



# The FindLaw Guide to Hiring

YOUR RIGHTS DURING THE APPLICATION PROCESS

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# The FindLaw Guide to Hiring: Your Rights During the Application Process

You have legal rights even before getting a job. Job applicants often have many of the same legal protections as employees. Here is some information you may want to know.

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## Introduction

What does the law have to do with getting a job? Probably more than you may think. Job applicants have legal rights even before they become employees. Your future employer is subject to legal restrictions that affect what the company's employment advertisement can say, what the employer is allowed to ask during the interview, and what kind of pre-employment testing can be required.

## Job Advertisements

Employers are prohibited from basing any job decisions including hiring on someone's protected characteristics. So before even meeting a prospective employee, the employer may be illegally discriminating against the job applicant if it has a

job advertisement that suggests a preference for a protected characteristic like race, sex, religion, national origin, disability, or age. For example, job advertisements that use words like hiring "recent college grads" may discriminate against older workers. Ads for "salesman" could suggest that only men apply.

## Interview Questions

From an employer's point of view, the interview process is about assessing an applicant's match to the position and the work culture. The hiring party wants to rule the applicant as a proper fit as quickly as possible, and almost everything is in play from attire and composure, to education and experience.

While employers have enormous latitude in the kind of questions they can ask, certain kinds of questions are illegal. For example, federal law makes it illegal for employers to base employment decisions on someone's protected characteristics. So asking questions about marital status, plans to have children, drug and alcohol use, and national origin may all be illegal.

In addition, some states and municipalities have established even more protections, making it illegal in certain jurisdictions to ask questions that would reveal things like the applicant's sexual orientation.

An interview by nature discriminates against applicants – good applicants versus bad applicants, qualified applicants versus unqualified applicants, etc. Job interview questions that touch on these topics are okay. But when employers start asking about personal information that has nothing to do with the job, they may be breaking the law.

## Background Checks

Employers will often conduct background checks on applicants. Inquiries into background information that is directly relevant to the job may be allowed like the driving records for a delivery driver position. However, use of certain records may be prohibited; such as:



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- **Criminal Records:** This varies widely from state to state, often depending on the type of work involved. Some states allow access to criminal records only with an applicant's consent, while others do not.
- **Educational Records:** College transcripts often are considered relevant to a job application and may be obtained with an applicant's consent.
- **Military Records:** Generally, considered confidential under the federal Privacy Act.
- **Bankruptcy:** While bankruptcy filings are a matter of public record, they usually may not be factored into a hiring decision.
- **Medical Records:** When relevant to the job, employers may require a physical examination. Otherwise, medical records are confidential.
- **Workers' Compensation:** A matter of public record, these records only may be used if relevant to the specific duties of the job.
- **Credit History.** Some states specifically prohibit the use of pre-employment credit checks unless the employer can prove its relevance to the job, while other states have no such restrictions.

Employers can look into your background, but remember, there are limits into how far they can dig.

## Pre-Employment Tests

Finding a job these days does not only require filling out an application and providing a resume and cover letter. More employers are using pre-employment tests to help determine which candidate in a pool of applicants is best qualified to perform a particular job's duties. These tests range from basic drug screenings and skills tests to more advanced, and potentially problematic, tests such as psychological and personality tests. Similar to the other steps in the hiring process, laws protecting prospective employees during testing largely revolve around anti-discrimination laws.

**STOP**

## Should I Talk to an Attorney?

If you see an ad for your dream job, but are automatically ruled out due to a protected characteristic, you may want to talk to an attorney. Additionally, if you are asked a discriminatory question during the interview, have an overly invasive background check, or are asked to undergo a pre-employment test that disfavors you because of a personal trait, you may want to speak with an employment lawyer. An effective employment lawyer can help educate you on your rights as an applicant and how to pursue your claims against a prospective employer.

You can locate an employment law attorney now by visiting [www.findlaw.com](http://www.findlaw.com) and choosing among several quality-assured lawyers in your area.

## For More Information

Regarding the hiring process and other employment related issues, please visit our website at <http://employment.findlaw.com>

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