

From Face-to-Face to FaceTime: Legal Issues in Virtual Interviewing

Related Professionals

William H. Floyd III
803.253.8201
wfloyd@nexsenpruet.com

Mary Stuart King
843.720.1754
MKing@nexsenpruet.com

Practices

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Due to the global pandemic, employers have begun recruiting new employees virtually, which has resulted in online video exchanges replacing the face-to-face interviewing experience. In June 2021, Forbes reported that in a survey of 1,142 hiring leaders, fifty-four percent said virtual interviews resulted in a more efficient recruitment process, thereby leading surveyors to conclude that virtual interviews are here to stay.^[1] Many of the same laws and rules of etiquette apply to both in-person and video conference interviewing; however, virtual interviewing presents its own set of challenges to ensure compliance with federal and state employment discrimination laws.

Hiring employers should be wary of assuming that a candidate has access to the necessary technology to conduct the virtual interview, such as a reliable internet connection and a computer with a camera, as this assumption may lead to a disparate impact claim. A disparate impact claim alleges that an employer's neutral policy, such as an interview process that requires a candidate to participate by video conference, has a disproportionate impact on a particular class or classes of individuals protected by equal employment opportunity laws. To reduce this risk, consider alternatives such as allowing the use of camera phones, identifying possible resources (e.g., library), or conducting the interview as a conference call.

Similar to addressing concerns over lack of access to technology, employers should be prepared with an alternative method of interviewing for candidates who may have disabilities that make it difficult to participate in a virtual interview. Individuals with disabilities are protected by the Americans with Disabilities Act, which in some instances requires an employer to provide a reasonable accommodation that allows the individual to fully participate in the virtual interview or other means of interviewing.

Virtual interviewing has advantages but requires special preparation and precautions by employers. For example:

- The interviewer should conduct the interview in a private area, away from distractions.
- Confirm that the virtual platform is stable (good audio and video) and secure (password protected).
- Avoid learning too much about the applicant during the virtual interview such as non-job-related issues such as their personal lives that otherwise might become evident during the interview.
- Typically, the interview should not be recorded by either party.
- As part of the interview invitation, include some related tips for the applicant such as participating in a distraction-free location, blurring backgrounds, and prohibition against recording.

Especially during the pandemic, virtual interviewing is convenient and efficient, but proper preparation is key to reducing the risk of related legal problems. If you would like more information on this or any related matter, please contact the Nexsen Pruet Employment & Labor Law team.

[1] Jack Kelly, *Virtual Interviews Are Here to Stay*, Forbes (June 14, 2021), <https://www.forbes.com/sites/jackkelly/2021/06/14/virtual-interviews-are-here-to-stay-hirevue-conducts-millions-of-one-way-videos-to-help-quickly-connect-candidates-with-companies-that-are-hiring/?sh=4072bed02a69>.