

LEGAL PITFALLS OF JOB APPLICATIONS

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The present study investigated how well organizations use legally safe questions on their application forms. The questions appearing on the application forms were analyzed according to their appropriateness for the job being sought. An inappropriate question was defined as one which was not job related, not necessary to make an employee decision, and those prohibited under Title VII. Fifty three-job applications were obtained from various organizations. Results indicate that organizations are not fully complying with the existing federal and/or state laws. Over 96 percent of the application forms contained at least one inappropriate question. An average of five inappropriate questions per application form were present. The results of the present study lend support for the need to place a higher emphasis on the development of application forms. An increase in question development awareness may reduce and/or eliminate possible discrimination.

Title VII of the Civil Rights Act of 1964 is a major piece of federal legislation prohibiting unfair employment practices. Other federal and state fair employment laws prohibit intentional and unintentional employment discrimination. These laws are not only applicable to the promotion or firing process, but to any employment decision. Because the job application form is part of an employment decision, it is also covered by federal and state laws. Therefore, it is important for employers to be aware that certain questions included on an application form may be legally inappropriate.

Fair employment practice laws do not dictate the questions that may be asked on an application form, nor do they specifically forbid particular types of questions (Frierson & Jolly, 1988). According to Gatewood and Feild (1987) an employer may determine the legal safety of a question by following the Equal Employment Opportunity Commission's (EEOC) pre-employment guidelines which caution against questions that:

- 1) Disproportionately screen out minority group members or members of a particular sex.
- 2) Do not predict successful performance on

the job.

- 3) Cannot be justified in terms of business necessity.

Other guidelines that may be used include the state fair employment job application guidelines (if applicable) and relevant case law.

An employer has the right to establish and use job related information. Because application forms are used as a method of collecting this type of information, one may conclude that any information collected on an application form is job related and will be used as part of the hiring decision. For example, if a question directly asks for an applicant's race, it is assumed the employer is basing part of the hiring decision on the race of the applicant. Because race is not a job-related requirement for any job, this would constitute potential discrimination. The EEOC has taken the position that any question asked on an application form must conform to the spirit and intent of both Title VII of the Civil Rights Act and the Griggs Syndrome. Basically, no questions on an application form are to be discriminatory in nature or application (Miller, 1980).

Previous research has attempted to ascer-

tain how well organizations have conformed to federal and state laws concerning job applications. Miller (1980) revealed that out of 151 job application forms, over 98 percent contained one or more potentially inappropriate questions. Lowell and DeLoach (1982) conducted research on application blank violations and concluded that only two out of 50 application forms contained no violations of the Uniform Guideline regulations. Seventy three percent of the applications forms surveyed by Camden and Wallace (1983) contained one or more illegal pre-employment questions. More recently Frierson, Bayes, Jolly, and McKee (1988) indicated that 99 percent of the application forms they analyzed contained legal problems.

The present study sought to determine if inappropriate questions are still being asked on job application forms, and to recommend potential solutions to resolve this problem if found to still exist.

Method

Job Application Forms

Fifty three job application forms were collected to be analyzed for inappropriate questions. The job application forms were collected in two ways. First, businesses were personally approached and a job application form was requested. Each business was informed that the job application form was to be used for research purposes and that participation was voluntary. Thirty one of 42 businesses contacted agreed to participate. Second, a local listing of businesses associated with the Chamber of Commerce were obtained. Businesses were randomly mailed a letter with a return envelope requesting their participation in the research. Twenty two of the 30 requests were returned. Fifty three job application forms were available for analysis.

Materials

A form with inappropriate job application questions was constructed. The form consisted of questions that were inappropriate because they were not job related, necessary for making an employment decision, and are questionable under Title VII (Miller, 1980). The inappropriate questions were divided into six categories:

- 1) Physical/Handicap
- 2) Gender/Race
- 3) Financial
- 4) Marital Status/ Personal
- 5) Age
- 6) religion

Procedure

The job applications were analyzed individually. Each job application question was read and checked against the inappropriate questionnaire form to determine the appropriateness of the question.

Results

Analysis revealed that 96.2 percent of the job application forms contained inappropriate questions. The average number of inappropriate questions on the job application forms were five.

The number of inappropriate questions asked on a given application form ranged from zero to 18. Whereas the average number of inappropriate questions were five, the mode was three; 22.6 percent of the application forms contained three inappropriate questions. Fifteen percent of the application forms contained eight inappropriate questions.

Table 1 reveals the frequency of occurrence of inappropriate questions and the associated percentage. The most commonly asked inappropriate job application question concerned an applicants salary expectations. The inquiry as to the expected salary appeared on 60.4 percent of the application forms. The applicant's previous conviction history was the second most inappropriately requested question (50.9). No warning was given to indicate that the information would necessarily bar them from employment.

