

LABOR PRACTICES

SALTING AND OPEN SHOP HIRING POLICIES

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“Salting” is the union ploy of surreptitiously attempting to insert union organizers into an open shop employer’s work force. The “salts” organize, convince key employees to leave the company, entrap the employers into engaging in unfair labor practices that will result in significant litigation expenses and liability, and file charges against the company with state and federal agencies. Their main purpose is to disrupt the company’s business.

In order to avoid being taken unaware by “salts” it is imperative that contractors know their rights and obligations under the National Labor Relations Act as they relate to applicants for employment as well as employee relations.

UNDERSANDING THE LAW

The first step is understanding the law.

Just as federal and state laws prohibit discrimination in employment on the basis of race, religion, national origin, sex, age or disability the National Labor Relations Act prohibits discrimination against individuals, whether applicants or employees, on the basis of union activity or union membership.

1. A. Unlawful
An employer may not discriminate against an applicant who is a union member. The employer may not refuse to hire an applicant because the applicant wears a union jacket to his interview, states he is a union member or tells the employer that, if hired, he will try to unionize the company.
- B. Lawful
It is not illegal to refuse to hire an applicant because he has not worked in the trade recently, has fewer skills or training than other applicants, or is abusive or demanding in his communications with the employer’s office staff or in the employment interview.
2. A. Unlawful
It is unlawful for an employer to discriminate against employees or union activists who, once hired, engage in union organizational activity or “concerted activity.” Such protected activity includes complaining to supervisors on behalf of other employees about wages, benefits, or other terms and conditions of employment, refusing to cross a union picket line to come to work, soliciting co-workers to join the union during work breaks, or wearing a union insignia on a hard hat.
- B. Lawful
It is not unlawful to terminate or layoff such employees if their organizing activities violate reasonable, non-discriminatory company rules or for the same reasons for which other employees have been discharged or laid off. For example, if the company discharges employees who are No Call/No Show or employees who report to work without the required tools, a union salt may be discharged for the same reasons.

SETTING APPROPRIATE HIRING POLICIES

As indicated, it is unlawful to refuse to interview or hire an applicant because of the applicant’s union membership or interest in promoting unionization. The contractor, however, may adopt legitimate hiring policies, the purpose of which is to insure the hiring of capable employees who are suited to the work the employer needs performed. The following policies, if applied

consistently and in a non-discriminatory manner, may help to protect contractors from charges of discrimination in hiring;

Hiring Policies

1. All hiring takes place only at our corporate office. All applicants must apply in person at the corporate office. Job site employees and managers are not permitted to accept Applications for Employment.
2. We hire applicants based upon merit. We do not discriminate on the basis of race, sex, color, age, national origin, disability, union affiliation, or any other protected status.
3. We accept job applications only when jobs are available and we intend to fill the position. Applications are retained in an active file for consideration for ___ days.
4. We do not accept group applications or photocopied forms and require all applicants to fill out the application form at our office and to be interviewed by our hiring supervisor.
5. Any applicant who falsifies or omits information on the application is disqualified from being hired. If the applicant has been hired before the falsification or omission is discovered, the employee is subject to termination.
6. Any applicant who provides non-responsive information on our application form will not be hired. If you adopt this policy, your application should state: "The inclusion of nonresponsive information will result in the disqualification of this application."
7. Applicants may be required to appear for work with those tools what the company considers necessary for their work.
8. Hiring decision are based on a variety of factors, including: Skills and ability to perform the job, prior satisfactory employment with us or recommendation by our supervisors, employment references as to capabilities, character, willingness to work dedication, as well as willingness to accept the offered salary and conditions of employment.

Prior to interviewing applicants, you should also determine and set out the attributes you seek in an applicant. While one important attribute may be significant experience in the trade, another could be long tenure with previous employers. Such longevity might demonstrate both ability and loyalty.

The key to having these policies work for your company is consistency. Discriminatory application of personnel policies may be an unfair labor practice and may also violate state and federal civil rights laws.

TRAINING MANAGERS AND COMMUNICATING WITH EMPLOYEES

In addition to instituting the policies employers who wish to avoid litigation should also train supervisors, receptionists, and telephone operators in how to lawfully and appropriately respond to the questions and provocations of sales, union organizers, and business agents. For example, an appropriate response to the question: "Do you hire union workers?" could be: "We hire qualified workers whether or not they are union members." Remember, if you have a policy of not accepting applications when no jobs are available, you are not required to provide to or accept job applications from anyone.

Also ...

- All applicants should be required to fill out an application
- Date stamp all applications
- Keep a record of the dates of interviews and job offers

- Draft a list of questions to be asked of all applicants
- Adopt, publish and enforce a general “No Solicitation Policy” such as the following:

Solicitation for any purpose may only take place on the non-working time of the employees involved. Selling of items or the distribution of materials and literature must occur in non-working areas on the non-working time of the employees involved. The term “working time” does not include meal or break periods. “Working areas” include all areas where employees perform duties for the company. Solicitation and/or distribution of literature on company premises by non-employees are strictly prohibited.

A lawful “No Solicitation Policy” must be enforced uniformly. Such a policy will not be deemed valid if it is enforced against employees soliciting signatures on union authorization cards but not against employees seeking signatures for a political cause or selling shares in a football pool.

This article is not intended as legal advice related to individual situations or as legal opinion. Counsel should be consulted for individual planning and legal advice.