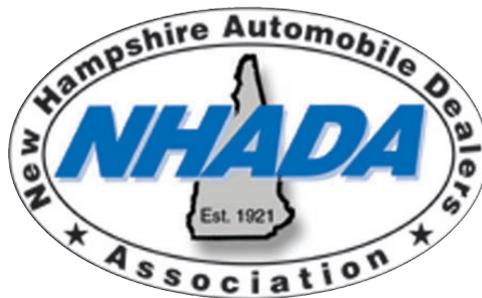


STRATEGIC HIRING GUIDELINES



*Prepared for Members
of the New Hampshire
Automobile Dealers Association*

Established: April 2006
Revised and Updated April 2010



July 2012

Dear NHADA Member:

Unfortunately, hiring mistakes negatively impact profitability. Turnover is costly, and Workers' Compensation hiring-mistake claims can cut into the bottom line of your business.

Thanks to your proactive NHADA Workers' Compensation Trust Trustees, you have an opportunity to reduce both turnover costs and Workers' Compensation claims through the implementation of the user-friendly "*Strategic Hiring Guidelines*" program.

There are several very important considerations related to this program. The various components of the program stand on their own, and members can determine which aspects they wish to incorporate. From the Workers' Compensation perspective, the implementation of drug tests and post-conditional offer, pre-placement physical examinations are cost-effective measures that will help you hire the most qualified people. Drug testing is obvious. The pre-placement physical will help you hire the right individual for the demands of the job and identify claims that rightfully belong in the Second Injury Fund and not against your experience.

The "*Strategic Hiring Guidelines*" program has been designed with an eye towards New Hampshire and federal law. This guide is general advice. If you are seeking legal advice, please call an attorney. If you participate in the program, you will receive periodic updates in an effort to maintain compliance as laws change. Dealerships with operations in other states will want to take steps to ensure compliance with the laws of those other states.

The "*Strategic Hiring Guidelines*" program is a new tool you can add to enhance the profitability of your business. A formal, consistent hiring process will provide substantial and measurable benefits to you.

Sincerely,

A handwritten signature in black ink that reads "Peter J. McNamara".

Peter McNamara
President

P.S. Included in this binder is a CD that contains the entire "*Strategic Hiring Guidelines*" program in a PDF file, easy-to-use customizable forms in Word format, and other forms in PDF files. A CD instruction sheet accompanies the CD. Please read the instruction sheet carefully before using the files on the CD.

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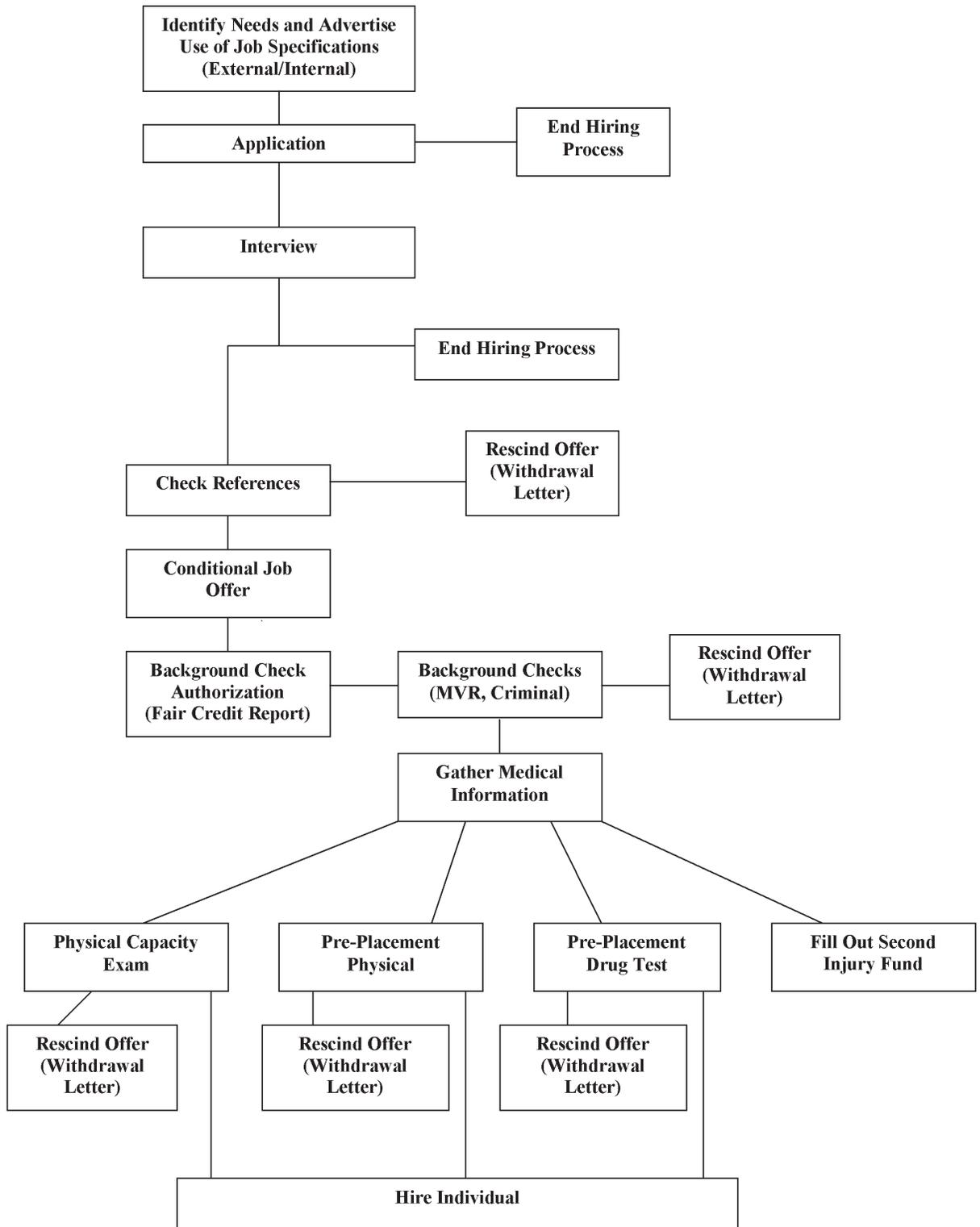
HIRING FLOW CHART INTRODUCTION

The “Hiring Flow Chart” on the following page is a “snapshot” of the hiring process, utilizing the guidelines provided in this binder. It allows the user to easily survey a complete hiring process that falls within the legal confines of both New Hampshire and federal laws.

It is important to note that the “Hiring Flow Chart” was developed in an order that allows the user to go through a legally sequential process. Please keep in mind that the program is modularized and that all aspects of the “Hiring Flow Chart” may not appear in the company’s final program.

Steps contained in the “Hiring Flow Chart” are referenced in individual sections of the program throughout this binder.

HIRING FLOW CHART



Hiring Guidelines

HIRING GUIDELINES

This section equips employers with guidelines and tools to ensure they provide a fair, compliant, and accurate hiring process to all applicants.

The guidelines are in place to ensure that qualified individuals are hired to fill vacant positions and minimize the expense and potential risk posed by unsuitable candidates. Prospective hires may be unsuitable because of illicit drug use, criminal history, bad driving record, lack of appropriate skills or experience, or they are physically not capable of performing the job tasks with or without reasonable accommodations.

These guidelines are not in place to unlawfully discriminate against potential candidates but, rather, to assure legal compliance and the best hiring practices. [REDACTED] adheres to a policy of equal employment opportunities for all applicants and employees.

The process of applying for a position at [REDACTED] is as follows:

Application

- Completely and accurately fill out an “*Application for Employment in the State of New Hampshire*” (*Attachment A - two pages*). Applicants between the ages of 16 and 17 will be required to fill out the “*State of New Hampshire Proof of Permission for the Employment of a Youth Age 16 or 17*” form (*Attachment B*). Inaccuracies on an application or otherwise provided during the hiring process may be grounds for rescinding any offer already given, conditional or otherwise.

Interview

- Upon completion of the employment application, an applicant may be asked to come in for an interview. (Note: for certain positions, multiple interviews may be held.) [*Refer to Section 3 (“Interview”) for proper “Interview Questions” and an “Interview Comment Sheet”*]

Offer

- If the applicant is determined to be qualified for the position, the applicant will receive a **written conditional job offer** (*Attachment C*). (*Be sure to include all enclosures as referenced in the letter.*)

Reference Checks

- Applicants will be asked to sign an “*Authorization for Employment Reference*” permitting the company to obtain reference checks [*Attachments D and D(1)*].

Background Checks

- Applicants will be asked to fill out an “*Authorization for Release of Records*” form (*Attachment I of Section 4, “Fair Credit Reporting Act”*) allowing [REDACTED] to perform [REDACTED]. Upon receipt of the criminal background check, [REDACTED] will review the findings.

Records that indicate a criminal history involving violence, theft, dishonesty, or other behavior that may put the company, its employees, or customers at risk may be grounds for rescinding the job offer. The General Manager/Dealer Principal will make all decisions related to rescinding the conditional job offer due to criminal background checks. (Refer to Section 4, "Fair Credit Reporting Act")

Driving Record

Applicants for positions that require driving as part of the job will also be asked to fill out an "Authorization to Obtain a Motor Vehicle Report" form (See sample Universal Underwriters' form - Attachment J of Section 4, "Fair Credit Reporting Act"), allowing [redacted] to perform a Motor Vehicle Report (MVR) check. Upon receipt of the MVR, [redacted] will review the findings. Records that show traffic violations/convictions that may put the company, its employees, or customers at risk may be grounds for rescinding the job offer. The General Manager/Dealer Principal will make all decisions related to rescinding the conditional job offer due to MVR checks. (Refer to Section 4, "Fair Credit Reporting Act")

Drug Test

- After satisfying all non-medical conditions of the conditional employment offer, the applicant must successfully complete a pre-placement drug test and/or pre-placement physical. (Refer to Sections 5 and 6 for guidelines on "Pre-Placement Drug Test" and "Pre-Placement Physical and/or Capacity Examinations")

Physical

- Applicants applying for [redacted] will be required to undergo a physical capacity exam to ensure they can handle the physical demands of the job. (Refer to Section 6, "Pre-Placement Physical and/or Capacity Examinations")

Second Injury Fund

- Applicants must provide a record of any pre-existing condition(s) by thoroughly completing a "Second Injury Fund" form (Attachment S of Section 7, "Second Injury Fund").

Only after candidates successfully complete the above items and satisfy all the conditions for hire will they be able to commence employment.

