



The McKenna Storer Employer Hiring Checklist

A Comprehensive Guide

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I. Main Focus

Your main purpose is to select people who can perform your jobs. Therefore, all the information you ask for should be related to the applicant's ability to do the particular job.

Federal, state, county and city civil rights statutes and ordinances prohibit racial or sexual harassment and discharge or discrimination in employment based on certain characteristics, which under these statutes, unless rebutted have no relation to a person's ability to do a particular job. These characteristics are race, color, religion, age, sex (including pregnancy), national origin, marital status, ancestry, sexual orientation (Illinois), sexual preference (Cook County and Chicago), physical or mental handicap unrelated to the ability of an individual to perform their job, genetic information and unfavorable discharge from the military service. These civil rights acts also prohibit retaliation for exercising rights under these statutes.

Your selection process should avoid seeking information related to these characteristics.

II. Methods for Seeking Information to Avoid these Characteristics

A. Application Form

The following information is considered job related and can be requested:

- name
- social security number
- present address
- prior address
- telephone number
- present employment
- prior employment
- educational background
- reference information

- emergency contact

If hired, can you provide proof of age?

If hired, can you supply the required documentation to verify your lawful right to work in the United States?

Have you been convicted of a felony within the last 5 years? If so, please explain.

The following information is not considered to be job related and should not be requested on your application form:

- age
- disability
- religious affiliation
- union affiliation

B. Interview

Proper Areas for Questions

- a. What was your absenteeism and tardiness record at your prior employer?
- b. Do you foresee any reason(s) why you would not be able to be at work on time on a regular basis?
- c. Do you intend to stay in this area?
- d. Are you willing to relocate?
- e. Do you foresee any reason(s) that you would not be able to travel as required?
- f. Are you willing to entertain clients on weekends or in the evening?
- g. What are your career objectives?
- h. Where do you see yourself in two (five/ten) years?

Improper Areas for Questions

- a. Questions related to gender or marital status (usually, but not necessarily, directed toward female applicants).
- b. Questions regarding a spouse's expectation regarding the applicant's hours of work, required travel, business entertainment, or possible job relocation.
- c. Questions regarding family plans, the number and ages of children, day care arrangements, or sick child arrangements.
- d. Questions regarding:
 - criminal history record information ordered expunged – See Illinois Human Rights Act – 775 ILCS 5/2-103(A) and (B)
 - arrest, indictment, or misdemeanor conviction records
 - dishonorable military discharge
 - how often they are deployed for their Army Reserve training exercises
 - automobile accidents, insurance claims, lawsuits or complaints
 - workers compensation claims
- e. Questions regarding:
 - loans and credit cards
 - wage assignments, garnishments, or wage deduction orders
 - judgments or bankruptcy
- f. Questions regarding:
 - birthday
 - utilizing date of high school or other graduation information to calculate the applicant's age
- g. Questions regarding:
 - place of birth or ancestry
 - proficiency in speaking, reading, or writing English unless this is a specific requirement of the job
 - proficiency in other language(s) unless this is a specific requirement of the job
- h. Questions regarding:
 - length and style of hair and facial hair

- skin color
 - youthful appearance
 - foreign accent
 - height and weight
- i. Questions regarding:
- church affiliation
 - social and benevolent organization membership
 - political party
- j. Questions regarding:
- prior accidents, illness or injury
 - hospitalization record
 - current or prior medication or treatment
 - how candidate got a scar, mark or other physical abnormality
- k. You should be aware of phrases that may be interpreted as creating an employment “agreement.” For example, avoid phrases like “permanent employment” or “you can have the job as long as you want it” or “employees are only discharged for cause.” Don’t “oversell” the job.
- l. Do not request or require any employee or prospective employee to provide any password or other related account information in order to gain access to the employee's or prospective employee's account or profile on a social networking website or to demand access in any manner to an employee's or prospective employee's account or profile on a social networking website. See Illinois Statute, 820 ILCS Sec 55/10 (b)(1).

III. Disability or Handicap Information

A. Pre-Employment- Inquiries and Tests

Pre-Offer Inquiries

An employer cannot conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

An employer may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

Examples of questions an employer may ask before making an offer of employment:

- Can you perform the functions of this job (essential and/or marginal), with or without reasonable accommodation?
- Please describe/demonstrate how you would perform these functions (essential and/or marginal).
- Do you have a cold? Have you ever tried Tylenol for fever? How did you break your leg?
- Can you meet the attendance requirements of this job? How many days did you take leave last year?
- Do you have the required licenses to perform this job?
- Do you currently use drugs illegally?
- Please provide the name and telephone number of a person to contact in case of a medical emergency.

Examples of questions employers are not allowed to ask:

- Do you have or have you had a disability?
- Do you have AIDS? Do you have asthma?
- Have you ever had a genetic test and what was the result?
- How many days were you sick last year?
- Have you ever filed for workers' compensation?
- Have you ever been injured on the job?

(See EEOC Tech. Assist. Manual (EEOC Manual), Paragraph 9.1 (1992); 820 ILCS §55/10.)

- How much alcohol do you drink each week? Have you ever been treated for alcohol problems? (820 ILCS §55/5)
 - Have you ever been treated for mental health problems?
 - What prescription drugs are you currently taking?
- (See generally EEOC ENFORCEMENT GUIDANCE: Disability Related Inquiries and Medical Examinations of Employees Under the ADA (Enforcement Guidance)– July 27, 2000 Fn 6, Fn 20-28.)

B. Pre-Offer Tests and Qualification Standards

Employers may use any kind of tests to determine job qualifications. The ADA has two major requirements in relation to tests:

The test must be (1) job-related for the position in question and (2) consistent with business necessity. Example - typing test for typist position.

C. Post-Offer Inquiries

The ADA allows an employer to take reasonable steps to avoid increased workers' compensation liability while protecting persons with disabilities against exclusion from jobs they can safely perform.

- (1) After making a conditional job offer, an employer may inquire about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category. But, not in Illinois. See 820 ILCS §55/10(a).
- (2) Employer may ask for any information that it believes to be relevant to a person's ability to perform a job; i.e., previous illnesses, diseases, sick leave usage or medications, general physical or mental health. (See EEOC Manual, Par. 6.4; EEOC Enforcement Guidance, Fn. 7).
 - for this to be a proper question, you must ask all employees in the same job category.

D. Post-Offer Medical Examinations/Tests

- An employer may not require a job applicant to take a medical examination, to respond to medical inquiries or to provide information about workers' compensation claims before the employer makes a (conditional) job offer. (EEOC Manual, Paragraph 6.1).
- An employer may condition a job offer on the satisfactory result of a post-offer medical examination if this is required of all entering employees in the same job category.

IV. Reference Check

If you do a reference check, have applicant sign a form authorizing release of information from prior employer and releasing prior employer from liability resulting from the prior employer's release of information.