



## Successfully Growing Your Workforce: Finding & Hiring

### Successfully Growing Your Workforce: Finding & Hiring

Anessa Abrams, Esq.

*FordHarrison LLP*

Kevin Tighe

*Director, Workforce Development, NECA*

**This session is eligible for  
2 Continuing Education Hours.**

For these hours to appear on your certificate, you must:

- Have your badge scanned at the door
- Attend 90% of this presentation
- Fill out the online evaluation for this session



NECA 2016 BOSTON

## Construction: A Growing Industry

- #TheWar4Talent
- Hiring BOOM
- 5% Growth in Non-Residential Construction
- Growing Market Share??
- -----
- Baby Boomers – Up and Out
- Recession Hangover
- Educational Transition



NECA 2016 BOSTON

# NLMCC

## NECA-IBEW National Labor Management Cooperation Committee

- 2015 Industry Nights
- Spent \$522,000
- 22 Events



NECA 2016 BOSTON

# 2016

## Industry Nights → Job Fairs

- NLMCC Budgeted \$750,000 for Job Fair Advertising
- NECA Labor Relations Department & IBEW Membership Development Department
- Ricky Oakland, Special Asst to the International President for Membership Development
- Virgil Hamilton, Director- Construction Organizing



NECA 2016 BOSTON

## Developed an 11 Step Electronic Procedure and Assistance Request Form

“Step 1) Local Parties agree to a Job Fair event with the purpose to address immediate workforce shortages, and parties jointly complete an NLMCC Job fair Request Form.”



NECA 2016 BOSTON

# Requirements

- Immediate workforce shortage of Wiremen, Linemen, or CW/CE's
- Chapter and Local Union joint effort
- Multiple Employers attend
- Ability for Employers to hire on the spot
- Willingness of Employers to hire on the spot
- Cooperation with State and District IBEW Organizers



NECA 2016 BOSTON

# Tracking

- Dependent upon Field Organizers & Chapter Managers
- Raises industry tide
- Hiring prior to Job Fair
- Hiring post Job Fair for weeks/months
- Event night surveys
- Immediate and 60 day results



NECA 2016 BOSTON

## NLMCC Support

- Oswego Creative – TV, radio, and digital
- RCI Recruitment Solutions – Digital Sourcing Strategies
- IBEW Web-Landing Page



NECA 2016 BOSTON

## RCI Recruitment Solutions

- Search job posting websites
- Search social media sites: Facebook, Twitter, LinkedIn, Pinterest, Google+, Tumblr, Instagram, Vine....
- Collect candidate information
- Direct contact a minimum of 5 times, with RSVP
- Text, Facebook, Tweet, Instagram, email, phone



NECA 2016 BOSTON

## The Future

- Construction unemployment is at 5.1%... a 10 year low
- New avenues of developing a needed workforce
- DOL – ApprenticeshipUSA
- Helmets to Hardhats
- CW/CE Programs



NECA 2016 BOSTON

## The Interview

- Can lead to legal liability
- Tips to try to avoid legal liability
  - Train managers/supervisors who will be conducting interviews
  - Write down questions in advance
  - Tie questions to functions of the position
  - Ask the same questions of all applicants
  - Stick to the script



NECA 2016 BOSTON

## Avoid Questions Related to . . . Among others

- Sex/gender
- Age
- National Origin
- Race
- Marital Status/Children
- Color
- Religion
- Disability
- Citizenship
- Arrest Record



NECA 2016 BOSTON

## Examples

### **Not Permissible**

- What is your date of birth? What year were you born? What year did you graduate high school?
- Where were you born? Where were your parents born? Of what country are you a citizen? Are you a U.S. citizen?

### **Permissible**

- If hired, can you provide proof that you are of legal age to work in the United States?
- If hired, can you provide documentation that you are legally authorized to work in the United States?



NECA 2016 BOSTON

## Examples (con't)

### Not Permissible

- What religion are you? What church/synagogue do you belong to? What holidays do you observe?
- What is your native language? What is your nationality? What is your ancestry?

### Permissible

- You may be required to work Saturdays and/or Sundays in this job. Are you able to do so?



NECA 2016 BOSTON

## Examples (con't)

### Not Permissible

- Are you married? Are you pregnant? Do you plan to have children?
- Do you own a car to enable you to get to work?

### Permissible

- This job requires you to work between the hours of X and Y. Can you work those hours? Are you able to work overtime, if necessary?



NECA 2016 BOSTON



## Examples (con't)

### Not Permissible

- Are you handicapped? Do you have a disability?
- Have you ever been injured on the job?
- What is your workers compensation history?
- How many work days did you miss last year due to injury/illness?

### Permissible

- Are you capable of performing the essential functions of this position, with or without a reasonable accommodation?



NECA 2016 BOSTON

## A Focus on Specific Statutes and Guidance



NECA 2016 BOSTON

# EEOC's ADA Enforcement Guidance: Pre-employment Disability-Related Questions & Medical Exams



NECA 2016 BOSTON

## A Summary

- Can only ask disability-related questions and require medical exams of applicants **after** making a conditional offer of employment
- After conditional offer of employment made, can ask disability-related questions/require medical exams **provided** done for all entering employees in that job category



NECA 2016 BOSTON

## What is a Disability-Related Question?

- Any question that is likely to elicit information about a disability



NECA 2016 BOSTON

## What is a medical examination?

- A procedure or test that seeks information about a physical or mental impairment or health
- EEOC Guidance contains factors to consider to determine whether something is a medical examination