A **withdrawal letter** will be given to a candidate who does not qualify for the position (See Attachment E). The withdrawal letter will identify why the applicant did not qualify.

All forms completed and/or signed by an applicant who is not hired, as well as any reports received regarding the applicant, will be kept in an applicant file at [redacted] for one (1) year. All such materials for applicants who are hired will be maintained on file for the duration of employment, with the personnel file, for a period of seven (7) years thereafter.

More information on hiring and the employer's legal responsibilities can be found in Section 11, "Appendix" – "Hiring Process Article" – pages 11-1 through 11-7.

Print Form

Attachment A

[open fillable pdf](#)

APPLICATION FOR EMPLOYMENT IN THE STATE OF NEW HAMPSHIRE

We are an equal opportunity employer. We do not discriminate in hiring, promotion, or other employment decisions on the basis of race, sex, color, pregnancy, religion, national origin, sexual orientation, marital status, disability, age, veteran, or any other basis protected by law. Equal access to programs, services, and employment is available to all persons. Those applicants requiring reasonable accommodation to the application and/or interview process should notify a representative of the Human Resources Department.

PLEASE PRINT (USE INK)

PERSONAL:				
Name _____	_____	_____		
(Last)	(First)	(Middle)		
Current Address _____	_____	_____	Telephone _____	
(Street)	(City)	(State)	(Zip Code)	(Include Area Code)
Permanent Address (if different)				
_____	_____	_____	Telephone _____	
(Street)	(City)	(State)	(Zip Code)	
Have you ever applied for employment here before? _____ Yes _____ No		If yes, when? _____		
Have you ever worked for our company before? _____ Yes _____ No		If yes, where? _____		
Dates of Employment _____		Reason for Leaving _____		

WORK EXPERIENCE:			
PRESENT OR MOST RECENT EMPLOYMENT			
Company _____	Address _____	_____	_____
	(Street)	(City)	(State)
May We Contact Your Present Employer? _____ Yes _____ No			
Telephone _____	Kind of Business _____	Name and Title of Immediate Supervisor _____	
(Include Area Code)			
Employed From _____ to _____		Job Title _____	
(Mo., Yr.)	(Mo., Yr.)		
Duties Performed _____			
Starting Salary _____	Final Salary _____	Reason for Leaving _____	

PREVIOUS EMPLOYMENT:			
Company _____	Address _____	_____	_____
	(Street)	(City)	(State)
Telephone _____	Kind of Business _____	Name and Title of Immediate Supervisor _____	
(Include Area Code)			
Employed From _____ to _____		Job Title _____	
(Mo., Yr.)	(Mo., Yr.)		
Duties Performed _____			
Starting Salary _____	Final Salary _____	Reason for Leaving _____	

PREVIOUS EMPLOYMENT:			
Company _____	Address _____	_____	_____
	(Street)	(City)	(State)
Telephone _____	Kind of Business _____	Name and Title of Immediate Supervisor _____	
(Include Area Code)			
Employed From _____ to _____		Job Title _____	
(Mo., Yr.)	(Mo., Yr.)		
Duties Performed _____			
Starting Salary _____	Final Salary _____	Reason for Leaving _____	

PREVIOUS EMPLOYMENT: (Use additional sheets if necessary to describe all previous employment)

Company _____ Address _____ (Street) _____ (City) _____ (State) _____

Telephone _____ Kind of Business _____ Name and Title of Immediate Supervisor _____
 (Include Area Code)

Employed From _____ to _____ Job Title _____
 (Mo., Yr.) (Mo., Yr.)

Duties Performed _____

Starting Salary _____ Final Salary _____ Reason for Leaving _____

EDUCATION:

	Name	City/State	Degree Received Yes or No	Type of Degree Diploma or GED	Major
High School	_____	_____	_____	_____	_____
College	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____
Trade School	_____	_____	_____	_____	_____

Commercial courses completed (Include skills, typing, shorthand, business machines, personal computers, etc.) _____

GENERAL:

Are you authorized to work in the United States? _____ Yes _____ No (Proof of citizenship or immigration status will be required upon employment.)

Are you 18 years old or older? _____ Yes _____ No How did you happen to contact our company? _____

Are you available to work full-time _____ part-time _____ temporary _____? If part-time, indicate maximum hours per week _____

What position are you applying for? _____ Starting salary desired _____

Can you perform the essential functions of the job with or without reasonable accommodation? _____ Yes _____ No

Are you currently on layoff or leave from another employer? _____ Yes _____ No

CONVICTION INFORMATION:

Have you ever been convicted of a crime that has not been annulled, except for minor traffic violations? _____ Yes _____ No (If yes, please fill in information below.)

Conviction information will not necessarily bar an applicant from employment.

	Date	Reason	Disposition of Case	Place
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____

NOTICE: PLEASE READ BEFORE SIGNING

- If I am hired, I agree to abide by the rules and policies of the Company.
- I understand that if I am hired, my employment will be for no definite period and that my employment and compensation can be terminated with or without cause and with out notice, at any time, at the option of either the Company or me.
- I authorize all persons, companies, prior employers, schools, credit bureaus, and government agencies to supply any information concerning my background, education, and employment, and release all parties from all liability for any damage that may result from furnishing same to you. I also release the Company and its agents from all liability from damages arising from this research of my background.
- I certify that the information contained in this application is complete and correct to the best of my knowledge and understand that falsification of this information is grounds for dismissal in accordance with Company policy.
- I certify that all of the information that I provide on this application or in any interview will be complete, true, and accurate. I understand that if I am hired and any such information is later found to be incomplete, false, or misleading in any respect, I may be discharged.

I have read and fully understand the above Notice Section.

 (Print Name) _____ (Signature) _____ (Date)

Print Form

STATE OF NEW HAMPSHIRE DEPARTMENT OF LABOR
PARENTAL PERMISSION AS DEFINED IN RSA 276-A:4 VIII AND LAB 1002.02
FOR THE EMPLOYMENT OF YOUTH AGE 16 OR 17

Youth's name: _____ Date of Birth ___/___/___
(please print) (month,day,year)

Youth's Address: _____
Street City State Zip

I, _____, grant permission for my son, daughter or legal ward
(Name of parent or legal guardian)

To be employed with _____
(Name of employer)

Located at _____
Street City State Zip

Description of work _____

_____ Date Signature of parent or legal guardian

For information regarding the requirements of RSA 276-A, the New Hampshire Youth Employment Law, please contact the New Hampshire Department of Labor at 271-6294, or 271-1492.

RSA 276-A:4

I. No youth shall be employed or permitted to work in any hazardous occupation, except in an apprenticeship, vocational rehabilitation, or training program approved by the commissioner.

VI. No youth 16 or 17 years of age who is duly enrolled in school shall be permitted to work more than 6 consecutive days or more than 30 hours during the school calendar week, which shall be Sunday through Saturday.

VII. No youth 16 or 17 years of age who is duly enrolled in school shall work for more than 6 consecutive days or 48 hours in any one week during school vacations, including summer vacation. For purpose of this paragraph, "summer vacation" means June 1 through Labor Day

VIII. No youth 16 or 17 years of age, except a youth 16 or 17 years of age who has graduated from high school or obtained a general equivalency diploma, shall be employed by an employer unless the employer obtains and maintains on file a signed written document from the youth's parent or legal guardian permitting the youth's employment.

RSA 276-A:13 Night Work. - No such youth shall be employed or permitted to work at night work more than 8 hours in any 24 hours nor more than 48 hours during the week. If any youth is employed or permitted to work more than 2 nights each week, for any time between the hours of 8 o'clock p.m. and 6 o'clock a.m. of the day following, such employment shall be considered night work.

Lab 1002.03 Hours Limitations.

(c) Pursuant to RSA 276-A:13, any youth scheduled to work more than 2 nights in a week past 8 o'clock p.m. shall not be permitted to work more than an 8 hour shift during that particular week.

Hazardous Occupations are as defined in Federal Child Labor Bulletin Requirements in Nonagricultural Occupations "Child Labor Bulletins No. 101" Order No. 1 through Order No. 17 Revised September 1991.

This form must be file with the employer prior to 16 or 17 year old youth performing any work.

[Redacted]
[Redacted]
[Redacted]
[Redacted]

RE: Conditional Offer of Employment

Dear [Redacted]

We are pleased to offer you a position with [Redacted] as a full-time [Redacted]. As discussed, your start date would be [Redacted]; and you would report directly to [Redacted] at [Redacted].

The following are additional terms of our offer:

- You will be paid [Redacted] hourly
If commission-based, enclose a copy of commission agreement.

- You will be able to participate in the following benefits offered by [Redacted] to full-time [Redacted] employees:

[Redacted]

- Your regular work schedule will vary from week to week but will generally be approximately [Redacted] hours per week performed during our hours of operation.
- You will be considered to be an employee at will as [Redacted] is an at-will employer. You, therefore, can resign from your employment at any time, for any reason. Likewise, the company can terminate the employment relationship at any time, for any reason. This letter is not intended to change the at-will relationship or create a contract of employment or for benefits.

This offer is conditional upon your successful completion of a criminal record check, a motor vehicle record check, and employment reference checks. Please sign the enclosed background check authorizations and return them to me in the enclosed envelope.

This offer is also conditional upon your successful completion of a drug test and a pre-placement physical, which you will be required to undergo if you successfully complete the background checks. [Redacted] requires all applicants to undergo pre-employment drug tests and physicals. If you accept this conditional offer and satisfy the background check requirements, we will contact [Redacted].

to set up an appointment. We will let you know when they expect you.
[REDACTED] will pay for all costs associated with the pre-employment drug test and physical. Please understand if your drug test is positive this conditional offer of employment will be withdrawn and you will be prohibited from re-applying for employment for a period of [REDACTED] from the date of this letter.

We hope that you will accept this offer of employment, and we look forward to having you join us. Feel free to contact me with any questions regarding this offer.

If you accept this conditional offer of employment, please acknowledge your acceptance by signing this letter. Upon receipt, [REDACTED] will contact [REDACTED] to schedule your appointment.

Sincerely,

[REDACTED]
[REDACTED]

Enclosures

- Benefit Statement
- Commission Statement

My signature below indicates acceptance of the conditional offer of employment as outlined in this letter.

Signature

Date

Print Form

AUTHORIZATION FOR EMPLOYMENT REFERENCE

I hereby authorize any present or former employer of mine to furnish [redacted] with any and all information concerning my employment with and separation from employment with that employer. Information that may be released includes, by way of example, but is not limited to, my date(s) of employment; position(s) held; job duties; ability to work independently and level of supervision required; compensation and benefits; information concerning my performance, attitude, work ethic, skills, qualifications, strengths, weaknesses, quality and quantity of work, and attendance; any disciplinary action; and the reason for my separation from employment. I also authorize any present or former employer to inform [redacted] whether the employer would recommend me for employment as well as whether the employer would rehire me in the same position if given the opportunity.

