

LEGAL Q&A: CAN A CAREER CENTER PRESCREEN CANDIDATES FOR AN EMPLOYER? CAN FACULTY PRESCREEN FOR AN EMPLOYER?

October 01, 2014 | By NACE Staff

If the career center or faculty prescreen candidates, they are, in effect, acting as an employment agency, and the relevant laws that apply to an agency would apply to the career center or faculty member. In this regard, federal, and most state, antidiscrimination laws prohibit discrimination in “referral practices.” In this regard, an employment agency may not discriminate in classifications or referrals for employment; circulate any discriminatory statement, advertisement, or publication; or use discriminatory application forms or inquiries made in connection with prospective employment. Further, if an employment agency advances an employer’s discriminatory practices, both the employer and the agency may be held liable for discrimination. As such, if a career center prescreens candidates in a discriminatory manner, it may be exposed to potential liability.

With regard to faculty, although federal antidiscrimination provisions typically apply only to “employers,” many states have adopted similar provisions that encompass individual employees and third parties. These state law provisions often make it unlawful for any individual or entity to “aid or abet” discriminatory employment practices. Additionally, educational institutions that accept federal funding may run afoul of Title VI of the Civil Rights Act of 1964, as amended, and/or the equal protection clause by implementing or endorsing discriminatory prescreening practices.

Once career services staff or a faculty member participate in the selection or referral process, they may have to justify the criteria upon which the screening was based, just like an employer or an employment agency. Problems occur when the criteria are facially discriminatory or have a discriminatory impact, such as when a career services office is asked to refer only minority students or a faculty member is asked to refer just female candidates. A career services staff member or faculty member could not defend the action by saying the employer “told me to do it.” As noted above, the career center staff or faculty member may be liable for implementing the discriminatory practices of the employer.

As such, the less directly involved the career services staff and faculty are in making choices for employers, the less likely the staff and educational institution will become embroiled in administrative claims and litigation if a student believes that he or she was discriminated against as a result of not being selected to interview. In the event that a career center (or faculty member) decides to engage in screening or referral practices, it must ensure that the requests made by the employer are not discriminatory and are based upon legitimate business needs.