



Best Hiring Practices: What You Can and Can't Ask a Job Applicant

In the course of your search for your next employee there are federal and state rules you will want to keep in mind...

According to the National Federation of Independent Business (NFIB), 62% of small businesses recently reported hiring or trying to hire employees. Many small businesses are stressed to find qualified job applicants and are scrambling to fill positions. If you are in the market for a new employee, there are many considerations: Does the applicant have the skills to do the job? Will he or she fit into your company culture? Can you afford the cost of a potential new employee? Great questions to ask. But in the course of your search for your next employee, be sure you don't run into conflict with federal and state rules. If you go about it the wrong way, you not only can lose out on hiring the next best employee but can be exposed to possible legal action against you. Here are federal and state rules to observe so you can hire wisely.

Federal rules

Under various federal laws, it is illegal to discriminate against a job applicant because of that person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information. This ban on discrimination translates into the following best hiring practices you need to observe.

Job postings. You can't advertise a preference that could discourage other classes of individuals from applying for your position. For example, the U.S. Equal Employment Opportunity Commission (EEOC) says a help-wanted ad that seeks "recent college graduates" may discourage people over 40 from applying and may violate the law.

Recruitment. You can't use recruitment practices that discriminate against any class of people. The EEOC's example: relying on word of mouth recruitment among mostly Hispanic workers if this would result in all new hires being Hispanic.

Screening. You can't use testing or other screening methods that effectively discriminate against a class of people. For example, it is illegal to make an inquiry about a person's disability before you make a job offer. Once this is done, you can ask the question so you can determine whether any reasonable accommodations are needed.



State rules

The rules on what you can and cannot ask job applicants varies greatly, and the rules are changing rapidly. Check to see whether these rules apply in your state:

Arrest and conviction. The majority of states have “ban-the-box” laws that prohibit employers from making hiring decisions based on criminal records. However, the laws differ, with some banning any inquiries about arrests and convictions, while others permitting requests for information about recent felony convictions. You can find a listing from the National Employment Law Project (<https://www.nelp.org>) of states, counties, and cities that have adopted ban-the-box.

Salary history. More than half a dozen states and cities prohibit employers from inquiring about a job applicant’s prior salary history. In other words, you must offer pay based on the job position; this cannot be impacted by the salary that an applicant received for a prior job.

Hair and hairstyle. California and New York passed legislation to ban discrimination based on an applicant’s hair texture or style. New Jersey is considering similar legislation.

Final thought

Review your current hiring policies to make sure you not only hire a diverse and talented group of people, but also avoid any hiring missteps that violate federal and/or state law. If you have questions, be sure to discuss them with an employment law attorney.

SOURCE: Barbara Weltman for the Small Business Administration