I authorize any present or former employer to provide the released information verbally or in writing.

I release all parties from all liability for any damage that may result from furnishing any and all information concerning my employment and separation from employment. I also release [redacted] and its employees and agents from all claims, demands, suits, and liability for any damages and/or costs arising from conducting this employment reference check.

I authorize any current or former employer to accept a photocopy of this authorization with the same authority as the original, and I specifically waive any written notice from any present or former employer who may provide information based upon this authorized request.

Name (please print): _____

Signature: _____

Address: _____

Social Security Number (will be used for identification purposes only): _____

Print Form

Attachment D(1)

REFERENCE CHECKING GUIDELINES

Reference checking questions generally fall into these categories:

- Basic facts
- Job content
- Supervision
- Performance level
- Major skill areas
- Personal traits and abilities affecting the job

Typical questions:

- How long did Jane Doe work for your company?
- What was her ending wage/salary?
- What were Jane Doe's responsibilities in order of importance?
- How would you rate her quality of work? Her quantity (or productivity)?
- How did Jane Doe compare on the job with others who perform the same work? What made her better (or worse)?
- What are Jane Doe's primary strengths?
- In what areas could we help Jane Doe to improve if we hire her?
- What was Jane Doe's biggest achievement while working for you?
- What could Jane Doe have done to produce even better results?
- What does Jane Doe need to do for continued professional growth and development?
- If I were going to be Jane Doe's supervisor, what advice could you give me to help me manage her most effectively?
- If you were going to hire Jane Doe today, what job would you put her in that would most effectively use her skills and experience?
- Why did Jane Doe leave your company?
- Would you re-hire her into the same job? (If no, why not?)

Don't ask about:

- Disability
- Religion
- Sex, Sexual orientation
- Age
- Marital status
- Pregnancy
- Nationality, Race

[Redacted]

PERSONAL AND CONFIDENTIAL

RE: **Withdrawal of Conditional Job Offer**

Dear [Redacted]:

On [Redacted], [Redacted] extended to you a conditional job offer for [Redacted]. This offer was contingent upon a number of items, including [Redacted]

As you have not satisfied this condition, the conditional job offer extended to you on [Redacted] has been withdrawn effective immediately.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

[Redacted]
[Redacted]

Print Form

INTERVIEW INTRODUCTION

State and federal employment laws prohibit employers from asking specific questions to obtain certain information during the hiring process.

This section assists the individual interviewing an applicant in asking the appropriate questions during an interview to obtain the information in a legal fashion (*Attachment F – “Interview Questions”*).

This section also provides a form, which allows the interviewer to make comments during the interview (*Attachment G – “Interview Comment Sheet”*). The form is a convenient tool that helps the interviewer/management to make a decision when comparing qualified applicants.

INTERVIEW QUESTIONS

Category	Unacceptable Questions	Acceptable Questions
Name	<ul style="list-style-type: none"> • Have you ever changed your name? • What was your original name? • Do you prefer Ms., Mrs., or Miss? 	<ul style="list-style-type: none"> • Have you ever worked for this company under a different name? • Have you worked under a nickname or different name for another company that we should know about in order to check a reference?
Age	<ul style="list-style-type: none"> • How old are you? • When did you graduate from high school? 	<ul style="list-style-type: none"> • If offered employment, can you prove that you are of legal age? • Are you 18 years old or older? If not, can you provide the appropriate youth employment documentation?
Birthplace	<ul style="list-style-type: none"> • Where were you born? • In what country were your parents born? 	<ul style="list-style-type: none"> • Can you provide proof of work authorization if you are hired?
Residence	<ul style="list-style-type: none"> • Do you own or rent your residence? • How many people live with you? • What is their relationship to you? 	<ul style="list-style-type: none"> • What is your present address?
Race/Color	<ul style="list-style-type: none"> • What race are you? • What color is your hair, skin? 	<ul style="list-style-type: none"> • None
Religion	<ul style="list-style-type: none"> • What religion are you? • Do you observe religious holidays? • Which ones? 	<ul style="list-style-type: none"> • If needed for business reasons, you may ask if applicant is available to work on Saturdays or Sundays.
Sex	<ul style="list-style-type: none"> • Are you male or female? • What is your sexual orientation? 	<ul style="list-style-type: none"> • None
Photographs	<ul style="list-style-type: none"> • May we have a photograph with your application form or after the interview? 	<ul style="list-style-type: none"> • After you are hired, we may need a photograph for identification purposes.
Education	<ul style="list-style-type: none"> • List the dates you attended or graduated from school (grammar, high school, or college). 	<ul style="list-style-type: none"> • List your academic, vocational, or professional education and the name and address of the schools you attended.

Citizenship	<ul style="list-style-type: none"> • Of which country are you a citizen? • Are you or other members of your family naturalized citizens? 	<ul style="list-style-type: none"> • Are you a citizen of the U.S.? • If not, are you authorized to work in the U.S. and, if employed, give us proof?
National Origin/Ancestry	<ul style="list-style-type: none"> • What is your national origin, your ancestry, nationality, or parentage? • What is your native language? 	<ul style="list-style-type: none"> • If another language is necessary for the job, you may ask, what languages do you speak and/or write?
Height and Weight	<ul style="list-style-type: none"> • How much do you weigh and how tall are you? 	<ul style="list-style-type: none"> • None, unless you can prove the height and weight is a bona fide occupational qualification for the job.
Arrests and Convictions	<ul style="list-style-type: none"> • Have you ever been arrested? • Have you ever been charged with any crime? 	<ul style="list-style-type: none"> • Have you ever been convicted of any crime that has not been annulled? (Note: Check your state law as this is not permitted in some states.)
Marital or Family Status	<ul style="list-style-type: none"> • Are you married, single, divorced? • What is your maiden name? • What is your husband's/wife's name? • Do you have any children? • How many? • Do you plan on having more? • Are you pregnant? • What kind of day care do you have for your children? 	<ul style="list-style-type: none"> • None (An employer may ask an applicant if he/she can adhere to the work schedule and if he/she foresees any attendance problems).
Military Record	<ul style="list-style-type: none"> • If you are a veteran, what type of discharge do you have? • Were you ever disciplined in the service? 	<ul style="list-style-type: none"> • Are you a veteran of the Armed Forces? • If yes, what type of education and/or training did you receive in the military?
Organizations	<ul style="list-style-type: none"> • To which social organizations, clubs, societies, and lodges do you belong? 	<ul style="list-style-type: none"> • Of which professional, trade, or service organizations are you a member?
References	<ul style="list-style-type: none"> • Who is your pastor, minister, rabbi? 	<ul style="list-style-type: none"> • Please provide us with the names of work and/or character references.

Physical Condition, Disability	<ul style="list-style-type: none">• Do you now suffer, or have you ever suffered, an emotional illness?• How did you receive that scar?• Do you have any physical disabilities?• Have you ever received Workers' Compensation benefits?	<ul style="list-style-type: none">• Specific questions regarding the applicant's ability to perform the essential functions of the job.• Can you lift 50 pounds?• Can you read a video display terminal?• Can you perform the essential functions of the job with or without reasonable accommodation?
--------------------------------	--	---

INTERVIEW COMMENT SHEET

Date _____

Applicant's Name _____ Telephone # _____

Position Applied For _____

Interviewer's Name _____

- What about the job description appealed to you and made you want to apply for this position?

Insert comments:

- Why do you want to leave your present job?

Insert comments:

- How would your co-workers and your boss describe you?

Insert comments:

-
- What do you feel are your major strengths and weaknesses?

Insert comments:

- What are some of the challenges you are facing in your current job, and what are you doing to overcome them?

Insert comments:

- How do you deal with co-workers or supervisors who disagree with you?

Insert comments:

- What jobs have you enjoyed the most during your career and why?

Insert comments:

-
- This position requires [REDACTED]

Please tell us how your skills and experience qualify you for this position.

Insert comments:

- Describe your experience in interacting with persons of diverse cultural, social, and economic backgrounds.

Insert comments:

- The job you are applying for requires the ability to [REDACTED]

Can you perform this job with or without reasonable accommodation?

Insert comments:

- Tell us about your abilities to handle deadlines and pressure.

Insert comments:

- What would you like to accomplish during the next 5 to 10 years?

Insert comments:

-
- What do you feel makes you different from the other candidates who qualify for this position?

Insert comments:

Interviewer's Comments:

- A. How well did the individual handle himself/herself during the interview? (Check all that are appropriate.)

Personable _____ Poor Enthusiasm _____ Introverted _____ Confident _____ Arrogant _____

Motivated _____ Timid _____ Argumentative _____ Enthusiastic _____ Outgoing _____

Comments:

- B. Was the applicant professional in dress and action? Yes _____ No _____

Comments:

- C. Does the applicant communicate well? Yes _____ No _____

Comments:

- D. Recommended for position? Yes _____ No _____

Comments:

FAIR CREDIT REPORTING ACT INTRODUCTION

This section supplies the employer with a brief overview of the Fair Credit Reporting Act (FCRA) as it relates to the hiring process. Along with an overview, it provides the employer with a sample “*Disclosure to Applicants About Requests for Records*” form (*Attachment H*) and an “*Authorization for Release of Records*” form (*Attachment I*) as well as outlines the employer’s legal responsibilities and what background information the employer is legally able to obtain. The following is a list of that information:

- *Attachment J* – Universal Underwriters’ “*Disclosure of Intent to Obtain a Motor Vehicle Report*”
 - Driving records
- *Attachment K* – “*ADP’s Employee Screening and Selection Services*” (*two pages*)
 - Overview of services
- *Attachment K(1)* – “*ADP’s Employee Screening Services*”
 - Criminal records
 - Credit reports
 - Court records concerning bankruptcies, lawsuits, and judgments
 - Education records
 - Employment records
- *Attachment K(2)* – “*ADP’s Employee Screening and Selection Services*”
 - Real World Dealership Examples

Note: *Section 10, “Appendix” – page 10-21 contains the State Police criminal background check form,*

WHEN DO YOU NEED TO WORRY ABOUT THE FAIR CREDIT REPORTING ACT?

