



Applicant Interviews

Avoid legal troubles by learning the do's & don'ts

by: Robert C. Goldberg, BTA General Counsel

The recent 2022 BTA National Conference in Chicago, Illinois, provided a wealth of information and knowledge coupled with the ability to network with others in the industry. During the conference, the most persistent concern heard among dealers was not back orders or costs, but the difficulty in attracting qualified salespeople and technicians. There are currently more than 11 million job openings in the United States and less than 6 million individuals looking for work. Chances are you will be interviewing applicants in the near future. Conducting a job interview presents numerous areas to avoid, and a recent judicial decision provides guidance.

On April 13, 2022, a jury in a New Jersey Superior Court matter, *Corbin v. American Home Crafters Remodeling*, awarded a plaintiff \$30,400 in damages in a discrimination case for what can be rightly classified as her experiencing the “job interview from hell.” During that interview, a seemingly inebriated employee of the defendant made numerous improper statements about the plaintiff, ranging from odd comments about her high-heeled shoes to questioning whether her teenage children had been breastfed. After the plaintiff was offered the job of administrative assistant, she was handed a glass of whiskey to celebrate her hiring. She drank it and was offered another glass. During this celebration, the plaintiff’s interviewer began making numerous vulgar comments requesting that the plaintiff have sex with him. Prompted by concerns regarding the interviewer’s behavior, the plaintiff left.

Thereafter, the interviewer attempted multiple times to contact the plaintiff and convince her to not report his behavior. After speaking to the plaintiff’s husband and learning that she had already filed a police report concerning his conduct, the interviewer emailed the plaintiff and rescinded the job offer, stating that the plaintiff was not a “good fit for the job.” In bringing her lawsuit, the plaintiff alleged that the interviewer’s conduct was in violation of the state’s discrimination prohibitions regarding sexual harassment and retaliation. There are similar federal laws as well. During the course of the trial, the entire interview was played to the jury because it had been videotaped on a company surveillance camera.

In defense of the claim, the defendant argued that since the plaintiff was not an employee, she could not be harassed in a job interview. The jury ultimately rejected this defense and awarded \$8,400 in economic damages and \$22,000 in emotional distress damages. Along with those significant damages, the court eventually awarded \$138,190 in legal fees under



the fee-shifting section of the law that requires the reimbursement of a prevailing party’s legal fees.

Is this case an extreme example? Perhaps. But it illustrates why dealers must pay attention to this overlooked area where employers must ensure that they abide by legal rules that restrict what can and should not be done during a job interview. The best way to eliminate this type of case from occurring is to train your employees on how to conduct a job interview.

While a simple question asking a female candidate if she has any children seems innocuous, it is not. The candidate could conclude that the interviewer has a possible gender bias against her. Asking an applicant if he (or she) graduated from high school is appropriate, but asking when he graduated is not, as it could be used to determine his age. All interview questions must be based on a bona fide occupational qualification. There are numerous other questions like these that seem harmless but, in fact, could be the precursor for potential legal action against both the employer and the interviewer. These kinds of traps for the unwary must be addressed by dealers as part of regular training for all employees involved in the interview process so you and your company can avoid a similar “interview-from-hell” scenario that can cost you hundreds of thousands of dollars.

Please pay attention to how your employees conduct job interviews and educate them now on the do’s and don’ts of the process to minimize your potential for future legal problems. If you have any questions and are a BTA member, the BTA Legal Hotline is always available to assist you. ■

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