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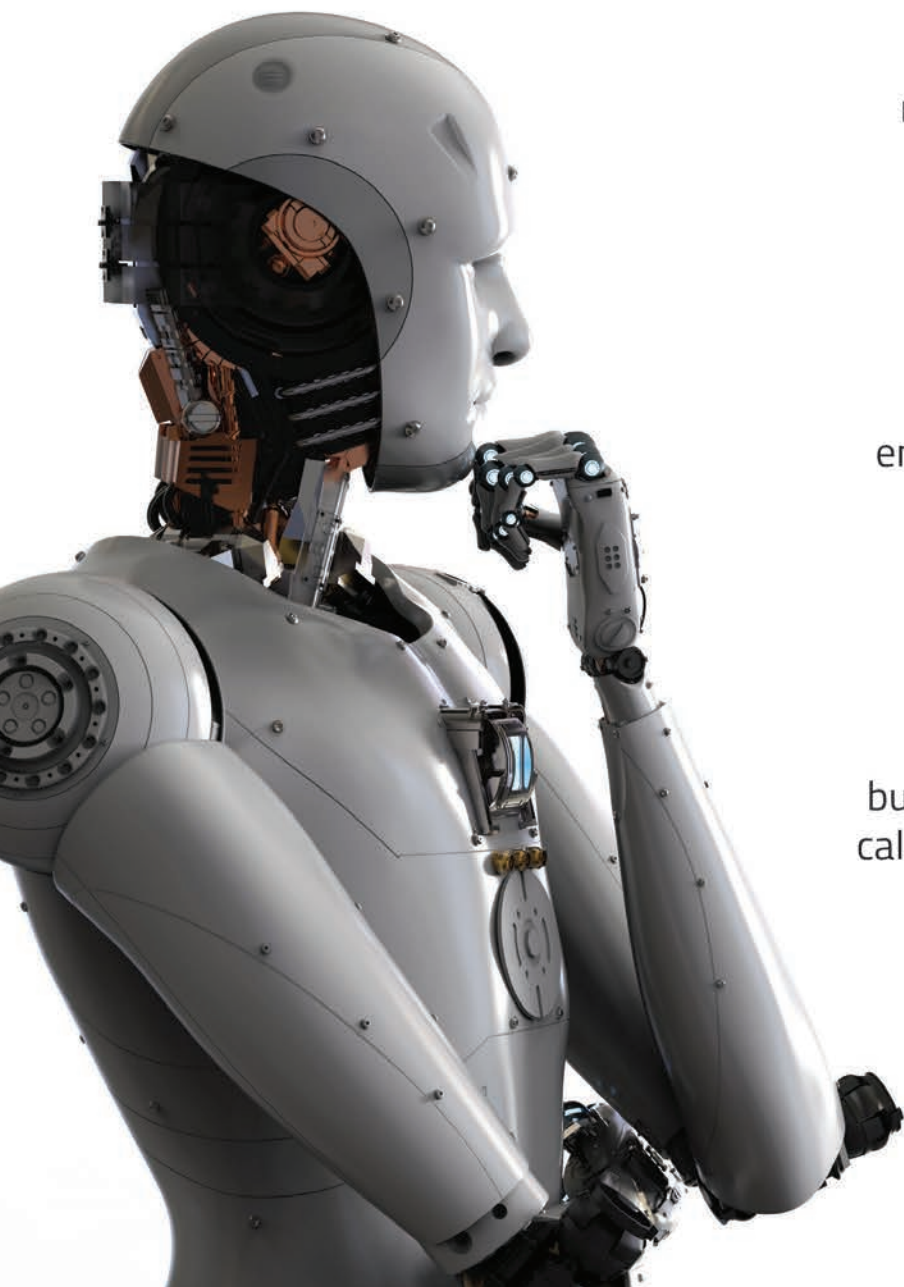
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Employer Hiring Dos and Don'ts

Finding and hiring good people to work for your business is one of the most important aspects of building a successful enterprise. The process can be a long and expensive one and unfortunately, rife with potential legal issues that your business should address before it even advertises for an open position.

Among the many considerations a business should consider, are what questions can be asked of potential hires during the hiring process. While there are a host of historical regulations that most employers already know limit certain interview and applications questions - such as inquiries into an applicants' race, ethnicity, disability, sexual orientation, religion, credit history and so forth - New Jersey has recently passed two laws restricting an employer's ability to inquire into a job applicants' criminal and salary history. A process that does run afoul of these regulations can help to avoid accusations of unfair hiring practices and prevent lawsuits and hefty government fines.

Most recently, New Jersey joined a host of other states by prohibiting employers from asking applicants about their current or past salary, wages, commissions, or benefits. The new law, which took effect on January 1, 2020, amends the New Jersey Law Against Discrimination and is designed "to strengthen protections against employment discrimination and thereby promote equal pay for women." In order to ensure that businesses take this latest restriction seriously, the law allows for a private individual to sue and imposes civil penalties from \$1,000-\$10,000 for each violation.

The new law also makes it unlawful for employers to consider past salary information even where the information is learned inadvertently during a background check, in which case the law requires the employer to destroy the salary information and not consider it in the hiring decision. That being said, employers are still permitted to consider salary

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Employer Hiring Dos and Don'ts

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history under limited circumstances -- for example, if a potential hire volunteers salary information without "prompting or coercion" or if the application is for internal consideration or promotion of an existing employee. Applicants may provide salary history information to employment agencies, but the employment agency cannot reveal the information to potential employers unless the applicant gives express written consent - and refusal by the applicant to give such consent cannot be used against the applicant in the hiring process.

It is worth mentioning that employers are prohibited from asking about an applicant's criminal history in connection with consideration of an applicant. Passed in March of 2015, New Jersey's Opportunity to Compete Act, known commonly as the "Ban-the-Box Law", explicitly prevents employers from asking potential hires about his or her criminal history during the selection process, including on an application. The law also makes it a violation to state in a job posting that persons with criminal records need not apply. Importantly, however, the law only applies before an offer has been made. In other words, employers are free to inquire into a potential hire's criminal history after a formal offer has been extended. At that point, employers are free to decline to hire the applicant based on arrest or conviction records, unless the conviction has been expunged.

Clearly, there are a host of considerations employers must take into account when making hiring decisions - many of which have nothing to do with finding an individual who best meets your business' needs. In order to avoid the minefield that is the hiring process and preempt the inevitable lawsuit by asking what may seem like an innocuous question, contact Dan Blanchard or Randy Ford to help guide you through the process and mitigate your risks accordingly.

Dan Blanchard and Randy Ford, attorneys with Lauletta Birnbaum, LLC (Lauletta.com)

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