*Labor & Employment Practice Group
Devine, Millimet & Branch, P.A.*

To operate their businesses efficiently, employers sometimes need to obtain from third parties information about applicants and employees, such as criminal records, driving records, and credit reports. In some cases, the federal Fair Credit Reporting Act (“FCRA”) requires employers to take certain steps before and after receiving these reports. The steps that must be taken depend on the nature of the report obtained, its purpose, and the agency from which the report is procured. This article focuses on the obligations of an automobile dealership that receives from its insurance company the Division of Motor Vehicle (“DMV”) records of applicants and employees.

When Does the FCRA Apply?

The FCRA applies when employers obtain from “consumer reporting agencies” “consumer reports” concerning applicants or employees. The terms “consumer reporting agencies” and “consumer reports” are surprisingly broad. A “consumer report” includes any communication by a “consumer reporting agency,” “bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living,” if it is to be used for employment purposes.

A “consumer reporting agency” is any person or entity which, “for monetary fees, dues, or on a cooperative nonprofit basis, regularly, assembl[es] or evaluat[es] consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties ...” However, the FCRA exempts from this definition agencies that have firsthand information based on their own interactions or experience with an individual.

Step One: Obtaining a Consumer Report Concerning an Applicant or Employee

Before obtaining a consumer report, an employer must provide the applicant or employee with a clear and conspicuous written disclosure that a consumer report may be obtained for employment purposes (*Attachment H*). This disclosure must be made in a separate document that contains only the disclosure. It is not sufficient to include the disclosure on a job application. The employer must also obtain from the applicant or employee a written authorization (*Attachment I*) allowing the release of the consumer report to the employer. The release may be included on the disclosure statement.

If the applicant requests additional disclosures, the employer must make a complete and accurate disclosure of the nature and scope of the report requested. This disclosure must be made in writing and mailed to the applicant within five days after his or her request, or within five days of requesting the report, whichever is later.

In addition, the employer must inform the consumer reporting agency from which it obtained the consumer report that it has complied with the disclosure requirements; that it will comply with the adverse action requirements (described below) if necessary; and certify that the consumer report will not be used in violation of any federal or state equal employment opportunity law or regulation.

Step Two: Taking Adverse Action Against an Applicant or Employee Based on Information in a Consumer Report

If the employer uses a consumer report as a basis for refusing to hire an applicant, or refusing to retain or promote an employee, it must take the following steps:

1. Provide a copy of the report to the applicant or employee; and
2. Provide the applicant or employee with a written notice of his or her rights under the FCRA.

As the law can be a bit confusing, some examples may be helpful.

Example One

An auto dealer asks its insurance company to add an employee as a driver on the company’s policy. In order to do this and determine the additional cost to the auto dealer, the insurance company obtains the employee’s driving record from the DMV. The insurance company does not provide the employer with any information from the driving record. Rather, the insurance company uses the driving record solely for the purpose of determining the additional cost for insuring the new driver.

Here, the auto dealer is not receiving any information about the employee’s driving record. Rather, the auto dealer is only obtaining a quote from the insurance company. As such, the FCRA is not triggered.

Example Two

As in *Example One*, the auto dealer seeks to add an employee as a driver on the policy, and the insurance company obtains the employee’s driving record from the DMV. However, in this scenario, the employer and the insurance company agree that the insurance company will forward the driving record to the employer so that the employer will understand the basis for the premium required by the insurance company.

In this example, because the insurance company is providing the driving record to the employer, the insurance company is acting in the capacity of a consumer reporting agency. Accordingly, the auto dealer will be required to comply with the FCRA.

Example Three

Assume the same facts as *Example Two*. Assume also that the employer has decided to terminate the employee because the employee has a poor driving record and is uninsurable or will cause a big increase in premiums.

In this scenario, the employer would have to comply with Step One under the FCRA before obtaining the driving record and Step Two when it takes adverse action against the employee.

Example Four

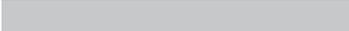
The auto dealer wishes to extend a conditional offer of employment to an individual, subject to proof of a driver’s license and a safe driving record. In order to obtain this information, the individual signs a consent form authorizing the auto dealer to obtain the individual’s driving records directly from the DMV. Upon receipt of the driving record, the employer learns that the individual has numerous motor vehicle offenses, making the individual unfit for the position. Based on this information, the employer withdraws its offer of employment.

This example is different than *Examples Two* and *Three* because the employer is obtaining the driving records directly from the DMV. Here, the FCRA is not triggered because driving record checks are covered by the FCRA only when they are provided to an employer by a consumer reporting agency, such as the insurance company in the above examples. As the DMV is the primary source of the employee’s driving record, and the information contained therein is not being conveyed to the auto dealer through a third party, the auto dealer will not be subject to the FCRA.

Conclusion

Failure to comply with the FCRA may subject an employer to monetary damages suffered by the applicant or employee harmed by the violation as well as any attorneys’ fees incurred by the applicant or employee. If the employer’s conduct is determined to be willful, a court may also impose a fine and award punitive damages to the applicant or employee. For these reasons, it is imperative that employers understand the FCRA and the steps it requires, the nature of the information they are requesting, and that they follow the steps required by the statute.

Mark Broth is Chair of the Labor & Employment Practice Group at the law firm of Devine, Millimet & Branch, P.A., 111 Amherst Street, Manchester, New Hampshire 03105. If you would like more information, please contact Mark Broth at 603-669-1000 or by e-mail at mbroth@devinemillimet.com, or you may call NHADA's Employment Law Hotline at 603-695-8582.


DISCLOSURE TO APPLICANTS ABOUT
REQUESTS FOR RECORDS

We will request consumer reports about you in order to evaluate your qualifications for the position for which you have applied. Depending on the job for which you have applied, we will request any or all of the following reports:

- Driving records
- Criminal records
- Credit reports
- Court records concerning bankruptcies, lawsuits, and judgments
- Education records
- Employment records

Please be aware that we may base our decision whether to hire you on the information contained in the reports. If we decide not to hire you because of information contained in a report, we will tell you; and we will provide you with the name, address, and telephone number of the agency from which we obtained the report.

If you have any questions, please call:



Print Form

[REDACTED]

AUTHORIZATION FOR RELEASE OF RECORDS

I hereby authorize and request any present or former employer, educational institution, police department, financial institution, insurance agency, or other persons or entities having personal knowledge about me to furnish [REDACTED] with any and all information, including criminal history, in their possession regarding me in connection with my application for employment with [REDACTED]. I authorize you to accept a photocopy of this authorization with the same authority as the original, and I specifically waive any written notice from any present or former employer who may provide information based upon this authorized request.

I certify that I have received a stand-alone notification that a report will be requested and used for the purpose of evaluating me for employment, promotion, reassignment, or retention as an employee. I also certify that I have received a copy of my rights under the Fair Credit Reporting Act.

Name (please print): _____

Signature: _____

Address: _____

Social Security Number (will be used for identification purposes only): _____

Driver's License State of Issue (will be used for identification purposes only): _____

Driver's License Number: _____

Print Form

**DISCLOSURE OF INTENT
TO OBTAIN A MOTOR VEHICLE REPORT**

In compliance with the Fair Credit Reporting Act, we hereby notify you that for employment purposes we may request a Motor Vehicle Report in connection with your application for employment or employment. It is our normal practice to limit the report to driving records available from the appropriate state departments of motor vehicles.

This disclosure also is to inform you that our insurance company, Universal Underwriters, may also request a Motor Vehicle Report on you, which under normal practice will consist of your driving record from the appropriate state department of motor vehicles. The purpose of Universal requesting a report will be for business insurance underwriting purposes. Universal is not your employer or prospective employer and will not make any employment decision relating to you.

**CERTIFICATION OF RECEIPT OF DISCLOSURE AND
AUTHORIZATION TO OBTAIN A MOTOR VEHICLE REPORT**

I acknowledge that I have received a copy of the "Disclosure of Intent to Obtain a Motor Vehicle Report."

The name of the consumer reporting agency gathering the report is:
Insurance Information Exchange, 3001 East Bypass, College Station, TX 77845-6002
1-800-683-8553, **OR** the Registry of Motor Vehicles

I understand that I have a right to dispute with the consumer reporting agency any inaccurate information by directly contacting the agency.

I voluntarily authorize you to obtain a Motor Vehicle Report regarding me in connection with my application for employment or my employment. I also voluntarily authorize Universal Underwriters to obtain a Motor Vehicle Report regarding me for business insurance underwriting purposes. I understand that Universal Underwriters is not my employer or prospective employer.

I understand and agree that I can revoke this authorization only in writing and the revocation will be effective only upon receipt.

Signature _____ Date _____ Job Position _____

Print Name _____

Print Maiden or Other Names Under Which Records
May be Listed _____

Date of Birth* _____

Are you provided a Demo for Personal

_____/_____
Driver's License Number State

YES NO

Have you held a license in another state in the past 3 years?

YES NO

If so, provide the number here _____ / _____
Driver's License Number State

*Date of birth information will be used by the consumer reporting agency to try to insure an accurate investigation. It will not be used in any employment decision. The Age Discrimination in Employment Act prohibits discrimination against a person 40 years of age or older. FCRA2—4/12/02



SELL CARS, PARTS AND SERVICE PROFITABLY.™

ADP's Employee Screening and Selection Services

HELPING DEALERSHIPS IN NEW HAMPSHIRE MAKE THE RIGHT CHOICE IN SELECTING DEALERSHIP EMPLOYEES

DEALERSHIP AREA
Business Office

ISSUES:

- Employee Turnover
- Hiring Decisions
- Productivity

**PEOPLE
SELECTION
MADE EASYSM**

In the automotive retail marketplace it is not uncommon for a dealership to experience annual turnover averaging 45%. Bad hiring is a high cost for dealerships with conservative estimates ranging from \$28,000 to \$65,000 per lost employee per year. When you factor in supervisor time, damaged customer relations, and lowered morale, the true cost to your dealership could far exceed this amount. Good hiring decisions will help you save money, increase sales, and maintain high CSI.

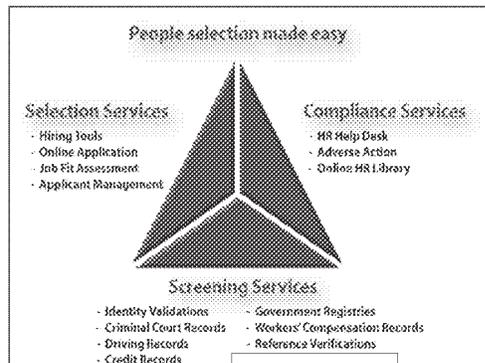
Here's how we can help.

