

## BE CAREFUL WITH PRE-EMPLOYMENT SCREENING PRACTICES

Your service personnel are probably one of the most important components of your business. Their technical competence and their ability to deal professionally with your customers are critical to your long-term success. In order to find the best people, you need to adopt good hiring practices. Pre-employment screening should be one aspect of these hiring practices. However, you need to be aware that there are important limitations on an employer's right to pre-screen potential employees.

Since your employees will be dealing with your customers at their homes, it is certainly important for you to know something about their character. We recommend that our clients conduct criminal background checks of potential employees who will be dealing with their customers. However, there are limits on employer's right to conduct background or "character" investigations. For example, an employer may be found guilty of unlawful racial discrimination by preferring job applicants with honorable military discharges or disability military discharges over those with dishonorable discharges, absent a showing that the policy was related to job performance. Because of the higher incidence of less-than-honorable discharges among blacks than whites, Title VII of the Civil Rights Act of 1964 may be violated by the use of a general background investigation that includes an inquiry into the applicant's military service.

Pre-employment drug testing may or may not be permissible, depending upon the state in which your business operates. Some state constitutions guarantee a right to privacy, and that right to privacy may limit the extent to which an employer may institute a pre-employment drug testing policy. Before implementing such a policy, you need to check with an attorney in your state to see if such testing is legal.

An inquiry into a potential employee's availability for work can also be problematical. Under the religious discrimination guidelines adopted by the Equal Employment Opportunity Commission (EEOC), an employer owes a duty to accommodate employees' religious practices. An employer may not permit an applicant's need for religious accommodation to affect in any

way its decision whether to hire the applicant, unless it can demonstrate that it cannot reasonably accommodate the religious practices without undue hardship. Thus, the use of pre-employment inquiries concerning the effect of an applicant's religious practices on his or her availability for work is prohibited in most circumstances.

The Americans with Disabilities Act (ADA) forbids the use of qualification standards, employment tests, or other selection criteria that screen out, or tend to screen out, individuals with disabilities, unless they are job-related and consistent with business necessity. There are ways to get the answers you need, but you will need someone familiar with the ADA to help you ask the right questions.

These legal limitations in pre-employment screening should not discourage you from adopting good screening practices. However, you should seek the help of an attorney in your area. There are firms that will handle pre-employment screening for you, but if you choose to out source this work, you must be careful in selecting a screening firm. In some circumstances, an employer can be held liable for the discriminatory screening practices of its outside agency. At a minimum, your contract with such an agency should include a provision that requires the agency to carry out its duties in a fashion consistent with federal and state discrimination laws.

Michael P. Coyne

**Copyright © 2007 HVACR Business. Reprinted with permission.**