



COMPLIANCE ON CAMPUS: GUIDELINES FOR COLLEGE AND UNIVERSITY RECRUITMENT AND SELECTION

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Danny Petrella advises employers on the specific workplace implications of federal, state, and local labor and employment laws, with a particular emphasis on the nondiscrimination and affirmative action requirements enforced by the Labor Department's Office of Federal Contract Compliance Programs (OFCCP).

Danny has more than 10 years of professional experience counseling and representing employers on matters before the OFCCP, the U.S. Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), and other federal, state, and local workplace regulatory and enforcement agencies.

Danny provides NT Lakis clients with a full range of advice and counsel on workplace legal and compliance requirements. In addition to his law firm role, Danny also serves as Senior Counsel to the Center for Workplace Compliance (CWC), where he helps CWC members understand and meet their workplace compliance requirements. Danny is also a Senior Consultant with the firm's affiliated consulting group, Employment Advisory Services, Inc.

Objectives

Examine the key employment laws and regulations that specifically impact campus recruiting programs

Identify how common campus recruiting practices can inadvertently run afoul of fundamental EEO compliance and recordkeeping requirements

Offer practical guidelines employers can follow to minimize campus recruitment compliance risks

Key Compliance Considerations

Contractors should evaluate whether and how campus recruiting practices implicate key legal challenges

- Age discrimination under the Age Discrimination in Employment Act (“ADEA”)
- Engaging in outreach and good faith efforts under EO 11246, Section 503 and VEVRAA
- VEVRAA’s mandatory job listing requirement
- Identifying “Internet Applicants” and soliciting their race, ethnicity, sex, status as a protected veteran, and status as a person with a disability

Age Discrimination in Employment Act

Employers may not discriminate against an individual in any aspect of employment because that individual is 40 years old or older

- Applies to applicants as well
- Also cannot advertise for jobs in such a way that indicates a preference for or bias against particular job candidates based on their ages

Outreach and Good Faith Efforts

Federal contractors must engage in outreach and good faith efforts for women, minorities, veterans, and individuals with disabilities

- Women and minorities (EO 11246 AAP)
 - Good faith efforts are tailored to percentage placement rate goals
- Veterans and individuals with disabilities (VEVRAA and Section 503 AAPs)
 - Good faith efforts permanent, ongoing
 - Each year, contractor must assess whether efforts are working

Mandatory Job Listing

Contractors must list all open positions with the “appropriate employment service delivery system”

- Usually means state job bank
 - But other options are available

There are three exceptions to this requirement:

- Executive and senior management positions
- Positions that will be filled “from within the contractor's organization”
- Positions lasting three days or less

Internet Applicant Rule

OFCCP requires that federal contractors solicit the race, ethnicity, sex, veteran status, and disability status for every “Internet Applicant,” meaning every job seeker who:

- Expresses an interest in employment through the internet or “related technologies”
- The contractor considers for one or more positions
- Meets the basic qualifications for the position(s)
- Prior to an offer being made, does not remove her/himself from further consideration for, or otherwise indicate disinterest in, the position (in other words, does not withdraw)

Internet Applicant Rule

Must retain any and all expressions of interest which the contractor considered for a particular position, regardless of whether they are an internet applicant

Must record the searches of both internal and external résumé databases

Different Challenges at Different Stages

These challenges arise in different ways based on the various steps of recruitment and selection

- Posting vacancies
- Sourcing job seekers
- Screening job seekers
- Campus interviews
- Virtual interviews
- Same-day offers

Posting Job Vacancies

- What are the rules for where and how we advertise internship opportunities?
 - Mandatory job listing requirements
 - No explicit exception for career fairs, but . . .
 - Understand difference between “listing” a job and “posting” a job
 - Outreach and good faith efforts considerations
 - Can’t overlook these continuing obligations under EO 11246, Section 503, and VEVRAA
 - ADEA concerns
 - Be careful with social media advertising, buzz words (“looking for young, energetic ...”)
- Can we limit applicants to a particular school?
 - Nothing explicitly says you can’t, but you should carefully weigh the potential implications under ADEA, EO 11246, and Title VII as well

Sourcing and Screening Challenges

To properly
assess risk,
first answer
two key
questions

- Are you sourcing or are you screening?
 - The rules are different
- Even if you are screening, do you have an expression of interest?
 - First element of internet applicant rule is often overlooked

Sourcing and Screening Challenges

- Key risk: leaving behind “Internet Applicants” who submitted an EOI and were considered for one or more roles, but weren’t the “best” candidate
- Possible solutions (each with pros and cons)
 - Making all students apply through the ATS?
 - If you don’t, consider how demographic data will be obtained
 - Determine procedure for handling paper resumes
 - Using a single “sourcing” or “pipeline” req to manage the applicant flow?
 - Challenges identifying when and why candidates fell out of process
 - Challenges with defining the pool being considered for each selection
 - Is the pipeline stored within your ATS? How are you searching?

Searches & Recordkeeping Obligations

External Searches

- Position searched for
- Search criteria
- Date of search
- Résumés or profiles returned from search that meet basic qualifications and are considered

Internal Searches

- Position searched for
- Search criteria
- Date of the search
- Résumés added to database (ATS) and date added

Interviewing During the Pandemic

- Many employers switching to video interviews (even before COVID-19), consisting of either
 - A live interview, or
 - An automated video interview, which is recorded and then evaluated by:
 - Recruiters and hiring managers, or even
 - The system itself, which analyzes the video by incorporating artificial intelligence
 - Ask: will you be using white box or black box technology?
 - Caution: if using AI video interviews as “cutoffs” to advance individuals, UGESP arguably triggered as well

Additional Compliance Implications

Title VII of the Civil Rights Act

- Disparate treatment and disparate impact concerns
- How are these videos being used? By whom?
- Where are all these records being stored?
 - Can they be retrieved or destroyed upon request?
- Recruiters when interviewed have stated that they worry the videos do impact their decision
 - Many have stated even the audio alone can impact their decision

Campus Interviewing

- Key risk: on campus interviews often put the cart before the horse, by interviewing job seekers before they apply
 - Sometimes switches the order the of application process
 - Can you reproduce in a data format?
 - Possible solutions
 - Kiosks or tablets to
 - Apply on-site
 - Register on-site, with link to apply after event
- Key risk: not retaining interview notes and guides, or résumés that with additional information
 - It is important to have clear policy on notetaking and retention, including the acceptance (or not) of résumés

Extending Offers

- Can you extend same-day offers?
 - Risks not receiving data on Internet Applicants (including those who were offered and may decline offer)
- Possible solutions
 - Kiosks or tablets to
 - Apply on-site
 - Register on-site, with link to apply after event
 - Condition formal offer extension on completion of formal application within a set time period following event

Key Takeaways

Campus
recruiting
does not
suspend
compliance
expectations

- Be mindful of how and where positions are advertised and that:
 - Job listing requirements are fulfilled
 - Age is not a factor in advertising, and
 - Good faith efforts continue
- Be prepared to demonstrate that all EOIs “considered” by company were invited to complete an application and were retained
 - Records of job seekers considered cannot be left behind simply because they weren’t “best” qualified



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