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LEGALNOTES

INFORMATION FOR OUR BUSINESS AND CORPORATE CLIENTS

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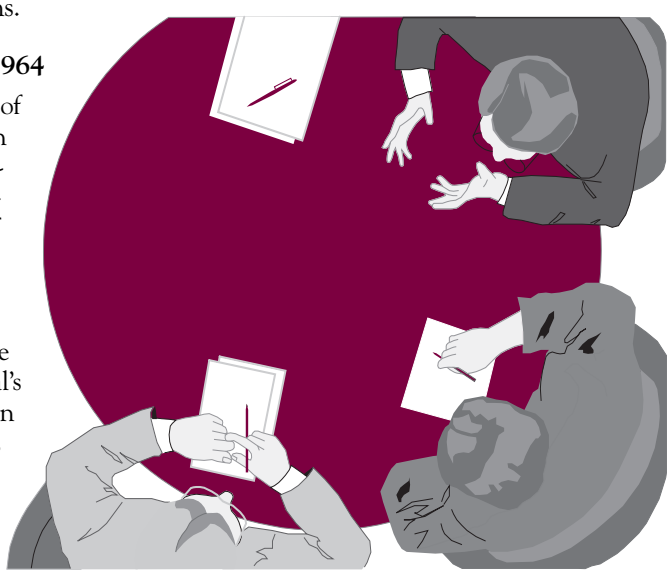
EMPLOYERS: AVOID LITIGATION!

KNOW PRE-EMPLOYMENT AND EMPLOYMENT GUIDELINES

A vast number of federal and state laws prohibit various forms of employment discrimination. Most states have enacted statutes and or laws that provide similar protections at the state level. The prohibitions apply to all aspects of the employment relationship including discharge, discipline, promotion, compensation, hiring and recruitment. Therefore, the protections apply to employees and employment applicants alike. The following is a general overview of these prohibitions.



Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 is simply called "Title VII." With limited exceptions, it applies to employers of 15 employees or more and prohibits discrimination on the basis of race, color religion, sex, pregnancy and national origin in employment and in the hiring process. Because race, color, religion, sex, or national origin are rarely, if ever, relevant to an individual's ability to perform a given job, unless an employer can prove that the inquiry is based on a *bona fide* occupational qualification, questions geared to elicit the sex, religion and or national origin of an applicant are prohibited.

1. Race

Under Title VII, race may never be a *bona fide* occupational qualification. Therefore, inquiries that relate to a person's race or color must be avoided. Inquiries into the color of an applicant's hair, eyes or skin must also be avoided as answers to these questions may be indicative of race or national origin.

2. National Origin

An employer may not deny employment to an individual because of his place of origin; because of his ancestors' place of origin; because the individual has physical, cultural, or linguistic characteristics of a particular national origin group; or because of the status of his citizenship. Accordingly, an employer may not ask an applicant questions designed to elicit this type of information.

3. Gender

An employer may not refuse to hire a woman for gender-based reasons, unless the employer can show that gender is a "*bona fide* occupational qualification," necessary to the operation of his business.

While inquiry into whether an applicant is "Male" or "Female," or whether he or she is "Mr., Mrs. or Miss" is permissible, provided the inquiry is made in good faith for a non-discriminatory purpose, an employer may not request pre-employment information from female applicants that it does not request from male applicants. For example, absent a showing that conflicting family obligations are demonstrably more relevant to job performance for a woman than for a man, an employer may not ask women if they have preschool-age children. And, the employer may not refuse to hire women in this group if no such restriction is applied to men. Therefore,

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BUYING AND SELLING ON THE INTERNET PRESENTS SOME LEGAL RISKS

Businesses relying on the Internet look for protection from hackers and viruses. But there are risks even more intangible than the invisible bytes forming worms and trojan horses that need to be guarded against as well. These relate to basic legal contracts.

