## Slide 1

**Recruitment, Selection & Hiring**

*September 21, 2023*

FiveL COMPANY
*Helping Leaders Limit their Liability by Learning the Law℠*

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## Slide 2

### Agenda

- Use of AI in your employment practices
- DEIB and Accessibility
- Federal, state and local trends mandating what employers must provide applicants in the recruiting process.
- Those that restrict or prohibit what employers may require of candidates in the selection process.
- Proactive tips for reviewing and safeguarding your related policies, procedures, and programs.

*This program and materials do not constitute the rendering of legal advice. Please talk to your company's employment counsel for specific guidance.*

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## Slide 3

### Why Worry About Recruitment, Selection & Hiring?

**U.S. Equal Employment Opportunity Commission**

About EEOC · Employees & Job Applicants · Employers / Small Business · Federal Sector · Contact Us ·

Home · Newsroom · iTutorGroup to Pay $365,000 to Settle EEOC Discriminatory Hiring Suit

Press Release
09-11-2023

**iTutorGroup to Pay $365,000 to Settle EEOC Discriminatory Hiring Suit**

Settles Federal Charges Tutoring Provider Programmed its Online Software to Automatically Reject More Than 200 Older Applicants

**U.S. Equal Employment Opportunity Commission**

About EEOC · Employees & Job Applicants · Employers / Small Business

Press Release
09-10-2020

**Walmart, Inc. to Pay $20 Million to Settle EEOC Nationwide Hiring Discrimination Case**

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## Sourcing Your Candidates

- Do you need to advertise?
- If so, where?
- Diverse applicant pools. By way of:
  - Methodology (how - accessibility)
  - Source (where)

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## Word of Mouth Referrals

"Unless the workforce is racially and ethnically diverse, exclusive reliance on word-of-mouth should be avoided because it is likely to create a barrier to equal employment opportunity for racial or ethnic groups that are not already represented in the employer's workforce."

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## Self-Check: How Friendly is Your Application Process?

- 50 percent of employers say the length of their job application process is a positive because it "weeds out" applicants.
- Yet **60 percent of job seekers quit in the middle of filling out online job applications because of their length or complexity**.
- Recruiters can boost conversion rates by 300+ percent by reducing the length of the application process to **five minutes or less**.
- How? Remove "nice to have" questions that aren't required on first contact with candidates and limit the number of screens people have to navigate to balance what's convenient for recruiters with what's user-friendly for applicants.

*Sources: Provided by SHRM's Research Dept: referencing CareerBuilder & Appcast*

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## To Ask or Not to Ask

1. Do you have any disability that would interfere with your ability to perform the essential functions of this job?
2. What is your date of birth?
3. Have you been convicted of a crime in the last seven years?
4. This job requires working a lot of hours, do you have family obligations that would interfere with that schedule?
5. What is your current salary or rate of pay?

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## EEOC Issues An AI Warning

- May 12, 2022 - US EEOC Publishes New Guidance on the ADA and "...*the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees*."
- Are you using any?
- You might be surprised.
- Ever post a job on LinkedIn / LinkedinRecruiter
- What about your recruiter - inhouse or 3rd party?

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## ADA: What's AI in this Context?

"Examples include: resume scanners that prioritize applications using certain keywords; employee monitoring software that rates employees on the basis of their keystrokes or other factors; "virtual assistants" or "chatbots" that ask job candidates about their qualifications and reject those who do not meet pre-defined requirements; video interviewing software that evaluates candidates based on their **facial expressions** and speech patterns; and testing software that provides "job fit" scores for applicants or employees regarding their personalities, aptitudes, cognitive skills, or perceived "cultural fit" based on their performance on a game or on a more traditional test. "

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## ADA Bells & Whistles

- I can't do [a part of my job] because of a [physical / mental] condition.
  - EE should talk to HR, not YOU
  - HR is YOUR firewall!!
- Don't try to predict the future
- Don't speculate as to the condition
- DO focus on job performance

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## Behavioral Interviewing Techniques

- Research indicates the best predictor of future performance is past behavior.
- Rather than asking candidates futuristic or hypothetical questions, ask questions that require the candidate to draw from past experience.
- Rather than asking "How would you _____?
- Ask, "Tell me about time you _____.
  - What did you do and
  - what was the outcome?

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## Interviewing Do's

- Interview to the job, not the person
  - Draft your "core" question
  - *Then* your person-specific
- Show the candidate the JD
- Be OK with silence
- What questions does applicant have?
- Avoid firm time frames
- Candidate/employee rather than you/your

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## Selection (Procedures)

- Do you have any?
- Do you need any?
- Watch tests & assessments
  - Work with HR

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## Pre-Employment Inquiries, Tests & Exams: Medical Issues

- ADA Rules
  - Pre-Employment
  - Post Offer
  - In employment

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## Selection (Procedures)

- Making the Offer
  - Who
  - Oral v. written offers
  - Conditions or contingencies

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## Selection (Procedures)

- Conditions / contingencies
  - Criminal history
  - Credit history
  - Other histories
  - Employment / salary confirmation
  - Education confirmation
  - References

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## Making the Offer *cont'd.*

- Include FLSA status
- FT or PT
- Annua*lized* compensation or hourly rate
- Written acceptance
- Deadline for receipt

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## Hiring

- Organizational v. departmental
  - Onboarding / orientation
- When may be the best time to set expectations?

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## Anti-Ghosting!

- Self-schedule interview
- Stack candidates & interviews (concurrent)
- Let them know self-selection is OK
- Shorten your post-interview TAT
- Post offer, ask for signed commitment
- Engage them in every step; it's all about *them*
- Stay in touch between post-offer & start date
    – Virtual *and* visual
- Post-ghost survey

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**2nd Edition**

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