



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

December 20, 2010

[REDACTED]

Re: Request for Opinion
Employee Recruitment
RO-10-0041

Dear [REDACTED]:

This letter is written in response to your email of March 24, 2010 in which you pose twenty-two questions related to "an employer's legal responsibilities and requirements when looking to fill vacancies and positions in New York State."

This office does not provide legal advice to the general public; rather, we serve as Counsel to the Commissioner of Labor and Department staff. As a courtesy, on occasion we will provide answers to specific questions posed by the public requiring interpretation of the New York State Labor Law or other laws over which we have jurisdiction.

Your email inquiry requested information regarding employer obligations and responsibilities with regard to filling vacancies in New York State. Please be aware that the questions you have raised could involve a number of federal statutes including the Americans with Disabilities Act, the Genetic Information Non-discrimination Act, the Social Security Act, and others over which this Department has no jurisdiction. Since your questions are so non-specific and provide no factual information, it would literally require a treatise on employment law to answer them. For this reason, your needs might be better served by searching out reference works regarding labor and employment law to find a discussion of these laws and others.

Generally, the New York State Labor Law does not prescribe the process by which employers recruit job candidates, process applications, review resumes, contact references, or take other actions related to the hiring of employees. However, the law does contain limits on fingerprinting and payment for pre-employment medical examinations, both of which could involve the hiring process. In particular, Labor Law Section 201-a provides:

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Except as otherwise provided by law, no person, as a condition of securing employment or of continuing employment, shall be required to be fingerprinted. This section shall not apply to employees of the state or any municipal subdivisions or departments thereof, or to the employees of legally incorporated hospitals, supported in whole or in part by public funds or private endowment, or to the employees of medical colleges affiliated with such hospitals or to employees of private proprietary hospitals.

Labor Law section 201-b(1) provides "It shall be unlawful for any employer to require any applicant for employment to pay the cost of a medical examination required by the employer as a condition of original employment."

In addition to these provisions which deal with the job application and hiring process, there is also a requirement in state Labor Law that employers provide written notice of the rate of pay and the regular designated pay day to employees at the time of hire (Labor Law §195(1)). That section reads as follows:

Every employer shall:

1. notify his or her employees, in writing, at the time of hiring of the rate of pay and of the regular pay day designated by the employer in accordance with section one hundred ninety-one of this article, and obtain a written acknowledgement from each employee of receipt of this notice. Such acknowledgement shall conform to the requirements established by the commissioner with regard to content and form. For all employees who are eligible for overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by law or regulation, the notice must state the regular hourly rate and overtime rate of pay.

In addition, Labor Law §201-f requires employers to post in their establishments in a place accessible to their employees in a visibly conspicuous manner a copy of Correction Law Article 23-A and regulations promulgated thereunder relating to the licensure and employment of persons previously convicted of one or more criminal offenses.

This letter addresses requirements imposed by the New York State Labor Law relating to the recruiting and hiring process and is not intended to be an exhaustive description or listing of requirements under either New York or federal law that fall outside of this Department's

jurisdiction. In this regard, you may wish to review New York State Human Rights Law, which prohibits discriminatory hiring practices and New York State Corrections Law, Article 23-A, dealing with discrimination against ex-offenders, among other provisions relevant to your inquiry.

Very truly yours,

Maria L. Colavito, Counsel



By: Victor M. DeBonis
Senior Attorney

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