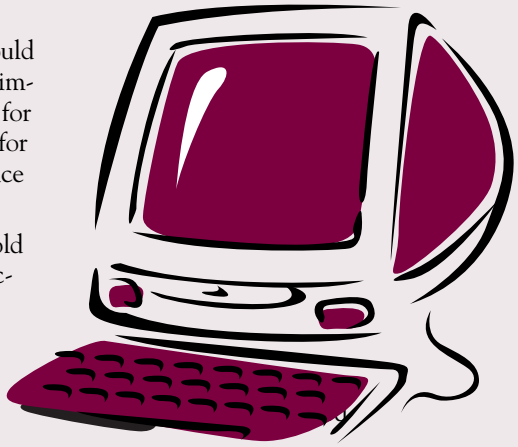
If you are selling over the Internet, you may be making contracts through your web site. A business should look for the same kinds of protection in these web contracts as in any paper contract. Clear language stating what is being promised and the scope of any warranties is critical. Disclaimers of implied warranties and limitations of liability clauses remain relevant to Internet transactions, and may need to be a part of your web site.

These contract terms will look similar to their paper counterparts. Other legal concepts are also similar. If you want to assure that the language will actually be effective, steps should be taken to make sure the buyer is aware of the terms and has an opportunity to read them.

The link to any web contract terms should be conspicuous and up-front. If buried within a web site, the cyber equivalent of "buried in small print," disgruntled buyers may have an opportunity to argue someday that they were not aware of any terms limiting the purchase. If the dispute winds up in court, the judge could very well look to whether or not any limiting terms were conspicuous, both for purposes of detection by a buyer, and for purposes of evaluating the importance the seller itself placed on the language.

Some products or services may be sold in traditional ways, with traditional documentation, but the good or service also includes an Internet component that works in connection with that good or service. Those paper contracts will need to address the Internet aspects of the deal, and form a coherent whole with the language on your web site that is being used together with your product or service.

Finally, the legal language on your web site should include limits on liability and risk for the new problems created by the cyber world. While your IT manager is working to protect your website from viruses, you also need to address the legal risks against your business if a client gets a virus from your web site; or if an unauthorized user obtains your client's password and ID and accesses your web site.



The national dimensions of web use impose some interesting challenges in addressing these matters, but taking steps to address web contracting is a necessary part of the new reality of business on the Internet.

For further information, contact Lee Applebaum at 215-893-8702

PAY NO REAL ESTATE TAXES FOR TEN YEARS IN PHILADELPHIA

If you are a property-owner in the City of Philadelphia, you now have an opportunity to qualify to pay no real estate taxes for ten years on the value of certain improvements to your property. You must first find out if you qualify for one of the abatement programs offered by the City.

It is important to note that your entitlement under any of these currently available economic incentive programs is not automatic. You must apply in a timely manner using official forms and meet various technical requirements. The abatement is always limited to the value that is added to the property due to qualifying improvements. The value of the land and any pre-existing improvements will remain fully taxable during the abatement term. Applications are filed with the Philadelphia Board of Revision of Taxes, which determines the value of the improvements as the corresponding amount of the abatement, and the beginning and ending dates of the abatement period.

The overriding requirement for qualification, as well as continuation, of such a tax abatement is that the property-owner must be and remain current in all Philadelphia taxes, fees, and charges. The Department of Revenue will review all accounts and records for delinquencies in any such obligations. Applicants who are delinquent will be denied an abatement; and approved applicants will be reviewed annually for compliance throughout the abatement term. If an abatement is terminated, the full real estate tax will become due.

Although each of the current abatement programs has its own technical requirements, generally the abatement is granted for a ten-year term, and is transferable. These tax abatements apply to improvements to existing residential, industrial, and commercial properties, and to new construction of residential properties. These programs have been very successful in achieving their stated goals of encouraging improvement and building of Philadelphia real estate properties. Developers have been spurred to action, and homeowners and businesses have been motivated to make substantial investments and move into the City. Everyone wins!

