

Overcoming the fear of hiring employees

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Is she safe to hire?

The Civil Rights Act of 1991 (CRA-91) held great promise for protecting workers from discrimination in the workplace. Unfortunately, like many good ideas, CRA-91 had an unintended consequence for employers: it increased the likelihood that a firm will face litigation from an employee claiming discrimination.

In fact, firms with 500 employees or more could expect to be sued for discrimination at least once a year. The cost to defend the accusation through the Equal Employment Opportunity Commission (EEOC) is an estimated \$10,000 to \$15,000, even if the allegation is found to be without merit.

The potential cost of litigation is daunting for most companies, and as a

result, CRA-91 has induced hiring discrimination. Even though employers may be well-intentioned, there is evidence that they minimize litigation risk by avoiding hiring employees they believe pose the greatest risk — those in groups protected by the EEOC.

Anne Marie Knott, assistant professor of strategy at the Olin School of Business at Washington University in St. Louis, said that CRA-91 has created a situation in which employers, protected groups and the court system all lose as employment cases crowd out other forms of litigation.

One way to get around this problem, Knott says, is to create a process that would enable the employers to get a sense of whether a prospective employee is likely to sue for discrimination. Her solution is an "anti-discrimination bond" (ADB). Economic experiments indicate the bond may reduce employment litigation by 96 percent, Knott said.

"The bond is presented to employees prior to an offer of employment," Knott said. "The bond is similar to 401K plans in that employees make contributions through payroll deductions that are accumulated in individual accounts. Unlike a 401K, however, the bond has a provision that the contributions are forfeited in the event that the employee brings suit."

Knott said the bond is an additional screening tool, like a reference check or personality test, that signals to the employer if a candidate will be cost effective. In this case the test is whether the employee is likely to sue the firm. The bond is priced such that non-litigious employees find it attractive, while litigious employees find it unattractive. If the person buys the bond, then he or she is not likely to sue. Conversely, if someone refuses to buy the bond, then it is a good bet that the candidate will sue, and accordingly, be more expensive to hire.

"It may sound backwards, but a lot of people in the experiment actually

resent litigious employees — the protected groups in particular realize litigation by people in their group casts a dark shadow on the group and hurts their hiring prospects," Knott said.

Source: Washington University in St. Louis, By Shula Neuman

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