

Disclaimers

During the initial stages of contact with job applicants, it is important for the organization to protect itself legally by clearly identifying rights it wants to maintain. This involves the use of disclaimers. Disclaimers are statements (usually written) that provide or confer explicit rights to the employer as part of the employment contract and that are shown to job applicants. The organization needs to decide (reevaluate) which rights it wants to retain and how these will be communicated to job applicants.

Three areas of rights are usually suggested for possible inclusion in a disclaimer policy: (1) employment-at-will (right to terminate the employment relationship at any time, for any reason), (2) verification consent (right to verify information provided by the applicant), and (3) false statement warning (right not hire, terminate, or discipline prospective employee for providing false information to the employer). An example of a disclaimer statement covering the three areas is shown at the bottom of the application blank in Exhibit 8.4. Disclaimer language must be clear, understandable, and conspicuous to the applicant or employee.⁵⁸

Reference Checks

Reference checking creates a legal quagmire for organizations. Current or former employers of the job applicant may be reluctant to provide a reference (especially one with negative information about the applicant) because they fear the applicant may file a defamation suit against them. On the other hand, failure to conduct a reference check opens up the organization to the possibility of a negligent hiring suit. To deal with such problems and obtain thorough, accurate information, the following suggestions are offered.

First, gather as much information as possible directly from the applicant, along with a verification consent. This will minimize the use of reference providers and the information demands on them.

Second, be sure to obtain written authorization from the applicant to check references. The applicant should sign a blanket consent form for this purpose. In addition, the organization could prepare a request-for-reference form that the applicant would give to the person(s) being asked to provide a reference (see Exhibit 8.7).

Third, specify the type of information being requested and obtain the information in writing. The information should be specific, factual, and job related in content; do not seek health or disability information.

Fourth, be wary of (or even prohibit) information obtained from online social networking websites; information provided about applicants by other individuals on these sites should not be treated as a reference. Questions about accuracy, job-relatedness, and confidentiality abound for such information. Also, develop a policy about whether your own employees can make recommendations about their current or former colleagues on these sites.