

THE C & D NEWSLETTER



CITRON & DEUTSCH
A LAW CORPORATION

Published by:
RICHARD K. CITRON
DAVID R. DEUTSCH
MICHELLE LeCOLST-JOHNSTON
Attorneys

EMPLOYMENT LAW - SELECTION OF EMPLOYEES

This Newsletter shall discuss the restrictions imposed on employers in recruiting and hiring employees by Federal law and California law. In general, both Federal and California law prohibit an employer from asking any question, in either an employment application or an employment interview, which relates to race, religion, color, national origin, sex or marital status, unless it is a bona fide occupational qualification for employment. Employers should carefully review their employment application forms and interview procedures to ensure compliance with applicable law.

Name. Since it is generally not permissible to discriminate on the basis of sex, an employer may not request information about an applicant's maiden name, or whether the applicant wants to be addressed as Mrs., Miss or Ms. It is permissible to ask whether the applicant has used another name.

Age. The Age Discrimination in Employment Act of 1967 makes discrimination on the basis of age illegal. Therefore, asking questions on the job application or in the interview as to age, birthdate, or dates of attendance of elementary or high school may be discriminatory. It is permissible to ask if the applicant is over 18 years of age.

Physical Description. The Equal Employment Opportunity Commission has found that height and weight information has been used to discriminate against Asian-Americans, Hispanics and women, when the employer had no job-related reason for the question. Similarly, questions about color of eyes or hair, or complexion, are inappropriate since this information can suggest race, religion or national origin. It is not permissible to require the applicant to submit a photograph; however, an employer may require a photograph after employment.

Religion. Questions concerning the applicant's religion or religious holidays observed are not permitted.

Race; Color. Questions concerning the applicant's race or color are not permitted.

National Origin. An employer is not permitted to ask questions concerning the nationality or ancestry of the applicant or the applicant's parents. An employer may not ask what is the applicant's mother tongue, or the language commonly used by the applicant. An employer may ask if the applicant reads, speaks or writes any language besides English if this is relevant to the job.

Sex; Marital Status; Family. Courts rarely hold that the sex or marital status of the applicant relates to job performance. Therefore, questions which indicate sex, marital status, or number or ages of children are not permitted, nor are questions relating to provisions for child care, or questions regarding pregnancy, child bearing or birth control.

Citizenship. It is unlawful to reject an applicant because he isn't a citizen; however, an employer may ask an applicant whether he can submit verification of his legal right to work.

Physical Disability or Condition. Questions concerning the applicant's general medical condition or whether the applicant has any physical disabilities or handicaps are not permitted unless the applicant's physical condition affects the ability to perform the job. An employer may condition employment on passing a job-related physical examination.

Arrest Record. An employer may not ask an applicant about an arrest record, or refuse to hire someone just for having been arrested; but an employer can ask about conviction records, if the employer states that a conviction will not necessarily disqualify an applicant from employment.

Economic status. An employer may not request information concerning an applicant's current or past assets, liabilities or credit rating (including bankruptcy or garnishment) unless it can show a business necessity for the question.

Military Service. An employer may not require proof of honorable discharge as a hiring condition. An employer may ask applicant to indicate the types of job-related skills acquired during military service.

Education. An employer may ask about educational background only if it relates to the requirements of the particular job. An arbitrary level of education for a low level job might be discriminatory.

Organizations. An employer may not request applicants to list all organizations, clubs and lodges to which they belong; but may inquire as to membership in job-related organizations, clubs and societies.

Lie Detector Tests. In California, an employer may not require a lie detector test as a condition of employment or continued employment; however, an employer may request a lie detector test if the employer advises the applicant in writing of his rights to refuse to take the test.

Other. An employer is prohibited from requiring, as a condition to employment, that an employee refrain from disclosing the amount of his wages.

Summary. An employer is entitled to gather enough information about prospective employees to be able to choose the most qualified candidate. However, an employer may not request information that can be used to discriminate against qualified candidates on the basis of race, religion, color, sex or marital status, unless the employer can show that such information relates to a bona fide occupational qualification for employment. Since failure to comply with the law may subject the employer to a lawsuit for discrimination, employers should review and redesign, if necessary, all employment applications and other personnel records which violate the foregoing guidelines.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.