Table 1
Inappropriate Application Questions

<u>Question</u>	<u>Frequency</u>	<u>%</u>
Physical/Handicap		
Do you have any physical limitations?	11	20.8

Have you ever applied for/received Workers Compensation?	9	17.0
How many days per year did you miss on your last job?	9	17.0
What is your height?	5	9.4
What is your weight?	5	9.4
Have you had any recent illness/operation?	5	9.4
What is the general condition of your health?	2	3.8
What was the date of -- your last physical examination?	2	3.8
Complete the following medical history:	1	1.9
Gender/Race		
What is your sex?	1	1.9
Financial		
What salary/earnings do you expect?	32	60.4
How would you get to work if hired?	10	18.9
Have you ever been bonded?	7	13.2
Marital Status/Personal		
Have you ever been convicted of a felony/misdemeanor?	27	50.9
Names of friends/relatives working for this company.	22	41.5
Are you a U.S. citizen?	19	35.8
What were your previous addresses?	16	30.2
What is your marital status or previous name?	12	22.6
What are your hobbies/interest/clubs?	9	17.0
Have you ever been arrested?	6	11.3
Emergency information?	4	7.5
How many dependents do you have?	3	5.7
Are you right or left handed?	3	5.7

Name of spouse?	2	3.8
Age		
Dates attended grammar school? High school?	19	35.8
Date graduated or last attended high school?	15	28.3
Date of birth?	4	7.5
Are you over 65?	2	3.8
What is your age?	1	1.9
Religion		
Will you work on Sunday?	1	1.9

Discussion

With few exceptions, the questions asked on the job application forms tended to be job related and necessary for an employment decision. The average of five inappropriate questions per application form found in this study was lower than the average of 9.74 found by Miller (1980). However, it is disturbing to note that 51 of the 53 application forms contained at least one inappropriate question. One application form went as far as to request an applicant's sex without warning the applicant the information would not be used in the employment decision.

Why are questions of this nature still being asked of applicants when they are clearly not job related? Several possible explanations exist. First, the updating of the application form may be overlooked. Second, the updating of the application form can be expensive and time consuming. Third, the employer may not be aware of the current employment laws. Fourth, application forms may not be a high priority within the company. Finally, organizations may simply ignore the legal pitfalls associated with job application forms (Coady, 1986; Lowell & DeLoach, 1982).

To avoid asking questions which are inappropriate and illegal, several general rules have been established and should be followed (Feld, 1983; Koen, 1984; Miller, 1980). First, not all positions within an organization are the same, therefore using more than one application form is advisable. Second, each question should be reviewed to assure it is

really needed to judge an applicant's competence and/or qualifications for the job. Third, is there any possibility that the question may have adverse impact on a protected class? Fourth, can a so-called inappropriate question be justified as a bona fide occupational qualification? Fifth, is the question in conflict with any existing law or current court decision? Finally, are all questions based on an updated job analysis and clearly related to the tasks to be performed on the job.?

The only way an employer can fully protect against a lawsuit is to comply with the state and federal laws. A lawsuit only results in bad publicity for an organization whether it is won or lost (Frierson, Bayes, Jolly, & McKee, 1988). Therefore, it appears to be in an employer's own interest to review the job application to ensure it is free from charges of discrimination. Table 4 presents some solutions employers may use when reviewing the questions on their application forms. Employers may also receive assistance from available policy guides on application forms, the EEOC, and state organization.

Table 4
Inappropriate and Acceptable Questions

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- A. Do you have any physical limitations?
 - B. Can you safely and substantially perform the duties of the position for which you have applied?
 - A. Have you had any recent illnesses or operations?
 - B. Have you had any recent or past illness or operation which might, in any way, hinder your ability to perform the duties of the job for which you have applied?
 - A. What was the date of your last physical exam?
 - B. Are you willing to take a physical examination at the company's expense if the nature of the job requires one?
 - A. What salary/earnings do you expect?
 - B. If you are accepted for employment, are you willing to accept the prevailing wage for the position you have applied for?
 - A. What are your hobbies, interests, clubs?
 - B. Do you have any hobbies, interests, clubs which are related to the job you are

seeking? Do not include any which may reveal your race, religion, sex, age, or ancestry.

- A. Have you ever been convicted of a felony or misdemeanor? Describe.
- B. Have you ever been convicted of a felony or misdemeanor that would be considered directly related to the job for which you have applied? Describe (A yes answer will not necessarily bar you from employment)
- A. Are you a U.S. Citizen?
- B. Do you have the legal right to live and work in the U.S.?

Note. A = Inappropriate Question
B = Acceptable Substitute

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