



EMPLOYMENT APPLICATIONS: WHAT TO AVOID, WHAT TO INCLUDE

An employment application is intended to provide your company with an opportunity to make specific inquiries into an applicant's work and educational background in a standardized way. The standardized collection of data can make it easier to identify which candidates meet the minimum qualifications for the job and to compare candidates to one another.

Even if a candidate has provided a resume, he or she should also be required to submit an employment application, since the application form generally elicits information applicants tend to exclude from their resumes (e.g., reasons for leaving previous job and salary history). However, employment applications must be carefully crafted and should take into consideration federal, state, and local laws.

The following are some guidelines on what to include and what to avoid in employment applications:

What to Avoid:

Employers must avoid certain questions, particularly those that may reveal whether an applicant is a member of a protected class under equal employment opportunity laws.

NONDISCRIMINATION CONSIDERATIONS:



Like all other aspects of the employment relationship, your hiring process must be free from discrimination under all applicable federal, state, and local employment laws. This means that generally you may not ask applicants questions that would reveal characteristics that are protected under the law, such race, color, age, national origin, religion, sex, veteran status/military status, disability, and genetic information. Many states and local jurisdictions protect applicants and employees based on additional characteristics. Check your state law to ensure compliance.

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It is important to avoid any questions on employment applications that may directly or indirectly reveal, or could be perceived as a preference for, a protected characteristic. For example:

- **Sex:** It is unlawful to use a different standard when evaluating a female applicant versus a male applicant. Therefore, questions that reveal the applicant's sex, marital status, number or ages of children or dependents, or provisions for childcare, as well as questions regarding pregnancy, child bearing or birth control are not permitted.
- **Citizenship:** Questions about a person's citizenship may reflect perceived discrimination based upon their national origin. Further, citizens of other countries are legally able to work in this country under certain conditions and circumstances. Therefore, you should not ask whether an applicant is a U.S. citizen. It is better to ask whether the person is legally authorized to work in the U.S.
- **Age:** Employment application questions that request a person's age, date of birth, or date of high school graduation should be avoided. However, asking whether a person is at least 18 years old or has the necessary work permit would be acceptable.
- **Disability:** Employment application questions about disabilities, medical treatment, medications, addictions, or the amount of sick leave taken in his or her last position are generally not permitted.

Note: In certain situations, such as where federal contractors may be subject to certain regulations, employers may be required to ask about an applicant's race, ethnicity, gender, veteran status, disability, or other protected characteristic to promote equal employment opportunities. The pre-offer invitation to self-identify may be included in the contractor's application materials for a position, but must be separate from the application.

Bottom line: You must keep employment inquiries strictly job-related and avoid questions that could lead to actual or perceived discrimination.



CRIMINAL CONVICTION INQUIRIES:

Several states and local jurisdictions expressly prohibit employers from asking about criminal convictions on employment applications, and may also require employers to wait until after a conditional offer of employment has been made. Additionally, the Equal Employment Opportunity Commission (EEOC) has taken the position that employers should avoid asking about criminal histories on employment applications. The policy rationale is that an employer is more likely to objectively assess the relevance of an applicant's conviction if it becomes known after the employer has already vetted the applicant's qualifications and experience.

SOCIAL SECURITY NUMBER:



While federal law does not prohibit employers from asking for a Social Security Number on employment applications, it is not considered a best practice because of the threat of identity theft and other privacy concerns. Note that some states have enacted laws with specific requirements for protecting individuals' Social Security Numbers, so be sure your business is in compliance.



FCRA NOTICE:

Under the Fair Credit Reporting Act (FCRA), before conducting a background check on an applicant or employee using a third party, employers must, among other things, inform the individual that the employer may use the information to make employment decisions. Among other requirements, FCRA provides that this notice must be in writing and in a stand-alone format--the notice may not be provided in an employment application. In addition to reviewing FCRA requirements, employers should become familiar with applicable state and local laws on background checks, which may have additional requirements.

What to Include:

Generally, employment applications include the following job-related components:

AVAILABILITY:

Employers should consider including a space for applicants to list their availability, such as full-time, part-time, and coverage for certain shifts, to make sure the applicant's availability is in line with your staffing needs.



JOB HISTORY:

In this section, employers generally request applicants to provide current and previous positions held, length of employment at each job, salary history, and reasons for leaving previous roles.



EDUCATION AND PROFESSIONAL DESIGNATIONS:

This section is reserved for degrees earned, institutions attended, and if applicable, professional licenses and certifications held.

AT-WILL STATEMENT (IF APPLICABLE):

It is also a best practice to include an “at-will” statement above the signature line indicating that generally either the employer or the employee can terminate the employment relationship at any time, with or without notice, and for any lawful reason. At-will employment is recognized in all states but Montana.



ATTESTATION:

This is a statement that the applicant signs attesting to the truthfulness and completeness of the information provided. Employers should consider including language that the company may take disciplinary action, up to and including termination of employment, at any time should any of the information provided prove to be false or misleading.

REFERENCES:

This section of the employment application requests applicants to provide a list of references.
Note: Reference checks should be reserved until after a conditional offer of employment has been made.



JURISDICTION-SPECIFIC NOTICE REQUIREMENTS:

Several states mandate that certain notifications be included with the employment application. For example:

- Massachusetts - It is unlawful in Massachusetts to require or administer a lie detector test as a condition of employment or continued employment. An employer who violates this law may be subject to criminal penalties and civil liability. Employment applications must reflect this notice.
- Maryland- It is unlawful in Maryland to require or administer a lie detector test as a condition of employment or continued employment. An employer who violates this provision is guilty of a misdemeanor and subject to a fine not exceeding \$100. Employment applications must reflect this notice.
- California- If an employer, without using the services of a third party, uses public records pertaining to individuals' character, general reputation, personal characteristics or mode of living for employment purposes, the employer must include on the employment application a checkbox in which applicants can waive their right to receive a copy of the public record [see [CA Civil Code Section 1786.53](#)].

Employment applications are an essential part of the hiring process, but it is important that the form is drafted carefully and complies with all relevant federal, state, and local laws.

EEO STATEMENT:

It is recommended that every application include a statement that the company is an equal opportunity employer (“EEO statement”). This statement reminds applicants that your recruiting and hiring practices are based solely on job-related criteria and that you do not discriminate on the basis of any federal, state, or locally protected class.