For more information, contact Gary A. Krimstock at 215-893-8722.

THE STATUTORY EMPLOYER DEFENSE
A GENERAL CONTRACTOR'S WAY OUT OF COSTLY LITIGATION

Pennsylvania law strictly prohibits civil actions against employers if an injury occurs during an employee's employment. The public policy behind the ban on these type lawsuits is a general encouragement of employers to provide workers' compensation to their employees, thereby providing the injured employee compensation absent the filing of a lawsuit. However, this does not deter many employees from filing lawsuits against other individuals or companies having some relation, however tenuous, to the accident.

These types of lawsuits are filed routinely in construction site accidents. Injured workers are unable to sue their direct employer; so instead, they file a personal injury action against other on-site contractors or the general contractor, seeking additional compensation for their injuries. Lawsuits of this type are of tremendous concern to general contractors. Construction sites have a high degree of risk of injury, and therefore these lawsuits are often filed against general contractors. Defending these lawsuits often costs a considerable amount of time and expense and can result in a significant verdict for the plaintiff.

Pennsylvania Law Protects the General Contractor

However, there is a useful law in Pennsylvania that if used in the early stages of litigation, could save a general contractor substantial defense costs and useless litigation.

The immunity enjoyed by direct employers also extends to "statutory employers" under Pennsylvania law. Contractors who have subcontracted with the direct employer of the injured worker are given a way out of the litigation as "statutory employers" in some circumstances. Known as the Statutory Employer Defense, its origin is in the Pennsylvania Workers' Compensation Act. It gives contractors who have been sued by an injured employee of a subcontractor the same rights and immunity provided to the subcontractor, provided specific criteria are met.

According to a recent ruling, section 203 of the Pennsylvania Workers' Compensation Act prohibits an employee from collecting compensation from his or her direct employer, or any employer that can establish itself as a statutory employer by satisfying all of the following elements:

1. The employer must be under contract with an owner or one in the position of an owner of the premises.
2. The employer must occupy or control the premises where the injury occurred.
3. The employer must have subcontracted part of its work.
4. The work entrusted to the subcontractor must be part of the employer's regular business.
5. The injured worker must be an employee of the subcontractor.

A Relatively Quick Exit From Litigation

General Contractors, more often than not, meet these requirements, and can take advantage of the Statutory Employer Defense.

The first three requirements are almost always unquestionably met by general contractors.

First, a general contractor is likely to have been directly hired by the owners of the jobsite and is in direct contract with them to build whatever has been contracted for.

Second, the general contractor is required in most circumstances to have a foreman and or project manager on site throughout the duration of the job. These managers are in charge of the day-to-day running of the job, and retain control over the work done by the subcontractors and their respective employees. By maintaining this presence and control over the jobsite, most general contractors routinely meet the second prerequisite.

The third element requires part of the job be subcontracted out, and is certainly met by general contractors. It is more than likely that the lawsuit stems from an employee of a subcontractor and therefore the third element, by the very nature of the lawsuit, is necessarily met.

The fourth component of the Statutory Employer Defense requires that the work subcontracted for be within the course and scope of the regular business of the general contractor. In general, this element is satisfied wherever the subcontracted work is an obligation assumed by a general contractor under his contract with the owner.

The final requirement is that the injured worker must be an employee of a subcontractor and can be easily determined early in the discovery process of litigation. Having met the above requirements, a general contractor gains the same immunity as the employer of the injured worker and cannot be joined in a third-party action, or in the alternative, can file a motion for summary judgment on the basis of its qualification as a "statutory employer." Once the contractor meets the qualifications as a "statutory employer" it is free of any and all negligence liability.

Early Action Needed

Therefore, a general contractor may avoid litigation through its status as a "statutory employer." Additionally, the elements are often easily and quickly determinable, and provide a general contractor a relatively quick exit from litigation, saving the contractor from accumulating further defense costs. Although any entity may be protected by meeting the requirements, general contractors most often do and should take advantage of the defense as early in the process as possible.

