

5 HIRING MISTAKES TO AVOID

Superintendents can take the wrong turn in the pursuit of the right job candidate. GCI's legal experts offer some sound advice on hiring.

by Christopher G. Elko, Esq.
and David B. Cronheim, Esq.

The downturn in the job market has led to an increase in employment-related litigation. In fact, not only have employees and former-employees targeted companies with a wide array of lawsuits (wage and hour claims, wrongful termination claims, and discrimination claims), but even rejected applicants are getting in on the action, and employers within the golf industry are not immune.

Golf course superintendents focus on turf, not employment law...and rightfully so. However, superintendents charged with recruiting and managing their own staff must be aware of the risks inherent in the hiring process. Often, that process can be quite informal. There is nothing wrong with informality, but superintendents should guard against overly casual approaches that can ultimately lead to liability; the line between informal and unlawful is narrower than many realize.

In the face of these growing risks, superintendents should remember that they

are part of a team, and the best way to avoid lawsuits is to work with their general manager to develop strong published policies and promote self-aware hiring practices. To that end, we have identified below a few of the most common pitfalls that plague superintendents in their hiring practices.

Interview Questions – Know Your Boundaries

Interviews are strange creatures and employers can often talk their way into trouble by trying to fill an awkward silence during an interview. Keep in mind also that interviews don't always take place between people wearing suits and meeting in a corner office. The rules governing interviews apply with equal force to a quick chat with an applicant beside a mower at 6 A.M.

Federal laws – such as Title VII, the Americans with Disabilities Act (“ADA”) and the Age Discrimination in Employment Act (“ADEA”) – all prohibit employers from considering certain characteristics in the hiring process. During an interview, the interviewer may not ask questions about an applicant's race, religion or sexual orientation. These types of prohibited inquiries are often familiar even to non-lawyers. However, even seemingly innocuous questions or small talk can inadvertently create liability. For example, an employer may not inquire about an applicant's marital status, whether they have children or whether they intend to have children. Such questions create serious risks for the employer. Similarly, a polite discussion about an applicant's health could intrude on protected confidential information. However, given that golf course maintenance



Key points

The rules governing interviews apply with equal force to a quick chat as they do to a one-on-one sit down.

- It may be unlawful to pass over an applicant based on information gathered from social media sources.
- It is critical that employers collect a candidate's proper documentation.
- Check to see if your state requires you to inform new hires in writing of their designated pay date, rate of pay, and overtime rate, if applicable.
- It's important to determine what type of employee you're hiring – ie, salaried vs. hourly; at-will vs. contract.

is physically strenuous work, a superintendant is entitled to ask questions that relate to necessary job requirements, including whether the applicant has the physical ability to perform the work.

Social Media – When Less Is More

Over the past few years, social media platforms have transitioned from a technological fad to a ubiquitous communication tool utilized by many of your potential employees. It is exceedingly easy to Google an applicant and, in a few seconds, uncover a wealth of information about that individual's personal and professional history. Curiosity is natural, but it also killed the cat.

Employers in search of extra information about their applicants are becoming more and more likely to find a lawsuit instead. As discussed above, certain applicant characteristics are off-limits when determining whether an applicant is suitable.

Once an employer's Internet search reveals an applicant's religion, marital status or genetic affliction, the employer cannot unring the bell. It is stuck with

that information. In any ensuing litigation for discriminatory hiring practices, the onus will be on the employer to explain how those characteristics did not factor into the hiring decision. Moreover, several states (such as New York, California and Colorado) have laws that prohibit employers from taking adverse action based on lawful off-duty conduct. So, if you stumble across social media evidence of an applicant drinking, smoking, or campaigning for a cause you do not support, it might be unlawful to pass over that applicant based on that information. Employment counsel can advise on the best way to use an Internet search without incurring liability, but when in doubt, a superintendant's best bet is not to let their curiosity get the better of them.

Air-Tight Hiring Procedures

Even employers that hire employees on a regular basis fall victim to simply “winging it” when it comes to progressing through the hiring process. It is critical that employers collect the proper documentation. For example, failing to check an applicant's immigration status and then sub-

sequently hiring an illegal alien can be costly. Repeat offenders can be liable for up to \$10,000 per illegal employee.

