Corporate Careers Websites: Liability Risks & Best Practices

Like most companies, you probably have a corporate website; and like most corporate websites, yours probably includes a "CAREERS" section profiling the company, listing job openings and providing other relevant information to potential job seekers. But, while the careers site has become a staple of recruiting, nobody has yet hit upon the perfect formula for doing it well. What's also not well understood are the legal ramifications associated with careers sites. This story addresses both issues.

THE LEGAL RAMIFICATIONS

Although there are currently no laws specifically addressing them, corporate careers websites are subject to regulation under traditional laws governing hiring and recruitment. There are 3 key legal issues you need to be aware of:

Risk of Employment Discrimination: It's illegal to make employment decisions on the basis of an individual's race, sex, religion, disability, age, etc. Human rights laws say that employers can't publish ads or transmit communications indicating a preference or unwillingness to hire based on ethnic and socio-economic characteristics protected by the discrimination laws.

Example: Ad seeking "young trainee" is prima facie evidence of age discrimination, i.e., enough evidence for a 40-year-old job applicant to sue and force the employer to either go to trial or settle [Miu v. Vanart Aluminum Inc., [2006] B.C.H.R.T.D. No. 219, May 2, 2006].

Example: Posting ad for "Cleaner/Maintenance Man" (emphasis added) isn't just politically incorrect oversight but a deliberate act of discrimination where employer comes out and tells the woman currently holding the position that it wants to replace her with a man [Wedley v. Northview Meadow Co-operative Homes Inc., [2008] O.H.R.T.D. No. 12, Feb. 25, 2008].

Careers sites aren't job ads—although they typically contain them. But they're a close cousin insofar as they communicate both words and images about the company and the kind of people who work for it. As such, they can be used to transmit discriminatory messages to would-be job applicants. These messages are often subtle and completely inadvertent. But in the realm of human rights law,

perception often counts for more than good intentions. Thus, for example, a careers site that displays only white males could cause a spurned applicant to sue you for racial and/or gender discrimination. You need to be aware of this risk and vet your site for anything that might even remotely suggest that you look for employees of particular racial, ethnic or socio-economic characteristics.

Disabled Job Applicant's Right to Accommodation: The human rights laws also require employers to make reasonable accommodations necessary to afford equal opportunity. In the context of corporate careers sites, the duty to accommodate would involve ensuring that all of the information and functionality of the site, e.g., the capacity to submit a job application online, are available to individuals with sight, hearing, mobility, motor skills and other disabilities.

To meet your accommodation obligations, you must ensure that your site includes or can be used with assistive technologies for web browsing by persons with disabilities, including screen reader, screen magnification and speech recognition software. You should also post a statement on your site notifying visitors with disabilities of their right to request accommodations:

Privacy Laws: The privacy rights of individuals that appear on or use the careers site is another liability risk you need to consider. Photographs and videos of individuals are deemed protected private information under privacy laws. So you need to get your employees' consent to display their images on your careers site.

You also need to protect any personal information about job applicants you collect on the site, e.g., if your careers site allows applicants to submit resumes and job applications online. Although there hasn't yet been much litigation in Canada, database privacy lawsuits and class actions are becoming increasingly common south of the border.

Example: A former employee from Pennsylvania who had gotten his job by applying online sued his former firm for not protecting the Social Security Number and other private information uploaded to its job application database. The employee lost because the court said his identity theft concerns were too tenuous but it cited a litany of similar cases where employees did win [Allison v. Aetna, Inc., No. 09-2560, U.S.D.C.—E.D., Pa., June 5, 2009].

THE RECRUITMENT RAMIFICATIONS

The other challenge for HR, of course, is to ensure the careers site is effective as a recruiting tool. Experts suggest a 2-step strategy: baseline review to ensure the site's general adequacy, followed by implementation of improvements based on Best Practices and what's working at other organizations. There are 4 dimensions of your site to concentrate on. You can use the rest of this story as a Checklist for vetting your own careers site:

Site Content

First, focus on the actual words, images and features of the site.

Step 1: Baseline Content Review: Action steps for baseline review of content:

- Ensure the topic areas list information that's relevant to job seekers; FF

- Read each section objectively the way a job seeker would;
- Keep your eyes open for potentially discriminatory content including FFphotos, graphics, videos and interactive features, as well as code words like "young and energetic" or "traditional values";
- Review the visuals and make sure they "pop";FF
- Make sure the corporate information on the site is up to date—FFremember that details about pay, benefits and the like change all the time;
- Make sure the overall tone of the messaging is compelling to job FFseekers; and
- Make sure the content accurately portrays your firm and workforce. FF

Step 2: Content Improvements & Best Practices: How do you improve on the content of your careers site? According to HR experts, effective methods include:

- Using photos of employees that actually work for your organization FFinstead of stock photos of anonymous John and Jane Does;
- Posting photos depicting the various work environments at your FFcompany—and not just its corporate HQ;
- Ensuring that employee photos do justice to the diversity of your FFworkforce in terms of ethnicity, age, gender, etc.;
- Posting written—or better yet, video—testimonials from your FFemployees telling job seekers all the good things about working for your company;
- Making your company's philanthropic efforts and contributions to FFthe community a prominent and central part of your careers site. Although it's okay to dedicate a separate section of your company site to community contributions, don't overlook the positive contribution such efforts can make to your recruiting program. ("Companies that make a difference in their community are a powerful lure for many of today's job seekers," according to one recruiting expert);
- Showcasing any employer of choice awards your company has won FFand including a link to the awarding entity's website;
- Providing information about career advancement at your company FFand describing the career support you offer, e.g., educational programs; and
- Listing the company's mission, vision, and goal statements, even if FFthis information is already on the main corporate website.

2. Site Layout and Navigation

Nothing undermines the effectiveness of a careers site like a glitch in the layout and navigation.

Step 1: Baseline Review of Layout and Navigation: Baseline review should verify that:

- Page headings and subheadings listed on the navigation bar are FFaccurate descriptions of the content actually contained on those pages;
- Information presented on the site flows in a logical sequence; andFF
- All of the links work.FF

Step 2: Layout/Navigation Improvements & Best Practices: Things you can do to improve your careers site layout and navigation include:

- Dedicating a specific section of your careers site for college and/or FFtechnical schools students or recent grads—or any other special groups you heavily recruit;

- Linking to and from social media sites;FF
- Expanding upon your careers site messaging by posting on Facebook, FFLinkedIn, Twitter, etc.;
- Posting videos from your careers site on YouTube; andFF
- Linking to the homepage of your careers site from all external job FFpostings.

3. Job Postings

The third part of your careers site to concentrate on is the section that posts job listings.

Step 1: Baseline Review of Job Postings: Ensure that:

- Job listings are properly organized by category, location or both, and FFlist accurate information;
- There's a way for job candidates to apply for positions; FF
- All confidential information is protected;FF
- Each posting promotes a culture of inclusion and contains no FFpotentially discriminatory buzz words or content; and
- The jobs section properly interfaces with HR systems.FF

Step 2: Job Postings Improvements & Best Practices: Ideas include:

- Including a brief company overview with each job posting; FF
- Explaining your hiring practices, so job seekers know what to FFexpect;
- Ensuring that each posting details how the position contributes to FFthe department and the company as a whole;
- Linking back to sections of the careers site containing details about FFbenefits, career advancement and other relevant information;
- Listing the specific hiring criteria for the position, including the skills, FFexperience and other qualifications the successful candidate must have; and
- Listing the position's work location and a brief description of the FFwork environment.

4. Technology Considerations

Finally, consider the technology aspects of your careers site.

Step 1: Baseline Review of Technology: Baseline review should ensure that:

- All corporate portals reside on a reliable server that can handle FFtraffic volume. (Although bandwidth isn't a problem for most large organizations, it may be for small or medium-sized ones.); and
- The site is accessible to all job seekers, including the disabled, e.g., FFverifying that the site supports screen-reading software.

Step 2: Technology Improvements & Best Practices: The key technological improvement stressed by the HR experts we spoke to is ensuring that your careers site is easily accessible from mobile devices like laptops, smartphones and tablets like the iPad. Use of these devices, especially among students and recent grads, is growing at an amazing rate. For example, a BBC/OMD study (titled "Unlocking Canadian Connectivity") found that in Dec. 2010, 20% of Canadians were connected to the Internet via mobile devices; in Feb. 2011—only 2

months later, that number had jumped to 26%. Over that same two-month period, the proportion of Canadians using tablets like the iPad doubled. But smartphones may be the hottest mobile device of all. Morgan Stanley Research projects smartphones sales will exceed total PC sales by the end of 2012.

That's why it's so critical to ensure that your careers site provides a positive user experience to the mobile visitor. Periodically use a small laptop, smartphone and/or tablet to access your own site, and evaluate it the way a job seeker would. Identify glitches that need to be fixed and/or improvements that need to be made to ensure that visitors on these devices can get all the information and apply all the functionality your careers site offers.

Conclusion

Corporate careers websites are an opportunity for you to control the images and messages you want to transmit about your company. But they take a lot of time, money and effort to develop and maintain. They can also lead to discrimination and privacy complaints if you don't recognize and take steps to manage the liability risks that these sites can create. The point of this article is to map out both the legal perils and the emerging best practices that you can apply to make your own careers site compliant and effective as a recruitment tool.