NECA 2016 BOSTON

## Pre-Offer

- Cannot ask disability-related question or require a medical exam BUT can
  - Ask applicant about his/her ability to perform specific job functions
  - Ask applicant about non-medical qualifications/skills (certifications, licensure)
  - Ask applicant to describe/demonstrate how he/she would perform particular job tasks if asked of all applicants in job category



NECA 2016 BOSTON

## Pre-Offer: Questions

- Can ask if applicant can meet attendance requirements
- Can ask about the number of days absent from last job BUT cannot ask about number of days applicant was sick
- Cannot ask about job-related injuries or workers compensation history
- Cannot ask what medications currently taking



NECA 2016 BOSTON

## Pre-Offer: Questions (con't)

- Can ask about *current illegal* use of drugs
- Can ask about prior illegal drug use BUT not about prior drug addiction
- Cannot ask if ever addicted to drugs or treated for drug abuse



NECA 2016 BOSTON

## Pre-Offer: Examinations

- Can require physical agility test
- Can require physical fitness test – as long as not a medical examination
- Can give test to determine current illegal drug use
- Cannot give alcohol test



NECA 2016 BOSTON

## Post-Offer

- Can ask disability-related questions and perform medical exams
- Can ask about prior workers compensation history, prior sick leave usage, illnesses/diseases/impairments, general physical/mental health



NECA 2016 BOSTON

## Post-Offer (con't)

- Required procedures if ask disability-related questions/conduct medical examinations:
  - Must inquire of or examine all entering employees in the same job category, regardless of disability
  - Must keep medical information confidential (subject to certain exceptions)



NECA 2016 BOSTON

# EEOC's Title VII Enforcement Guidance: Consideration of Arrest/Conviction Records



NECA 2016 BOSTON

## Arrests

- Cannot exclude from job based solely on fact of arrest
- BUT can make employment decision based on the underlying conduct IF it renders the individual unfit for the position at issue



NECA 2016 BOSTON

## Convictions

- EEOC **recommends** not asking about convictions on job application
- EEOC recommends that inquiry be job related and consistent with business necessity – i.e., there is a connection between the criminal conduct and the duties of the position at issue



NECA 2016 BOSTON

**BUT Be Aware of State / Local  
Legislation – i.e. “Ban the Box”**



NECA 2016 BOSTON



## States with “Ban the Box” Legislation for Private Employers Include:

- Connecticut
- Hawaii
- Illinois
- Massachusetts
- Minnesota
- New Jersey
- Oregon
- Rhode Island
- Vermont
- Washington, D.C.

Source: National Employment Law Project, Ban the Box Guide, June 2016, Michelle Natividad Rodriguez and Beth Avery



NECA 2016 BOSTON

## Local Jurisdictions with “Ban the Box” Legislation for Private Employers Include:

- San Francisco, CA
- Chicago, IL
- Baltimore, MD
- Montgomery County and Prince George’s County, MD
- Columbia, MO
- Newark, NJ
- Buffalo, New York City and Rochester, NY
- Portland, OR
- Philadelphia, PA
- Austin, TX
- Seattle, WA

Source: National Employment Law Project, Ban the Box Guide, June 2016, Michelle Natividad Rodriguez and Beth Avery



NECA 2016 BOSTON

# EEOC's ADA Enforcement Guidance: Disability-Related Inquiries & Medical Exams of Employees



NECA 2016 BOSTON

## General Standard

- Must be “job-related and consistent with business necessity”
- Employer has a “reasonable belief,” based on “**objective evidence**” that either
  - Employee’s ability to perform essential functions of the job will be impaired by medical condition OR
  - Employee will pose a direct threat due to medical condition



NECA 2016 BOSTON

## Examples Which Generally Satisfy the Standard

- Employer has knowledge of medical condition and observes performance problems which can be attributed to medical condition
- Employee requests reasonable accommodation and disability or need for accommodation is not known/obvious
- Employee seeks to return from medical leave and employer believes ability to perform essential job functions may be impaired



NECA 2016 BOSTON

## EEOC's ADA Enforcement Guidance: Reasonable Accommodation & Undue Hardship



NECA 2016 BOSTON

## Reasonable Accommodation

- Required to enable qualified individual with a disability to perform the “essential functions” of the job, unless poses “undue hardship”
- May include:
  - Making facilities accessible
  - Job restructuring
  - Modified / part-time work schedule; leave of absence
  - Acquiring or modifying equipment
  - Changing tests / training materials
  - Reassignment to a vacant position



NECA 2016 BOSTON

## Reasonable Accommodation – Request & Response

- Request need not use term “reasonable accommodation” or mention ADA
- Request need not be in writing
- Request triggers “interactive process”
- Employer is not required to provide the requested accommodation, but must provide an effective accommodation



NECA 2016 BOSTON

## Undue Hardship

- Determined on a case-by-case basis
- Whether accommodation would result in significant difficulty or expense



NECA 2016 BOSTON

## Undue Hardship

- Factors to consider:
  - Nature and cost of accommodation
  - Overall financial resources of facility; number of persons at facility; effect on expenses and resources of facility
  - Overall financial resources, size, number of employees, type/location of facilities of employer
  - Type of operation
  - Impact of accommodation on the operation of facility



NECA 2016 BOSTON

# Questions?

*Don't forget...*

- 10:15 - 11:30 am – Opening General Session *with Doris Kearns Goodwin*
- 11:30 am - 5:00 pm – NECA Show Hours

Anessa Abrams, Esq.  
FordHarrison LLP  
(202) 719-2000  
aabrums@fordharrison.com

Kevin Tighe  
NECA  
(301) 215-4527  
kt@necanet.org



NECA 2016 BOSTON