For further information, contact Elyse L. Glazer, 215-893-8727

EMPLOYERS: AVOID LITIGATION!

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generally, inquiries designed to elicit information regarding an applicant's marital status or the number and or ages of his or her children and or dependents should be avoided.

4. Religion

Title VII also prohibits employers from refusing to hire individuals because of their religion. To address any scheduling issues that may interfere with an applicant's religious obligations, the employer should set out the required work schedules and then invite the applicant to specify any problems that he may have with meeting the schedule.

The ADEA

The Age Discrimination in Employment Act of 1967 or commonly called the "ADEA", which applies to employers of 20 people or more, protects individuals aged 40 and over from discrimination based on their age. Therefore, during the interview process, unless age can be proven conclusively to be a *bona fide* occupational qualification for a particular job, with the exception of asking whether an applicant meets the minimum age requirements for a particular position, an employer is prohibited from asking the applicant's date of birth, age, age group, or when the applicant graduated from high school. These are questions that tend to identify applicants who are over age 40.

The ADA

As with legislation protecting other groups victimized by discrimination, Congress, in enacting the Americans With Disabilities Act or "the ADA", which applies to employers of 15 people or more, recognized the need to protect qualified individuals from pre-employment and employment discrimination based on their disabilities.

Specifically, during the interviewing process, an employer may not ask questions likely to elicit answers about a possible disability, or whether an applicant will need a reasonable accommodation to perform the job. There is, however, one caveat to this rule. An employer may ask whether an applicant needs a reasonable accommodation to perform the job if, and only if: (1) the employer reasonably believes the applicant will need reasonable accommodation because of an obvious disability; (2) the employer reasonably believes the applicant will need reasonable accommodation because of a hidden disability that the applicant has voluntarily disclosed; or (3) the applicant has voluntarily disclosed to the employer that he needs reasonable accommodation to perform the job.

In addition, the ADA prohibits pre-employment medical examinations and inquiries designed to reveal information about disabilities unless such inquiries are designed to reveal an applicant's ability to perform the essential functions of the job. However, the ADA does permit employers to conduct medical examinations or inquire as to whether the applicant is "an individual with a disability" if: (1) the offer of the job has already been made; (2) all entering employees are subject to the same examination; and (3) the information secured is kept in a separate medical file and is "treated as confidential". The examination or inquiry must be job-related and consistent with business necessity.

Ask Only Job Related Questions

To decrease the risk of liability for discrimination as a result of employer screening techniques, employers should ask job applicants only job-related questions, such as questions that will aid the employer in determining whether an applicant is capable of performing the job. To determine whether a question is job-related, the employer should ask himself why the information requested is pertinent to the job at issue and whether a particular applicant is capable of performing the job for which he has applied. If an employer cannot defend a question as job-related, he should not ask the question.

For further information, contact Phinorice J. Boldin at 215-893-8735.

MAJOR CHANGE IN PHILADELPHIA REAL ESTATE TAX ASSESSMENTS

The City of Philadelphia is now in the process of revaluing all its 565,000 properties in preparation for a major change in the real estate tax system to take effect in 2006. All properties will then be assessed at full market value, rather than at the present 71% of market value. The calculation of property taxes will then be simplified to just a multiplication of the market value assessment by the tax millage rate; and the present use of the 32% "pre-determined ratio" will be eliminated. The result will be that the Board of Revision of Taxes will make property value determinations to reflect the actual market, but the actual property tax revenue for the City will be determined by the annual tax millage rate adopted by City Council and the Mayor. Therefore, in theory at least, a market value increase will not necessarily cause a corresponding tax increase.

More details about this "revenue-neutral" change are available now, and public notices will be sent in 2005.

For further information, call Gary A. Krimstock at 215-893-8722.