to use of criminal background checks
- Company to pay \$3 million and provide training to resolve allegations of age discrimination in termination
- Company to pay \$340,000 after withdrawing job offers based on unfounded fears and discrimination
- Company agreed to pay \$225,000 to resolve hiring discrimination allegations based on statistical shortfall in hiring minority applicants

OVERVIEW

- Laws impacting hiring and firing decisions
- Hiring Practices
- Termination Practices
- Post-termination Practices

LEGAL FRAMEWORK

- Title VII of the Civil Rights Act of 1964 (15+ employees)
 - ✓ Civil Rights Act of 1866 (42 U.S.C. § 1981) (applies to all employers)
- Age Discrimination in Employment Act of 1967 (“ADEA”) (20+ employees)
- Americans with Disabilities Act of 1990 (“ADA”)
- Fair Credit Reporting Act (“FCRA”)
- Federal Bankruptcy Act
- State Laws (negligence, tortious interference, breach of contract, defamation, wrongful termination (not all states))

HIRING PRACTICES

- Background Checks
 - ✓ Negligent hiring and retention
 - ✓ Job specific
 - ✓ Consent and release from applicant
- Pre-employment Inquiries
 - ✓ Job-related and consistent with business necessity
 - ✓ Job applications
 - ✓ Interviews
 - ✓ Social media
- Reference Checks
- Driving History
- Criminal History/Sex-offender registry
- Medical/Drug Testing

HIRING PRACTICES (cont.) DOCUMENTATION

- Offer Letter
- Acknowledgements
 - ✓ Handbook
 - ✓ EEO Policy
 - ✓ At-will
- Identification and work authorization documents (I-9)
- Tax documents
 - Employee v. Independent contractor
- Benefits

EMPLOYMENT CONTRACTS

- Exception to at-will employment
- Specified term of employment
- Conditions on termination
- Post-termination conditions
 - ✓ Restrictive covenants
 - ✓ Confidentiality

TERMINATION PRACTICES

- Involuntary Termination
 - ✓ Review evaluations and discipline history
 - ✓ Follow discipline procedure
 - ✓ Ensure consistency with past practice
- Review employment contract (if applicable)
- Termination meeting
 - ✓ Honesty is the best policy
 - ✓ Do not apologize

TERMINATION PRACTICES (cont.)

- Documentation
- Exit Interview
- Return of company property
- Final paycheck
- COBRA notice (20+ employees)

TERMINATION PRACTICES (cont.)

- Separation Agreement and Release
 - ✓ Consideration
 - ✓ Knowing and Voluntary
 - ✓ Release of all claims
 - ✓ Acknowledgement of receipt of all compensation due
 - ✓ Older Workers Benefit Protection Act (“OWBPA”)

POST-TERMINATION PRACTICES

- Unemployment compensation
 - ✓ Voluntary resignation excluded
 - Compare with claim of constructive discharge
 - ✓ Employer must show policy violation
- Employment references
 - ✓ Require release signed by employee
 - ✓ Be truthful
 - Employer privilege in Georgia
 - ✓ Central source
- Record retention
 - ✓ Personnel files (7 years)

FOR MORE INFORMATION

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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