

HIRING ACTIONS: *What Is Wrong with this Employment Application?*

by Susan Boyd, J.D.

When it comes to hiring the employees who are going to run your business, you obviously want to find out as much as possible about the people who apply. After all, these are the people you are going to be working closely with, and they're the people who are going to represent your business. As the owner, you naturally feel that hiring the perfect person for the job is really important to your small business, and that you should be able to ask prospective employees whatever questions it takes to find that person.

That kind of thinking can get you sued! Recent studies show that 50 to 70% of all civil cases filed in federal court today involve employment law! This article is designed to help keep you and your business from joining those statistics. This article is not intended to replace the legal advice you might seek from your attorney, but to "red flag" the issues you might want to address with him or her.

There are lots of laws related to hiring practices. Take a few minutes and see if you can spot all the illegal requests for information on this job application.

FAMILYBIZ APPLICATION FOR EMPLOYMENT (APPLICANTS MAY BE TESTED FOR ILLEGAL DRUGS) Date of Application_____

Applicants May Be Tested For Illegal Drugs: NOT OK. Don't drug test at the APPLICATION phase. You wouldn't want to anyway, because it's not cost-effective. You may make an offer of employment CONDITIONAL upon the prospective employee's passing a drug test. This way, you're only drug testing someone to whom you've actually made an offer of employment. This is important because former drug addiction is considered a disability under the ADA.

Date: OK. You want to include the date since this will help you later purge your files.

NAME_____

Last	First	Middle	Maiden
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Name: NOT OK as it appears on this application. It's alright to ask first, last and middle names. It's NOT OK to ask for maiden name because this raises questions as to whether you will make a discriminatory decision based on marital status, gender, or possibly national origin.

Age_____ Birthplace_____ Gender_____

Age: NOT OK. You may ask if the applicant is 18 or older. Asking outright for an applicant's age raises the possibility that you may make a discriminatory decision based upon age.

Birthplace: NOT OK. This implies that you may make a discriminatory decision based upon national origin.

Gender: NOT OK, unless gender is a bona fide occupational qualification for the job. Otherwise, don't ask!

Marital Status_____ Height_____ Weight_____

Marital Status: NOT OK. Don't ask the way it was done on this application, and don't have the applicants circle "Mr. Mrs. Miss or Ms." as you've seen on other applications. This only raises questions about whether you have discriminatory intent.

Height: NOT OK. Certain races are physically shorter than others. Restricting hiring to persons who meet certain height requirements can have a discriminatory result. Instead, make an offer of employment conditional upon the person passing a test (demonstrating that he/she is able to perform the task about which you are concerned with height as an issue). If you do make passing the test a part of the employment offer, make sure that the test really does measure a person's ability to perform the job, and make sure it tests a function of the job which is essential--not just a minor part of the job.

Weight: NOT OK. Same reasons as height.

Present Address _____

Street City State

ZIP _____ **Length of Residence** _____ **Rent or Own?** _____

Present address and Length of residence: OK

Rent or Own? NOT OK. This brings up possible discrimination since certain minorities rent, rather than own, in higher percentages than other applicants.

Telephone (____) _____ - _____ Social Security Number _____ - _____ - _____

Telephone: OK, as a way of making follow-up contact with the applicant.

Social Security Number : OK. You may need this for reference checking.

Position Applied for _____ **Salary Desired** _____

Position applied for: OK Salary desired: OK

Days, Hours Available to Work _____

Employment Desired: _____ **Full-time Only** _____ **Part-time Only** _____ **Full- or Part-time**

When Available to Start _____

Days, Hours available to work: NOT NECESSARILY OK. This raises the possibility of discrimination based on religion. If a person is unable to work on a particular day, due to his religion, an employer must accommodate his schedule if it does not place an undue hardship on the employer.