ADP Screening and Selection Services provides over 18 years of experience providing you the right tools and processes to make the better hiring decisions. Screening and Selection Services utilizes innovative Internet technology to offer clients fast turnaround using current data while providing competitive pricing on all products and services. Consider the benefits of choosing ADP's Screening and Selection Services:

- Reduce the time spent on the labor-intensive tasks of researching and evaluating applicants
- Focus on hiring qualified candidates that best fit your dealership
- Save money and resources by reducing the risk of unwarranted litigation, fraudulent workers' compensation claims and the cost of hiring and training a bad hire
- Spend more time on selling and servicing vehicles instead of dealing with problem employees

COMPLETE SOLUTION TO FIND AND HIRE THE RIGHT DEALERSHIP EMPLOYEES

ADP Screening and Selection Services full suite of applicant selection, background, and compliance services makes it easy for organizations to select the right applicants for the right job. Only ADP delivers the total Solution necessary to make certain that you avoid the cost and loss of productivity that can result from make the wrong choice. ADP's paperless integrated product set helps you qualify, screen and select the right applicants using customized solutions that enable you to pick and choose the services that map to your business needs.



Dealership Employee Selection Made Easy



SELL CARS, PARTS AND SERVICE PROFITABLY.™

Employee Screening and Selection Services *cont'd*

ADP SCREENING SERVICES

Choose applicants with confidence using ADP's background screening reports and gain the compliance support you need with every order including the following:

- Identity Validations
- Criminal Court Records
- Driving Records
- Credit Records
- Government Registries
- Workers' Compensation Records
- Reference Verifications

Sample Report Screen

Screening and Selection Services	Criminal Court Records	Your Corporation
Iowa, Polk County 7 Year Felony		SSN:123-45-6789 Sample, Joseph R.
Product Coverage: Felony Records for most recent 7 years		Order/Item: 692765-2 Order Date: 2/25/04 Requestor: YOUR NAME Billing Code: 123456
Source Records Reviewed	1/1997 to 12/2003	
Search Criteria:	Name and Date of Birth	
Source:	POLK COUNTY--5TH DISTRICT COURT	
Case No.:	99CR18657	
Arresting Agency:	Not provided	
File Date:	05/13/1999	
Arrest Date:	Not provided	
Offense Date:	Not provided	
Offense:	ARMED ROBBERY	
Disposition Date:	10/17/98	
Disposition:	PLEAD GUILTY, FOUND GUILTY, 3 YEARS DEPT. OF CORRECTIONS, 3 YEARS PROBATION, \$2,000 FINE	

ADP HIRING COMPLIANCE SERVICES

Leave your stress behind with ADP's Compliance Services. Expert human resource and compliance advice is a quick phone call or a mouse click away.

- **Resource Library** – A one-stop location for organized, easy-to-use employment information
- **HR Help Desk** – For live, timely answers to all your HR questions, ADP's certified human resource and compliance professionals are only a phone call or e-mail away
- **Adverse Action** – If you decide not to hire applicants based on their background check results, our experts will handle all FCRA-mandated applicant correspondence to facilitate a fair and efficient adverse action response

ADP SELECTION SERVICES

With our ADP's Selection Services Suite, you get access to easy-to-use Hiring Tools, Applications, Job Fit Assessments and Applicant Management capabilities, you will have all the Resources giving you need to stay informed and organized in your hiring decisions.

- **Hiring Tools** – intuitive, online tools help you create job descriptions, set salaries based on current market information and build a network of recruitment sources
- **Online Application** – Customized qualifying questions automatically filter out applicants who do not meet your position requirements
- **Job Fit Assessment** – Based on industry or customized benchmarks, each candidate is ranked as a Good, Manageable or Questionable fit
- **Applicant Management** – Track applicants, place orders, and get results online - no matter where you are

To find out more about ADP's Screening and Selection Services and learn about a discount exclusively for New Hampshire Association Members, please call 1-888-424-6342

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www.DealerSuite.comSM / 888.424.6342

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ADP's Employee Screening Services

DEALERSHIP AREA

All Departments

ISSUES

- Employee Selection

ADP's Screening Services utilize innovative Internet technology to offer clients fast turnaround using current data while providing competitive pricing on all products and services.

If you would like additional information about ADP's Screening Services, please call us at 888-424-6342 or visit us at www.DealerSuite.comSM.

Select Reliable, Honest and Qualified People For Your Dealership

Choose applicants with confidence using ADP's background screening reports and gain the compliance support you need with every order.

Identity Validations

Start your hiring process off right with ADP's Identity Validations. In seconds, our First Check Validation determine if your applicant's SSN is valid. We also verify your applicant's address to automatically build your criminal court records order.

Criminal Court Records

Minimize complexity. ADP's county, state, national and federal Criminal Court Records enable you to obtain superior information to help you select the right applicants. Select reliable, honest and qualified people

Driving Records

Prevent an accident waiting to happen. You will know how well your applicants drive with ADP's driving records from any state, Canada and Puerto Rico.

Credit Records

Get detailed credit information from ADP in a matter of seconds. You will obtain comprehensive credit information from the three major credit bureaus.

Government Registries

When the risk is not worth taking, choose ADP's Government Registries. Learn if your applicants have been sanctioned by federal and state agencies for fraud, sex offenses or other crimes.

Workers' Compensation Records

Stop insurance fraud before it starts with ADP's post-hire Workers' Compensation Records. Our compliance experts help you each step of the way to ensure all ADA regulations are met.

Reference Verifications

More Time. This is what you gain with ADP's Reference Verifications. We complete employment, education, credential and Personal Verifications to help you verify that your candidates have the qualifications you require.

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ADP's Employee Screening and Selection Services

DEALERSHIP AREA
Business Office

ISSUES

- Employee Selection
- Employee Retention

FOR LITTLE EFFORT TODAY YOU CAN HELP AVOID MAJOR HEADACHES TOMORROW

Consider These Real World Dealership Examples:

Does your applicant have a past?

A North Carolina car salesman sexually assaulted a young woman while accompanying her on a test drive. The salesman had been charged three years earlier for both first degree burglary and first degree sexual offenses. Although the car dealership had asked this employee about previous convictions on an application form, it did not conduct a criminal background check and was ignorant of his past crimes.

Who did you just hire?

Postal Inspectors in Southern California arrested a federal fugitive for the attempted murder of a letter carrier.... the man remained a fugitive until he was featured on America's Most Wanted where Postal Inspectors arrested him at a car dealership where he was working under an assumed name.

What is their past "job" performance?

A Toronto-based trucking company tried to save money by not checking the background of a woman hired to manage its accounting department. The woman seemed impressive and had the right credentials. Over the course of two years, the employee siphoned \$250,000 from the company's general accounts. Ultimately, she was prosecuted on criminal charges and sentenced to three years in jail. Had the trucking company checked her references, they would have discovered that she'd also defrauded her previous company of \$150,000.

What is their "best" practice?

A North Carolina dealership fired seven employees after an internal investigation alleged they faked pay stubs and tax returns and inflated personal income to help qualify buyers with poor credit for loans.... Three employees were fired in connection with offenses they allegedly committed before working for the dealership.

COMPLETE SOLUTION TO FIND AND HIRE THE RIGHT DEALERSHIP EMPLOYEES

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ADP Screening and Selection Services full suite of applicant selection, background, and compliance services makes it easy for organizations to select the right applicants for the right job. Only ADP delivers the total Solution necessary to make certain that you avoid the cost and loss of productivity that can result from make the wrong choice.

If you would like additional information about ADP's Screening and Selection Services, please call us at 888-424-6342 or visit us at www.DealerSuite.comSM.

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Pre-Placement Drug Test



Dear NHADA Member:

Your NHADA Workers' Compensation Trust Board of Trustees has enthusiastically and unanimously voted to require all Workers' Compensation Trust members to perform pre-placement drug testing effective January 1, 2008.

The dealer Trustees have spent a considerable amount of time and effort in proactively analyzing how your Trust can do an even better job at assisting our members with the goal of reducing claims.

In this process of review, the Loss Prevention Department has developed a much-researched and legally approved soup-to-nuts "Strategic Hiring Guidelines" program. Staff has already helped many Workers' Compensation Trust members implement this program.

A key component to the hiring process is pre-placement drug testing. Conducting these tests will help eliminate drug users from your places of employment and will assist in:

- Reducing Workers' Compensation claims;
- Reducing Workers' Compensation claims costs;
- Reducing sick-time abuse;
- Reducing health insurance claims; and
- Improving security.

There is no doubt that this new policy, effective January 1, 2008, will benefit all members of the Trust and will have a positive impact on the premium rebates for many years to come!

Our staff is available and geared up to immediately assist Workers' Compensation Trust members in developing policies and procedures to implement pre-placement drug testing.

Please contact Brian Duplessis, Loss Prevention Coordinator, or Peter Sheffer, Claims Manager, at 800-852-3372 for assistance.

Personal regards,

A handwritten signature in cursive script that reads "Peter J. McNamara".

Peter McNamara
WCT General Manager / NHADA President

**STEP-BY-STEP APPROACH TO IMPLEMENTING
A PRE-PLACEMENT DRUG TESTING PROGRAM**

This section provides the employer with a comprehensive, step-by-step process for implementing a pre-placement drug testing program. Additionally, this section provides the employer with sample policies and procedures, a sample drug testing protocol (*Attachment L – “Alcohol and Drug Testing Protocol”*), and an article written by legal counsel, which indicates the employer’s responsibilities when implementing this program.

Step One: Familiarize yourself with an employer’s state-specific legal obligations when implementing a drug testing policy.

Step Two: Develop a drug testing policy in consultation with legal counsel (*Attachment M – “Drug and Alcohol Policy”*).

Step Three: Implement the drug testing policy by distributing the policy to all applicants and having them sign the policy (*Attachment N – “Applicant’s Acknowledgment of Drug and Alcohol Policy”*).

Step Four: Require applicants to sign an authorization form for the drug test (*Attachment O – “Pre-Placement Drug Testing Policy”*).

Step Five: Arrange for the applicant to have a drug test with a designated testing facility.

Step Six: Keep all test results and other medical records confidential and separate from the individual’s personnel file.

This information was compiled with assistance from the attorneys in the Labor and Employment Practice Group at Devine, Millimet & Branch, P.A. The information is not designed to be, and should not be, construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for informational purposes only. Anyone needing specific legal advice should contact an attorney.

If you need legal advice or assistance, you may contact the New Hampshire Automobile Dealers Association (NHADA) at 800-852-3372 or the attorneys at Devine, Millimet & Branch, P.A. through NHADA’s Employment Law Hotline at 603-695-8582.

