

ANTI-DISCRIMINATION BONDS: A POTENTIALLY COSTLY INVESTMENT

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For many employers, the question is not *if* they will face a discrimination suit, but *when*. Not everyone is resigned to meritless lawsuits as an inevitable price of conducting business. Professor Anne Marie Knott at the Olin School of Business at Washington University in St. Louis has proposed that companies use anti-discrimination bonds as an additional screening tool for employment. According to Knott, the bonds would be offered to applicants “prior to the employment contract” and would allow employers to gauge the likelihood that an individual would sue them for employment discrimination, as litigious applicants would presumably not choose to purchase the bond.

In our view, Knott asks the right question, but offers the wrong solution, because the risks of anti-discrimination bonds to employers are manifold. Anti-discrimination bonds may encourage disparate impact litigation, amount to an unenforceable contract and constitute an illegal waiver of rights. Moreover, anti-discrimination bonds may adversely affect a company’s ability to successfully defend against allegations of discrimination. Rather than safeguarding a company, anti-discrimination bonds almost certainly would heighten the company’s exposure to discrimination claims.

For now, the fact remains that effective EEO policies, nondiscriminatory implementation of the policies and EEO training can’t always keep frivolous claims at bay. Yet these options, however well-trodden, are likely to remain among employers’ most sensible courses to limit their exposure to claims of unlawful discrimination. By continuing to follow these familiar paths, employers can stay clear of the

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considerable legal risks likely to accompany the use of anti-discrimination bonds.

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