

# How to Avoid Accidental Discrimination When Hiring

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February 2020



EQUAL OPPORTUNITY EMPLOYER  
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# What We'll Cover

- Language to avoid when advertising and recruiting
- How to ensure your job application is legally compliant
- Checklist of right and wrong interview questions
- Precautions to take when tapping overlooked applicant pools
- Considerations when conducting background checks

# Job Advertisement Best Practices



# Job Advertisements

- Placing a job ad on a website is the most popular method of recruiting today
- But in doing so, you must be extremely careful with the wording
- Federal laws prohibit any type of employer preference or bias based on gender, race, color, religion, national origin, age, genetic information or disability

# Avoiding Gender Discrimination

Steer clear of stating any gender preferences for the position. Make sure to use neutral job titles.

For example:

- Don't specify you're looking for a new "salesman," but, rather, a "sales representative"
- "Waitress" implies a preference for female candidates, while "wait staff" or "server" show no gender preference
- Instead of advertising for a "stock boy," look for a "stock clerk"

# Avoiding Religious Discrimination

- Religion shouldn't be referenced in job postings unless it is absolutely necessary for the job
- If you're a conservative company, be extra cautious with the language you use to convey this
- "Christian values" is obviously illegal, but terms like "wholesome," "traditional," or "family values" can also be tricky; it's best to avoid them

# Avoiding National Origin Discrimination

- You can't require applicants to be U.S. citizens unless it's necessary for the job
- Indicate that successful applicants will be required to complete an I-9 to verify their eligibility to work in the U.S.
- If the job requires English language skills, phrase it along the lines of "having an excellent command of the English language"
- If the job requires speaking a different language, make sure the emphasis is on the skills ("must speak Spanish" is okay, but "must be Hispanic" is not)

# Avoiding Disability Discrimination

Don't use phrases like "able-bodied," "strong" or "in good health." Instead, include precise job descriptions that state the exact tasks required, such as:

- Position requires lifting up to 50 pounds
- Employee needs to travel to different job sites
- Position requires use of a ladder
- Employee must be able to stay in a stationary position during the entire shift (*avoiding the term "stand"*)



# Avoiding Age Discrimination

Avoid any age-related terms in your job listings.

- It's okay to ask for applicants with a “fresh outlook” or “lots of energy” but you can't specify “young professional”
- Advertise your “entry-level” jobs, but don't use the words “recent graduate”
- Never use the terms “junior” and “senior” unless they're part of the job title

# What You Can Say

In every ad, have the statement, “We are an equal opportunity employer.” Beyond that, incorporate these elements:

- Job title/position
- Primary duties
- Necessary skills and experience
- Company background
- How to respond

# Developing a Legally Compliant Job Application



# Legally Compliant Job Applications

The job application can include questions about a person's background and qualifications. However, it should never include questions that reveal:

- Gender
- Age
- Race or National Origin
- Religion
- Disability
- Marital status

# Legally Compliant Job Applications

Make sure you're using an application that:

- Asks job-related questions regarding skills, education, employment history and reasons for leaving previous jobs
- Contains equal employment opportunity language
- Includes an EEOC-approved question regarding the applicant's ability to perform the job, with or without accommodation

# Legally Compliant Job Applications

- Features the Equal Employment recommended general non-harassment clause
- Reinforces that employment is “at-will”
- Establishes an expiration date, so the candidate knows the application won’t be held indefinitely
- Authorizes employment references
- Complies with all federal and state laws, including the latest “ban-the-box” laws

# Ban-the-Box Laws

- To date, more than 30 states and 150 cities/counties have passed laws to reduce hiring barriers for individuals with criminal histories
- It's called ban the box because it prohibits the question on job applications, "Have you ever been convicted of a crime?"
- The laws restrict employers from asking this question until later in the hiring process

# Salary History Ban Laws

- A handful of states and cities now prohibit employers from asking applicants about their salary history
- The purpose of the law is to discourage unequal pay between men and women — and people of different races
- In affected states and cities, employers can't ask, "What was your starting/ending rate of pay?"



# Interview Questions: Do's and Don'ts



# Interview Questions

- **Don't ask:** Are you a U.S. citizen?  
**Do ask:** Are you eligible to work in the United States?
- **Don't ask:** Are you in good health?  
**Do ask:** Can you perform the essential duties required by this job, with or without a reasonable accommodation?
- **Don't ask:** Do you have children?  
**Do ask:** Will working overtime be a problem?

# Interview Questions

- **Don't ask:** Are there religious holidays you can't work?  
**Do ask:** Can you work all the days and hours required by the job?
- **Don't ask:** How many sick days did you take last year?  
**Do ask:** Are you able to meet the attendance requirements of this job?
- **Don't ask:** When did you graduate?  
**Do ask:** Can you tell me about your academic or vocational education?

# Accommodating Disabled Applicants



# Accommodating Disabled Applicants

- In 1990, the Americans with Disabilities Act (or ADA) was passed to help prevent discrimination against individuals with disabilities
- Federal law applies to employers with 15 or more employees

# Accommodating Disabled Applicants

- Conduct interviews in accessible locations
- Honor requests for a reasonable accommodation
- Inform candidates of any pre-employment tests ahead of time
- Treat applicants with disabilities with the same respect and dignity you treat all applicants
- Focus on the essential functions of the job

# Conducting Background Checks



# Conducting Background Checks

A background check is a particularly wise move if the employee will be:

- Driving on the job
- Handling money
- Doing your company's bookkeeping
- Working with sensitive data (such as customer financials)
- Working on your company's computers



# Conducting Background Checks

Background-checking companies can help confirm information the candidate provides on the resume and job application such as:

- Previous employment
- Job titles
- Hiring and termination dates
- Education or credentials

# Conducting Background Checks

- To comply with federal and state regulations, use a qualified background-checking company that is familiar with the latest legal requirements
- Obtain written consent from the applicant
- If you decide not to hire a candidate due to the background check, you must give the applicant written notice and offer him or her a chance to dispute the information

# Final Notes

- Avoid high-risk language when recruiting and advertising job openings
- Use fully compliant job applications that capture important job-related information
- Follow an approved list of interview questions to keep the conversation job-focused and above board
- Familiarize yourself with the legal protections for applicants with disabilities, including how to handle reasonable accommodations
- Follow the proper precautions with background checks

# HR Solutions: HRdirect Smart Apps



## Applicant Tracking

- Collaborate through all stages of hiring
- Step-by-step process for capturing and candidate information and activity
- Track applicants throughout the entire hiring process
- Assign different stages to different managers



## Job Application

- Create your own online state-specific employment application
- Customize job applications for your business
- Generate a link to your job application – or email the link directly to candidates
- Print unlimited paper copies

For more information visit: [hrdirectapps.com/hiring](http://hrdirectapps.com/hiring)

# Questions



*Reminder: All attendees will receive a link to the presentation and slides in a follow-up email.*