NHADA members with dealerships in states other than New Hampshire should be aware that other states may have different and/or additional legal requirements concerning pre-employment physical examinations and/or drug testing. In addition, members should be aware that the U.S. Department of Transportation has rules that apply to commercial drivers and that these materials have not been designed to meet those requirements.

WORKPLACE DRUG TESTING IN NEW HAMPSHIRE: AN OVERVIEW

*Labor & Employment Practice Group
Devine, Millimet & Branch, P.A.*

Introduction

Illegal drug use by employees can result in high absenteeism, low productivity, unacceptable safety risks, and increased costs. As a result, employers often ask whether they may require job applicants and employees to submit to drug tests. While neither federal nor New Hampshire law prohibits this practice, employers must be aware of the practical aspects of implementing a drug testing policy. This article explores issues that employers should consider before implementing such a policy.

The Law

Federal law permits employers to conduct drug testing of job applicants and employees. The Americans with Disabilities Act of 1990 (“ADA”) does not prohibit employers from testing for the use of illegal drugs at any stage during the job application process or employment. While the ADA (*See Section 10, “Appendix” – “ADA Article” – pages 10-7 through 10-20*) prohibits discrimination against individuals who suffer from a past or present drug addiction and are not currently using drugs, current illegal drug use is not a protected disability under the ADA. Although many states have enacted legislation establishing guidelines and parameters for drug testing in the workplace, New Hampshire law places no restrictions on an employer’s ability to require a job applicant or an employee to submit to a drug test.

Developing a Policy

Although New Hampshire law does not require employers to have written policies prohibiting drug use, it is a good idea for all employers to distribute a written policy to employees before beginning a drug testing program and to take affirmative measures to protect the privacy rights of the employees. In addition, federal law requires certain employers to adopt policies that prohibit illegal drug use. For example, the Drug Free Workplace Act requires employers with government contracts to establish a written drug policy, and the Omnibus Transportation Employee Testing Act requires employers in transportation-related fields who receive federal funds to conduct pre-employment and post-accident drug testing for certain employees. Drug testing policies should contain the following elements:

1. a statement regarding the need for drug testing in the workplace based on the effects of illegal drug use on employee health, safety, judgment, relationships, and/or productivity;
2. a statement of the Company’s policy prohibiting illegal drug use and possession;
3. an explanation of the consequences of violating the policy, including the range of disciplinary sanctions;
4. an explanation of rehabilitation and assistance programs, if any, available to employees who seek resources for substance abuse (i.e., Employee Assistance Program, benefits under the Company health insurance plan); and
5. a statement of employees’ rights under the policy, including notice of the testing program, confidentiality protections, and a right to receive a copy of the test results.

Developing Effective Procedures

Employers should seek legal advice before developing the procedures for conducting drug tests. These procedures must be reliable, consistent, and fair to all employees. Some testing facilities provide written protocols that can be helpful in developing the employer’s procedures, so it is advisable to contact the facility or facilities to establish a working relationship and to obtain this information as part of the

process of developing employer procedures. In consultation with legal counsel, employers should cover the following areas in their drug testing procedures:

1. the basis for drug testing (pre-employment, random testing, reasonable suspicion, post-accident, and/or as part of a return-to-work program following a positive test result);
2. selection of testing sites and laboratory;
3. specimen type and collection method;
4. chain of custody and record keeping;
5. employee notification of test results;
6. follow-up testing; and
7. supervisor training on illegal drug use in the workplace and identifying signs of impairment if reasonable suspicion is a basis for testing.

Employers are advised to test only for illegal drug use that might have an impact on work performance; and testing, therefore, should occur during or close to an employee’s work time.

Practical Considerations

While illegal drug use and abuse can be costly and pose serious safety hazards in the workplace, drug testing should not be used as a substitute for employee training and evaluation. Employees must understand company policies and the employer’s expectations for their performance on the job. Periodic evaluations, monitoring, and feedback are important ways to address productivity problems in general and the specific issue of illegal drug use by individual employees. Employers also should be mindful of the impact of drug testing on employee morale. As drug testing will not identify whether employees are currently impaired by drug use but will only provide information about whether employees have traces of certain controlled substances in their bodies, employers must determine whether the test will furnish the necessary information for making an employment decision. Finally, employers should be aware of the potential for liability if the drug testing program is administered in a faulty manner or in a way that unlawfully invades the privacy of applicants or employees.

Conclusion

Employers have a compelling interest in maintaining drug free work environments. Drug testing is one way to minimize the use and abuse of illegal drugs in the workplace. In addition, by establishing comprehensive education, training, and assistance programs, and by providing employee evaluations and feedback, employers may prevent the problems associated with illegal drug use in the workplace before they occur.

Mark Broth is Chair of the Labor & Employment Practice Group at the law firm of Devine, Millimet & Branch, P.A., 111 Amherst Street, Manchester, New Hampshire 03105. If you would like more information, please contact Mark Broth at 603-669-1000 or by e-mail at mbroth@devinemillimet.com, or you may call NHADA’s Employment Law Hotline at 603-695-8582.

[REDACTED]

ALCOHOL AND DRUG TESTING PROTOCOL

Collection Site

An employee or applicant who has consented in writing to an alcohol or drug test will be directed to a collection site designated by the Company.

Scheduling Tests, Payment of Testing Costs, and Transportation

The Company will pay all actual costs for alcohol/drug screening conducted in connection with this policy. The Company will also pay employees for time spent undergoing drug/alcohol testing at our direction. Applicants for employment will not be compensated for time spent in connection with testing. The Company will provide transportation to and from the collection site for any employee the Company reasonably suspects is impaired by illegal drugs or alcohol. Applicants must arrange for their own transportation.

Drug and Alcohol Screen

Drugs for which individuals are tested under this policy include those substances controlled under federal or state law. An employee will be considered to have tested positive for alcohol if the employee has a breath alcohol concentration that equals or exceeds .02 percent.

Collection Procedures and Testing Methods

All sample collection and testing for drugs and alcohol impairment under this policy shall be performed according to the following conditions:

- The collection of samples shall be performed under reasonable and sanitary conditions.
- Sample collections will be documented, and these documentation procedures will include both of the following:
 1. Labeling of samples in order to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided.
 2. An opportunity for the person to be tested to provide any information that may be considered relevant to the test, including identification of currently or recently used prescription or non-prescription drugs or other relevant medical information.

-
- Sample collection, storage, and transportation to the place of testing will be performed in a manner reasonably designed to preclude the possibility of sample contamination, adulteration, or misidentification.
 - Sample testing will comply with scientifically accepted analytical methods and procedures.
 - Drug testing will include confirmation of any positive initial drug test results for employees. Confirmation of positive drug test results for employees will be by use of a different chemical process than was used in the initial drug screen.

Reporting Results

The laboratory will report all initial and confirmatory test results to the Company. Before any test result is reported, the responsible laboratory personnel will review the result and certify that the result is accurate. The test report will identify the substances tested and whether the test result was positive or negative.

Notification and Employees' Rights

Individuals who test positive will be notified and given an opportunity to explain to the testing facility, in a confidential setting, any reasons they may have for the positive test result. If an individual provides an explanation that satisfies the testing facility that the result is due to factors other than the presence of illegal drugs or alcohol in the sample, the testing facility may disregard the positive test result.

Individuals who test positive for drugs or alcohol have the right to request and obtain the results of their tests.

Consequences of a Positive Test Result

If an alcohol impairment test reveals the presence of alcohol in an employee's system at or above the applicable prohibited level or if initial and confirmatory drug testing reveals the presence of any illegal drug(s) in an employee's or applicant's system at or above the applicable prohibited levels and the individual does not provide an explanation concerning the positive test result(s) that satisfies the testing facility, the Company will take disciplinary action, up to and including termination of employment. Applicants who test positive will not be considered for employment.

Confidentiality of Test Results

The results of all drug tests and alcohol impairment tests conducted for/by the Company will be disclosed only to the Company's testing program coordinator, the Company's personnel on a need-to-know basis, and the individual tested, upon that individual's request.

Print Form

[REDACTED]

DRUG AND ALCOHOL POLICY

Our Company believes that all of our employees and customers have the right to an environment that is free from the effects of alcohol and drugs. We have adopted this drug and alcohol policy because we care about the health and safety of our employees, customers, and the community.

Prohibited Conduct

Certain forms of conduct are clearly prohibited and are listed below as a guide. The list is not all-inclusive and is intended to be illustrative of the type of conduct that will not be tolerated:

- Use, possession, storage, manufacture, distribution, dispensation, transfer, or sale of an illegal drug, unauthorized prescription drug, or drug paraphernalia at any time while on Company property, on Company business at any time or place, in Company or customer vehicles, or otherwise during work hours.
- Use, possession, manufacture, distribution, dispensation, or sale of alcohol while on Company property, on Company business, in Company or customer vehicles, or during work hours. (Note: The Company may sponsor an event where alcohol is served. The moderate consumption of alcohol is permitted during these events. Individuals attending such events must still adhere to reasonable and acceptable standards of conduct.)
- Reporting to work or otherwise working under the influence of illegal drugs or alcohol or under the influence of legal drugs that may impair your ability to safely perform your job functions.
- Refusing to submit to a required drug and/or alcohol test.
- Failing to agree to any requirements of a drug or alcohol treatment or counseling program in which you are enrolled as a condition of continued employment.
- Failing to advise your supervisor or Human Resources of your use of any drug that could impair your ability to safely perform your job duties.
- Failing to notify Human Resources within three (3) days of any criminal conviction (not annulled by a court) involving alcohol or drugs.

Reporting Requirements

- Any employee who is taking medication that may impair his or her ability to safely perform job functions must inform his or her supervisor or Human

Resources immediately and must not perform any work until authorized to do so by his or her supervisor or Human Resources.

- Any employee who is convicted of any crime (not annulled by the court) involving alcohol or drugs must inform Human Resources within three (3) days of the conviction.
- If any employee is involved in drug misconduct (including the use or possession of illegal drugs or unauthorized prescription drugs) on Company property or while working for the Company, the Company reserves the right to report the incident to law enforcement authorities and to cooperate in prosecuting the crime to the fullest extent of the law.
- If any person observes an employee exhibiting behavior that may be indicative of impairment by drug or alcohol use, he or she should immediately report the behavior to Human Resources or the General Manager.

Available Assistance for Substance Abuse

Our Company encourages employees to voluntarily seek assistance for the early resolution of drug and alcohol problems. Employees may contact Human Resources for information about the application of health insurance benefits to substance abuse treatment programs and the Company's Employee Assistance Program, if one is in place.

