

Job Post It Notes

By: Brian Thomas on November 22, 2019 on graydon.law

I am reasonably tech savvy. Or at least I think I am. It's because I grew up in the late 70s and early 80s -the video game renaissance. I cut my teeth on Frogger, Pitfall, QBert and Double Dribble. I even took a DOS coding class in school. Generation Xer's like me grew up with technology and technology grew up with us. So imagine my frustration when I couldn't figure out how to sync my new smart watch with my iPhone. I tried everything. Installing the new software update. Then deleting and re-installing the software update. Watching a YouTube video. Nothing worked. I got so frustrated that I threw my watch on the floor and swore I didn't need a stupid smart watch. A few minutes later my youngest daughter proudly announced that she fixed it. I said "sure buddy" before realizing she actually fixed my watch!

She's seven.

But that's how it is. Each generation seems a little more tech savvy than the one that came before it. Maybe that's why some tech companies are targeting a younger workforce. I understand why they're doing it. But it's also against the law. The Age Discrimination in Employment Act and Title VII prohibit employers from limiting jobs based on certain protected characteristics, including age, sex and race. It's easy to understand why a company can't explicitly say that they are looking to fill a job with a 20-something, a recent college graduate, or a man. Those postings necessarily exclude older workers and women from the job pool. But sometimes it's not what employers put in the job post that's the problem; it's where they post the job.

In September 2019, the EEOC ruled that several employers violated the Age Discrimination in Employment Act and Title VII when they advertised on certain social media platforms. The ruling makes sense. Social media platforms, like Facebook, can slice and dice data in a million different ways. Some employers have used social media to only send targeted job postings to young professional or recent college alumni groups. Some take it a step further and use algorithms that digitally define the relevant job pool. The EEOC believes this trend towards efficiency is infringing on many job applicants' civil rights. In other words, companies that use social media to target men or younger applicants are denying all job applicants a fair access to the job.

So what should employers do? First, take a breath. There's a reason Title VII and the

ADEA prevent companies from making employment decisions based on an applicants' race, age, national origin or any other protect characteristic. It's because those characteristics are terrible predictors of job performance. Maybe it's true that Millennials are typically more technologically savvy than the average Baby Boomer. But it doesn't tell us whether *this* millennial candidate is more tech savvy than this Boomer. OK?

Second, employers that use unimportant criteria to focus their job postings are unnecessarily limiting their candidate pool. Third, companies get better results if the specific job posting accurately reflects the actual job duties. Finally, using a rigid algorithm or targeting a specific type of candidate can lead to hiring the same type of candidate. Studies show that diverse teams make better decisions and are more profitable. Companies lose that with targeted job postings. The bottom line? Hiring managers should use good judgement when posting a position. And they should learn how to put their watch on airplane mode during the interview.