



Help Desk FAQ:

Employment Applications: What to Include and What to Avoid



Employment Applications: **What to Include and What to Avoid**

Although resumes are a valuable addition to the hiring process, it is advised that employers still use employment applications because they can provide legal and practical advantages. Some companies even reject resumes and require all job candidates to complete the company's application.

By providing you with information that may be contained in this article, the Employers Resource Council (ERC) is not providing a qualified legal opinion concerning any particular human resource issue. As such, research information that ERC provides to its members should not be relied upon or considered a substitute for legal advice. The information that we provide is for general employer use and not necessarily for individual application. We also recommend that you consult your legal counsel regarding workplace matters when and if appropriate.



Why an employment application?

The primary purpose of an employment application is to ask the right questions. Those are the questions that lead to the candidate that best fits your organization or has the greatest chance of success in the current open position; that means learning specifically what skills, training, experience, achievements and behaviors make that person the best candidate for the job.

The employment application is often the first contact a job seeker has with your organization. It is the beginning of the employment relationship. The information you request from a job applicant is different than the information you will request from hired employees.

Disclaimers

It is best practice for a company to include certain disclaimers and authorizations in the application form. To avoid a wrongful discharge legal suit, include an "employment at will" statement, along with a place for applicants to sign off on their acknowledgement of this statement.

There are no federal or state laws that require a company to include an equal employment opportunity statement on their employment application, however including this statement confirms for the applicant that the company adheres to these employment practices.

Guidelines

An application should always include a section for an applicant's signature to attest that he or she has read and understands certain policies and procedures of the employer that are spelled out on the employment application. These frequently include the fact that the employer is an at-will employer, that the employer is an equal opportunity non-discriminating employer, and any other facts that the employer wants the applicant to read and understand on the employment application.

What to Avoid

The application should avoid questions that may reveal that an applicant is a member of a protected class. This includes questions about religion, age, race, disabilities, medical history, gender, marital status, and national origin, etc. Although many equal opportunity laws do not directly prohibit employers from asking such questions on an application, these kinds of questions may be used as evidence of an employer's intent to discriminate, unless the questions asked can be justified by some business purpose.

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Background Checks

Information needed to conduct background checks should be obtained on a separate form authoring the employer to conduct a check. Some common questions to avoid are:

Protected Characteristics: Federal and Ohio employers are prohibited from making hiring decisions based on characteristics such as race, color, religion, sex, pregnancy, national origin, ancestry, age, disability, genetic information, veteran status, military status or any other characteristic protected by law. Although outside the definition of protected class of “sex” the EEOC now includes gender identity and sexual orientation within that classification.

Citizenship: Employers should not inquire on an application about an applicant’s country of origin, but can ask if the applicant is authorized to work in the United States.

Date of Birth: If there is a state imposed minimum age for certain positions, it can be asked if the candidates meet the minimum age requirement , but avoid asking for date of birth. In addition to the date of birth, stay away from questions about specific graduation dates.

If educational background is important, ask for the name of the educational institution and the degree or credentials, but no dates.

Medical Information: Avoid asking questions related to a disability, amount of sick leave taken, or workers compensation history. Both FMLA and ADA prohibit discrimination and retaliation against applicants who have exercised those rights. An employer may inquire about these areas after it has offered the applicant employment if it makes the same inquiries of all applicants.

Emergency Contact: This information is only relevant once a candidate has been extended an offer of employment, and should not be requested on the initial job application. This type of inquiry may elicit information about familial status, marital status, a domestic partnership, or other associations unrelated to the applicants qualifications.

Criminal History: Enforcement guidelines issued by the EEOC recommends that employers not ask about convictions on job applications. Federal law does not prohibit employers from asking about criminal history. But, federal EEO laws do prohibit employers from discriminating when they use criminal history information.

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Using criminal history information to make employment decisions may violate Title VII of the Civil Rights Act of 1964, as amended (Title VII). The fact that an individual was arrested is not proof that he/she engaged in criminal conduct. Therefore, an individual's arrest record standing alone may not be used by an employer to take a negative employment action.

Many states and cities are enforcing "Ban the Box" laws which prohibit employers from asking about or considering an applicant's criminal background until the later stages of the application process, such as the first interview or after a conditional offer of employment has been made.

By using an application, an employer can avoid a number of potential problems in the hiring process and promote a selection process that is fair to everyone.



Additional Questions?

If you have any additional questions or resources regarding employee applications, and are an ERC Member, contact our HR Help Desk or log into myERC.

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