An employee will not be disciplined or terminated for voluntarily seeking assistance for a drug or alcohol problem. However, employees who undergo voluntary counseling or treatment and who continue to work must meet all established standards of conduct and job performance. The fact that an employee is in treatment for alcohol or drug abuse does not preclude the Company from taking disciplinary action for violation of its policies or standards of conduct. Likewise, an employee who has violated this Drug and Alcohol Policy cannot escape disciplinary action, including termination, by voluntarily requesting treatment for alcohol or drug abuse.

Drug and Alcohol Testing

- **Pre-Employment Testing:** The Company will require drug testing of all applicants to whom the Company has made a conditional offer of employment. If an applicant tests positive for drugs or there is evidence that the applicant tampered with the test or result in any way, the conditional offer of employment will be withdrawn.
- **Reasonable Suspicion Testing:** An employee may be required to submit to drug and/or alcohol testing when one or more supervisors have a reasonable suspicion that the employee:
 - Is under the influence of drugs and/or alcohol. Factors that may be considered in determining whether an employee may be under the

influence of drugs and/or alcohol include, but are not limited to: the employee's behavior; evidence of impairment; and evidence of repeated errors on the job, policy violation, or unsatisfactory attendance patterns if coupled with a specific contemporaneous conduct that indicates possible impairment by reason of drug or alcohol use; or

- Has violated this Drug and Alcohol Policy; or
- Has sustained a personal injury while working or has caused personal injury to another person; or
- Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident. Post-accident or injury testing will be conducted as soon as practical after the accident or injury.
- **Management Approval for Testing:** Reasonable suspicion drug and alcohol tests will not be performed without prior notice to and approval from Human Resources or the General Manager.
- **Testing Site:** Drug and alcohol testing will be performed by a qualified laboratory, hospital, or health center designated by the Company. The Company will provide transportation to and from the testing site for employees. Applicants must arrange for their own transportation. Test results will be reviewed and interpreted by a qualified Medical Review Officer, who will notify the Company of the results. Please refer to the "*Alcohol and Drug Testing Protocol*" available from Human Resources for more information.
- **Consent to Testing:** Tests will not be conducted without the individual's written consent. However, applicants and employees must submit to tests requested or required by the Company as a condition of hire and employment. If an applicant refuses to submit to a required test, the applicant will not be hired. If an employee refuses to submit to a requested or required test, the employee will be subject to disciplinary action up to and including termination of employment.
- **Cooperation With Testing:** Individuals subject to testing may not try to subvert the test by using an adulterated, diluted, or substituted specimen. Failing to provide a specimen in a timely manner or otherwise tampering with the process is grounds for withdrawal of a pending job offer or employment termination.
- **Opportunity to Explain Positive Results:** Any applicant or employee who tests positive will have the opportunity to rebut or explain positive test results within three (3) business days of notice of the positive test result and/or to request and pay for a confirmatory re-test.

-
- **Confidentiality:** Test results and other medical information will be maintained as confidential and shared only on a “need-to-know” basis unless otherwise required by law. Test results may also be disclosed to a substance abuse treatment facility for the purpose of evaluating or treating the employee. An applicant or employee may request a copy of the test result report for any test he or she undergoes.
 - **Consequences of a Positive Test Result:** If an applicant tests positive, the applicant will not be hired. If an employee tests positive, he or she will be subject to disciplinary action, up to and including termination of employment. Within its discretion, the Company may decide to refer an employee for drug or alcohol treatment in lieu of termination and as a condition of continued employment. Within its discretion, the Company may suspend the employee while he or she participates in the treatment program. Employees must pay for the cost of any such treatment programs. Employees who refuse to participate in such programs or who fail to successfully complete a treatment program are subject to immediate termination.
 - **Follow-Up Testing:** An employee who is referred by the Company for drug or alcohol treatment or who is voluntarily participating in a drug or alcohol treatment program may be requested or required to undergo drug or alcohol testing without prior notice during the treatment period and for a period of time, determined by the Company, after the completion of the treatment. An employee who tests positive during this period will be subject to termination.

Investigations and Searches

When there is reasonable cause to suspect that an employee has violated this policy, the Company reserves the right to inspect, without prior notice, lockers, work areas, desks, cabinets, purses, bags, briefcases, other belongings, and vehicles brought on Company property or at locations where work-related activities are being conducted. Cause to suspect shall be solely in the judgment and discretion of the Company, which may release any illegal drugs, paraphernalia, or other evidence to law enforcement authorities.

Violations of This Policy

Any violation of this policy may lead to disciplinary action up to and including immediate termination of employment. Compliance with this policy is a condition of employment.

The Company reserves the right to interpret or change this policy with or without notice. Please also note that nothing in this policy is to be construed as a guarantee of employment for any period of time or a restriction of the Company's ability to discipline or terminate employees or its right to place employees on administrative leave. Employees may be terminated at any time, with or without cause or reason, as all employees of the Company are employed on an at-will basis.

APPLICANT'S ACKNOWLEDGMENT OF
DRUG AND ALCOHOL POLICY

I acknowledge that I have received a copy of the Company's Drug and Alcohol Policy and further acknowledge the following:

- I understand that it is my responsibility to read the policy and that I may address any questions about the policy to Human Resources.
- I understand that I may be required as part of my application for employment to submit to pre-employment drug testing.
- I further understand that if I test positive or refuse to undergo a test upon request by the Company or if I tamper or attempt to tamper with the test or results in any way, I will not be hired by the Company; and, if I have been hired, I may be terminated.
- I also understand that if I am hired and if I violate any of the provisions of the Company's Drug and Alcohol Policy and/or if the results of the alcohol and/or drug testing indicate that I may have violated the Company's Drug and Alcohol Policy, I will be subject to disciplinary action, up to and including immediate termination of employment.

Applicant's Name (please print)

Applicant's Signature

Date

Print Form

PRE-PLACEMENT DRUG TESTING POLICY

NOTICE TO CANDIDATES FOR EMPLOYMENT WITH THE COMPANY

_____ strives to hire only the highest quality, most appropriately qualified, individuals to fill positions in our Company. As part of our hiring process, applicants are required to undergo drug screening that is conducted by a medical facility designated by _____. Any offer of employment that an applicant receives from _____ is contingent upon, among other things, satisfactory completion of this screening.

After you have carefully read the following statement, please sign and date the notice and consent form to acknowledge your understanding of our process.

**PRE-EMPLOYMENT DRUG TESTING POLICY NOTICE
AND CONSENT FORM**

By signing this form, I hereby consent to the drug test required by _____. I understand that if I am hired by _____, I may be subjected to further drug testing in accordance with Company policy. I understand that if I test positive for the presence of a controlled substance, my conditional employment offer will be withdrawn, and I may not apply for employment with _____ for at least _____ months from the date of the withdrawal of the conditional offer of employment.

The drug test will be conducted after I sign this notice and consent form. If I refuse to submit to the test or do anything to tamper with or dilute the test results, the Company will withdraw my conditional offer of employment.

Date

Applicant's Signature

Applicant's Printed Name

Print Form

Pre-Placement Physical and/or Capacity Examinations

STEP-BY-STEP APPROACH TO IMPLEMENTING PRE-PLACEMENT PHYSICAL AND PRE-PLACEMENT PHYSICAL CAPACITY EXAMINATIONS

This section provides the employer with a comprehensive, step-by-step process for implementing a pre-placement physical program. Additionally, this section provides the employer with sample policies and procedures, along with an article written by legal counsel, which indicates the employer's legal responsibilities when implementing this program. Finally, this section allows the employer to select sample job specifications (NHADA can assist in the development of these), which they presently may not have, but need, to assist in the evaluation of candidates during the physical.

Step One: Familiarize yourself with an employer's state-specific legal obligations when requiring pre-employment physical examinations for job applicants.

Step Two: Familiarize yourself with the eligibility requirements for reimbursement from the Second Injury Fund. (*See Section 7, "Second Injury Fund"*)

Step Three: Implement a policy and require applicants to sign an authorization form for the pre-employment physical examination (*Attachment P*).

Step Four: Arrange for the applicant to have a physical examination with a designated physician. Physical capacity exams may be required for certain positions within the company. Be sure to provide the physician with a copy of the written job specifications for the position for which the applicant has applied. NHADA can assist you with drafting job specifications and provide you with samples (*Attachment Q – "Job Specification Checklist"*).

Step Five: Sign an "Employer's Affidavit of Employee's Pre-Existing Permanent Impairment" form (*Attachment R*) for the purposes of the Second Injury Fund, stating that you have knowledge of the employee's pre-existing physical or mental condition (if the physician determines that a pre-existing injury or impairment exists).

Step Six: Keep all medical records confidential and separate from the individual's personnel file.

This information was compiled with assistance from the attorneys in the Labor and Employment Practice Group at Devine, Millimet & Branch, P.A. The information is not designed to be, and should not be, construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for informational purposes only. Anyone needing specific legal advice should contact an attorney.

If you need legal advice or assistance, you may contact NHADA at 800-852-3372 or the attorneys at Devine Millimet & Branch, P.A. through NHADA's Employment Law Hotline at 603-695-8582.

NHADA members with dealerships in states other than New Hampshire should be aware that other states may have different and/or additional legal requirements concerning pre-employment physical examinations and/or drug testing. In addition, members should be aware that the U.S. Department of Transportation has rules that apply to commercial drivers and that these materials have not been designed to meet those requirements.

**PRE-PLACEMENT MEDICAL AND PHYSICAL CAPACITY
EXAMINATIONS FOR JOB APPLICANTS**

*Labor & Employment Practice Group
Devine, Millimet & Branch, P.A.*

Introduction

Have you reviewed your company’s employment application lately? Do you ask about an applicant’s medical history? Do you require medical examinations or drug testing prior to making a job offer? While employers are free to establish job criteria to ensure that applicants can adequately perform the functions of a particular job, these requirements must comply with state and federal laws regulating the workplace.

The ADA

The Americans with Disabilities Act of 1990 (ADA) prohibits employers with fifteen (15) or more employees from discriminating against qualified individuals with physical or mental disabilities. Employers are prohibited from discriminating in hiring, promoting, training, and other terms and conditions of employment against any applicant or employee who is capable of performing the essential functions of his or her job with or without reasonable accommodation. Among other things, the ADA (*See Section 10, “Appendix” – “ADA Article” – pages 10-7 through 10-20*) generally prohibits an employer from asking disability-related questions on employment applications or during interviews or requiring medical examinations that may reveal an applicant’s disabilities unless the applicant has received a conditional job offer. Waiting until a conditional offer has been extended will help protect the employer from potential charges of discrimination on the basis of disability because the employer must first evaluate an applicant based on non-medical qualifications for the position.

