

# Pitfalls of Holiday Hiring: What Not to Ask on Employment Application

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With holiday hiring in full swing, it is a good time to review some basic rules about employment applications in *California*. In general, employers should not request the following information on employment applications:

- Social security numbers. With the advent of identity theft, it is a good practice not to include social security numbers on applications unless access to the applications is restricted and care is taken with respect to their disposal by secure means.
- Date of birth, including dates of school attendance or graduation. Employers can ask if an applicant is over 16, over 18 or over 21 depending on job requirements. If the date of birth is necessary for a background check, it can be obtained during the background check process.
- Marital status, including maiden name.
- Race, ancestry or ethnic identity, including place of birth.
- Sexual orientation, gender expression or gender identity.
- Pregnancy status or number of dependents.
- Citizenship or immigration status.
- Disability or medical conditions.
- Religious Affiliation. However, employer can state on the application the regular hours and days and shifts to be worked, but if it does, the application should state the company provides reasonable accommodation of religious practices that do not pose an undue hardship.
- National origin or ancestry. An employer can ask about languages the applicant speaks,

reads or writes if use of language other than English is necessary for the position.

- Dates or nature of military service or veteran status, but employers must permit applicants to include information about military service in the experience or skills section of the application.
- General questions about clubs, volunteer service, civic organizations, or societies unless it is stated applicants may omit organizations where the name of the organization may indicate a protected status.
- Criminal Arrests and Convictions. Employers cannot ask an applicant about arrests. With respect to convictions, most employers cannot ask about convictions:
  1. Which resulted in a referral to, and participation in, any pretrial or post-trial diversion program.
  2. Which have been judicially expunged, statutorily eradicated, dismissed after probation, or ordered sealed.
  3. Related to marijuana offenses that occurred two years prior to the application.

Of course, there are always exceptions, including when the employer is required by law to obtain conviction information, when the applicant would be required to possess or use a firearm in the course of his or her employment, and when an individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

There may be exceptions to these requirements based on the bona fide occupational qualifications of the position or the industry at issue. If you have any questions about employment applications or the hiring process, please contact the Jackson Lewis attorney with whom you regularly work.

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