From I-9's to W-2's and any state-specific documents, the hiring process can be frustratingly complex and untangling that paperwork can be the last thing a superintendant needs to add to a busy day. Consistently following a system is the key to avoiding liability. Don't be afraid to ask your GM to provide a hiring checklist. If the GM won't handle the paperwork, then the superintendant should have that checklist handy to make sure nothing gets skipped. By establishing a solid checklist, an employer can face a lawsuit or even an audit with the confidence that they have covered all of the necessary bases.

Know Your Notice Requirements

Last year, the New York State Legislature passed the Wage Theft Prevention Act, which requires employers to inform new hires in writing of their designated pay date, rate of pay, and overtime rate, if applicable. In enacting this statute, New



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“The SBI was one of the best educational experiences of my career. The lesson most valuable and useful to me was the block of sessions revolving around employee morale, and learning to understand the differences between generations. One of the big challenges as a superintendent in the past few years has been dealing with declining employee morale (in the atmosphere of minimal pay increases), and attracting different new employees to our teams. Many superintendents believe employee relations is nothing more than a ‘crew carne asada’ once a month. There is so much more to understanding each employee and what actually motivates them. Learning this and understanding your employees will lead to stronger teams, better retention and ability to recruit. We have taken much of that information and used it to change our operation here at Coto De Caza.”



Ken Newcomb
Regional Director of
Agronomy
Coto De Caza Golf &
Racquet Club
Coto De Caza, Calif.



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Legal note

Some states and cities have local laws that are even more restrictive than the federal law, and you should consult an attorney when determining acceptable hiring practices in your jurisdiction.

York became just the latest in a long line of states that require employers to provide such notice to employees. Other states with similar laws include Connecticut, Colorado, Delaware, Illinois, Maryland, and Pennsylvania, just to name a few. Some states require employers to post certain payroll information in the workplace. Contact an attorney for more advice on the notice requirements for your jurisdiction.

Don't identify "who," identify "what"

So you have finally finished the hiring process. Now what exactly do you have in your new employee? The first question to ask is whether they're a contract employee or an "at-will" employee? Most employers prefer "at-will" employees, which means they can fire their employees for any reason or no reason at all. However, some states have found that language within an employer's handbook can create an employment contract that negates an employee's "at-will" status and ends the employee with added rights against termination. Does your course have an employee handbook or policy manual? If so, be sure to follow the handbook's guidelines. Practice trumps policy, so if something looks great in writing, but is not followed in practice, your policy will not protect you.

Almost all employees hired by superintendents will be "at-will" employees, but digging down a little further, an equally important question is whether the employee is a salaried or hourly employee. The distinction is important because hourly employees are entitled to overtime for hours worked beyond the limits set forth by state and federal laws. Claims for unpaid

overtime are common.

For example, in January 2012, a New Jersey golf course was sued in federal court by a former employee who claimed that he had worked 65-70 hours per week, but was classified as a salaried employee. He is now seeking unpaid overtime wages. The club's liability could exceed half a million dollars for that employee alone. If the club used the same allegedly impermissible practice for more employees, the total exposure could be far greater.

As this case demonstrates, simply calling an employee salaried does not make it so. In fact, many states have instituted task forces to crack-down on the misclassification of hourly employees as salaried employees. These task-forces include a variety of state agencies sharing information and conducting audits based on tips from disgruntled employees, or sometimes randomly and for no reason at all. That said, correctly classifying employees is also good business.

By hiring the correct number of hourly employees rather than relying on erroneous designations designed to skirt the law, a superintendent can cut down on costly overtime paid to their greens crew. Spending less is a surefire way to make any greens chairman smile. **GCI**

Christopher G. Elko, Esq. and David B. Cronheim, Esq. are attorneys at the law firm of Norris, McLaughlin & Marcus, P.A. Mr. Elko is a member of the firm's employment group specializing in labor relations and wage and hour issues. Mr. Cronheim serves as general counsel to Twin Brooks Country Club in Watchung, N.J. and is the author of the golf law blog Tee, Esq.