Employment desired: OK When available to start: OK

Type of School	Name of School	Location	Years/Dates Attended
Major/Degree			
High School	_____	_____	_____
College	_____	_____	_____
Trade School	_____	_____	_____
Professional School	_____	_____	_____

NOT OK as it appears on this application. You may ask the number of years an applicant attended a particular school, but not the dates. From the dates, a prospective employer may discern the applicant's age. This raises

the question of age discrimination. If you must have the dates to verify attendance, explain on the application that this is the purpose for the requested information.

Have you ever been arrested/convicted of a crime? _____ If so, explain _____

NOT OK. Don't ask if someone has been arrested. When one is arrested, one is still presumed innocent. You may ask about convictions; in fact, you'll want to do so in order to avoid possible negligent hiring claims. Jobs that will require the prospective employee to work with children, to work in close contact with the public, or to carry a weapon require the employer to ask more detailed questions and gather more background information on the applicant. The Equal Employment Opportunity Commission has suggested the following statement be included on employment applications inquiring about criminal convictions:

Conviction of a crime will not necessarily be a bar to employment. Factors such as age at the time of the offense, type of offense, remoteness of the offense in time, and rehabilitation will be taken into account in determining effect on suitability for employment.

Do you have a driver's license? What is your means of transportation to work?

DL # _____ State Issued _____ Operator, CDL, Chauffeur? _____

Do you have a driver's license? NOT OK, unless driving is an essential part of the job. . If the person is being considered as a driver, you better ask this information; otherwise, you could be later accused of negligent hiring.

What is your means of transportation to work? NOT OK. Certain minorities own vehicles in fewer numbers than other applicants. You can't base your hiring decision on whether the applicant owns a car, unless use of a personal vehicle on the job is an essential part of the job. Otherwise, only ask if the applicant has reliable means of getting to and from work.

Have you had any accidents in the past three years? _____ How Many? _____

**Have you had any moving violations during the past three years? _____
How many? _____**

NOT OK unless driving is an essential part of the job. If the person is being considered as a driver, you better ask this information; otherwise, you could be later accused of negligent hiring.

Have you ever been awarded Workers' Compensation? _____ If so, Explain _____

NOT OK. You can't discriminate against someone on the basis of workers' compensation. So, don't ask.

Please list TWO references other than relatives or previous employers.

Name_____	Name_____
Position_____	Position_____
Company_____	Company_____
Address_____	Address_____
Telephone_____	Telephone_____
Relationship_____	Relationship_____

OK, except don't ask about the relationship.

List clubs, societies, lodges, and/or other organizations to which you belong_____

NOT OK. Many organizations indicate the race, color, religion, national origin, etc. of their members. It could be argued later that you used this information as a basis for discriminatory hiring practices.

In case of emergency: Do you have a hospital preference? Do you have a pastor/priest/rabbi you wish to be called?

NOT OK. A certain hospital preference can have religious implications. Certainly, a person's choice of religious authority to be called implies his religion. Instead, once the person has been hired, ask simply whom to notify in case of emergency. Don't ask about the relationship between your new employee and the person he names.

Have you ever been in the armed forces? *OK if military experience is relevant to the job.*

Specialty; date entered; date discharged; Reason: _____

NOT OK. Some states prohibit discrimination based on type of discharge. So, don't ask about that. Specialty and areas of training are OK. Date entered could be used to infer age, and cause a problem with discrimination. If you intend to check the applicant's military information, indicate that the reason for the request for dates is for verification purposes only.

Please attach a current photograph, a copy of your resume, and list additional references:

NOT OK. Do not ask for a photograph unless appearance is a bona fide occupational qualification, like modeling, acting, etc.

This article originally appeared in the Summer 2001 (Vol. 5, Issue 2) Family-Owned Business Institute newsletter, Heritage. Susan Boyd is an Applied Assistant Professor of Business Law at the University of Tulsa and the Director of the Genave King Rogers Business Law Center. You can email her at: susan-boyd@utulsa.edu.