

These suggestions show there is much to be considered as the organization develops appropriate and legally defensible practices.

Finally, the organization should examine its own social media practices for recruiting applicants. It should ensure that its recruitment messages do not discourage applications based on EEO protected characteristics and, conversely, that the messages portray a welcoming of applicant diversity. In addition, the organization should make sure that its recruitment information is accurate and does not make any false promises about job offer content or future business and employment opportunities (see "Fraud and Misrepresentation" below).<sup>75</sup>

### Job Advertisements

Job advertising that indicates preferences or limitations for applicants based on legally protected characteristics is generally prohibited (see Chapter 2). Questions continually arise as to exceptions or less blatant forms of advertising, as the following examples indicate.<sup>76</sup>

Title VII permits indicating preferences based on sex, religion, or national origin (but not race or color) if they are bona fide occupational qualifications (BFOQs). The organization should be sure about the legality and validity of any BFOQ claims before conducting such advertising. Use of gender-specific job titles such as waitress or repairman, however, generally should be avoided.

Using the phrase "women and minorities are encouraged to apply" in a job advertisement is okay because it is an inclusive effort to generate the largest pool of qualified applicants. An indication that the organization is "seeking" a particular type of applicant (e.g., stay-at-home moms), however, is not permitted, because it connotes a preference for a particular group rather than an encouragement to apply.

Regarding age preferences, advertisements cannot limit or deter potential older applicants from seeking a position. It is permissible, however, to show a preference for older workers, using phrases such as "over age 60," "retirees," or "supplement your pension."

These examples show that the line between permissible and prohibited advertisement is quite murky. The organization thus should monitor the construction and content of all its job advertisements.

### Fraud and Misrepresentation

Puffery, promises, half-truths, and even outright lies are all encountered in recruitment under the guise of selling the applicant on the job and the organization. Too much of this type of selling can be legally dangerous. When it occurs, under workplace tort law, applicants may file suit claiming fraud or misrepresentation.<sup>77</sup>

Claims may cite false statements of existing facts (e.g., the nature and profitability of the employer's business) or false promises of future events (e.g., promises

il  
d  
d,  
if  
it  
  
li  
rial  
the  
the  
will  
  
sup  
  
media  
  
media  
media  
uitment  
known  
a formal