After an applicant receives a conditional job offer, the employer may ask disability-related questions and/or require a physical examination as long as this requirement applies to all applicants for a particular position and as long as any job offer conditions related to medical questions/exams are addressed only after any other conditions have been satisfied. If an applicant with a conditional job offer is subsequently denied employment and the applicant files a charge of discrimination, the employer’s decision will be closely examined by an investigator to determine whether the applicant was rejected based on the information regarding a disability or medical condition. If so, the employer bears the burden of showing that the reason for revoking the job offer was job related and consistent with business necessity.
(See 42 U.S.C. 12112(d)(2).)

Medical Examinations

The ADA defines a medical examination as a procedure or test that seeks information about an individual’s physical or mental impairments or health. The Equal Employment Opportunity Commission (EEOC) has determined that physical agility and physical fitness tests are not medical examinations if a test demonstrates the ability of an applicant to perform actual job tasks. However, if the employer measures an applicant’s physiological or biological responses to a physical test, the test becomes a medical examination.

Similarly, psychological tests are prohibited at the pre-offer stage if they produce evidence that would lead to identification of a mental disorder or impairment. However, the courts have permitted employers

to administer personality tests, which measure such traits as honesty, organizational and management skills, and ability to get along with others. As the ADA specifically provides that tests to determine the current illegal use of controlled substances are not considered medical examinations, employers may test for use of illegal drugs at any stage in the application process. Employers may not test for the use of alcohol at the pre-offer stage because the test is considered a medical examination and does not have a statutory exemption under the ADA. All medical information must be kept confidential but may be shared with appropriate decision-makers involved in the hiring process.

The Post-Offer Stage

The ADA permits an employer to ask disability-related questions and perform medical examinations after the applicant has received a conditional job offer. The job offer must be real, which means the offer must be sincere and intended to fill current vacancies or reasonably anticipated openings. The offer may be conditioned on the results of a medical examination or answers to inquiries regarding the applicant’s Workers’ Compensation history, prior sick leave usage, medical history, and general physical and mental health.

Follow-up examinations or questions may be necessary and are permitted under the ADA if the follow-ups are medically related to the information obtained previously.

Once an applicant accepts a job offer and becomes an employee, the employer may ask disability-related questions or require a medical examination only if the inquiry or examination is job related and consistent with business necessity. The EEOC has stated that an employee may be subjected to medical inquiries if the employer has a reasonable belief, based on objective evidence, that: (1) an employee’s ability to perform essential functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition. (*See Section 10, “Appendix” – “ADA Article” – pages 10-7 through 10-20*). If the employer focuses on an employee’s ability to perform the functions of his or her job, the inquiries are more likely to be job related and consistent with business necessity.

Conclusion

By requiring employers to evaluate an applicant on the basis of non-medical qualifications, the ADA seeks to protect individuals with disabilities from discrimination in the employment application process. Recognizing that medical inquiries and examinations may provide important information regarding an applicant’s ability to perform the essential functions of a job, Congress established a process that allows employers to obtain this valuable information while protecting the rights of applicants with disabilities. Although not prohibited by the ADA, pre-employment drug screening presents a broad range of legal challenges for employers.

The information contained in this article is a summary of a comprehensive document entitled ADA Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations (10/10/95). A copy of this article appears in Section 10, “Appendix” – “ADA Article” – pages 10-7 through 10-20.

PRE-PLACEMENT PHYSICAL EXAM POLICY

NOTICE TO CANDIDATES FOR EMPLOYMENT WITH THE COMPANY

It is the policy of [redacted] to hire only the highest quality, most appropriately qualified, individuals to fill positions in our Company. As part of [redacted]'s employment procedures, an applicant is required to undergo a pre-employment medical examination that will be conducted by a physician designated by [redacted]. Any offer of employment that an applicant receives from [redacted] is contingent upon, among other things, satisfactory completion of this examination and a determination by [redacted] and its examining physicians that the applicant is capable of performing the essential functions of the position that has been offered, with or without reasonable accommodation.

After you have carefully read the following statement, please sign and date the notice and consent form to acknowledge your understanding of our process.

**PRE-PLACEMENT PHYSICAL EXAM
POLICY NOTICE AND CONSENT FORM**

By signing this form, I, [redacted], hereby consent to the physical examination by [redacted]. In connection with my physical examination, I understand that I may be required to provide [redacted] with access to my medical records if requested. In addition, I understand that [redacted] will receive a full medical report from its examining physicians regarding my state of health.

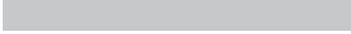
The physical exam will be conducted after I sign this notice and consent form. If I refuse to submit to the exam, the Company will withdraw my conditional offer of employment.

Date

Applicant's Signature

Applicant's Printed Name

Print Form


JOB SPECIFICATION CHECKLIST

**Please check the positions applicable to your facility(ies).*

- Assistant Parts Manager**
- Cashier Operator**
- General Manager**
- Lot Attendant**
- Assistant General Manager**
- Parts Associate**
- Parts Driver**
- Parts Manager**
- Parts Specialist**
- Sales Administrative Associate A**
- Sales Administrative Associate B**
- Sales Administrative Manager**
- Sales Associate**
- Sales Manager**
- Service Manager**
- Service Associate**
- Assistant Service Manager**
- Service Reconditioning Technician A**
- Service Reconditioning Technician B**

JOB SPECIFICATION CHECKLIST

**Please check the positions applicable to your facility(ies).*

- Service Specialist**
- Service Technician A**
- Service Technician B**
- Service Technician C**
- Service Technician D**
- Service Apprentice**
- Service Technician Team Leader**
- Shuttle Driver**
- Vehicle Cleaner**
- Warranty Specialist**
- Painter Team Leader**
- Collision Center (Body Shop) Advisor**
- Painter**
- Collision Technician**
- Collision Center Reconditioner**
- Collision Technician Apprentice**
- Painter Apprentice**
- Production Manager**
- Call Center Associate A**

JOB SPECIFICATION CHECKLIST

**Please check the positions applicable to your facility(ies).*

- Call Center Associate B**
- Call Center Manager**
- Account Clerk**
- Accountant**
- Central Accounting Manager**
- Controller**
- Mail Clerk**
- Central Finance Administrator**
- Central Finance Associate A**
- Central Finance Associate B**
- Central Finance Data Entry Associate**
- Central Finance Manager**
- Executive Secretary**
- Swap Driver**
- Human Resources Associate**
- Human Resources Manager**
- Payroll and Benefits Associate**
- Information Technology Associate**
- Information Technology Manager**

JOB SPECIFICATION CHECKLIST

**Please check the positions applicable to your facility(ies).*

___ **Central Reconditioning Manager**

___ **Central Reconditioning Service Porter**

___ **Central Reconditioning Service Reconditioning Technician A**

___ **Central Reconditioning Service Reconditioning Technician B**

___ **Central Reconditioning Service Specialist**

Print Form

SECOND INJURY FUND FORM
EMPLOYER'S AFFIDAVIT OF EMPLOYEE'S PRE-EXISTING
PERMANENT IMPAIRMENT

I have knowledge that [redacted] has the following pre-existing permanent impairment: [redacted]

Signature

Date

Printed Name/Title

*It is very important that the affidavit include the date. The Department of Labor regulations require the affidavit to be executed at the time of hire or retention and the affidavit, therefore, cannot be executed at a later date; i.e., following the employee's work-related injury or impairment.

[Notary Stamp]

NOTARY SIGNATURE: _____

Print Form

SECOND INJURY FUND INTRODUCTION

New Hampshire law, RSA 281-A:54, provides reimbursement to self-insured employers and insurance companies who pay Workers' Compensation benefits to an employee who has a permanent physical or mental impairment from any cause or origin and incurs a subsequent disability from an injury arising out of and in the course of employment. Reimbursement will be provided where the compensation amount for the disability is greater than would otherwise be the case due to the combined effects of the pre-existing impairment.

The New Hampshire Department of Labor will reimburse an employer or insurance company for all compensation payments made after the first 104 weeks of the disability. In addition, prior to the first 104 weeks of the disability, the employer will be reimbursed at 50 percent after the first \$10,000 is paid on all compensation for temporary total, temporary partial, permanent partial, permanent total, medical, or rehabilitation benefits.

The New Hampshire Department of Labor regulations require self-insured employers and insurance companies to give written notice to the Department of a possible claim against the Second Injury Fund (*Attachment S*) no later than 100 weeks after the date of injury. (*Lab 506.04*) In order to qualify for reimbursement under the Second Injury Fund, proof of eligibility must be submitted. Proof of eligibility must include:

1. Medical evidence of a pre-existing permanent impairment and subsequent disability;
2. A medical evaluation which indicates that the disability is greater due to the combined effects of the pre-existing impairment and the work-related injury than would have been caused by the subsequent injury alone;
3. Notarized true copies of the written record of knowledge by the employer of the employee's permanent impairment as a condition of hire or continued employment; or
4. As an alternative to (3) above, an affidavit that the employer had knowledge of the employee's permanent physical or mental impairment, which was executed by the employer at the time of hire or retention, may be used as a written record of the pre-existing impairment.

By requiring applicants with conditional offers of employment to submit to medical examination, employers ensure that they have documentation of an employee's pre-existing permanent impairment. When submitting proof of eligibility to the Second Injury Fund, employers may rely on the physician's documented report as well as an affidavit (*Attachment R of Section 6*) that should be completed by the Human Resources Department following an applicant's physical examination, which reveals a pre-existing permanent impairment.

SECOND INJURY FUND POST CONDITIONAL EMPLOYMENT OFFER MEDICAL FORM

Employer: _____ **Address:** _____

Applicant: _____ **Position:** _____

Date of Conditional Offer of Employment: _____

We require the following information in order to satisfy our obligations under the New Hampshire Workers' Compensation Law, RSA 281-A. In order to apply for reimbursement from the Second Injury Fund in the event that you may suffer a work-related injury while employed with us, we must have written documentation of any physical or mental impairment which you may have or have previously suffered. This documentation and any related information that you provide in connection with this inquiry will be maintained confidentially and separately from your employee personnel file.

This document and any related information that you provide in connection with this inquiry will only be used as permitted under the *Americans With Disabilities Act* and *New Hampshire Workers' Compensation Law*.

Please identify any prior or current physical or mental impairments, from any cause or origin, to include all non work-related conditions and any and all injuries which you may have received workers' compensation for in the past. An example of such conditions include: High Blood Pressure, Diabetes, Respiratory or Cardiovascular Concerns (and any medication you may be on for the same), Motor Vehicle Accidents, Prior Back Injuries, any Surgical Procedures.

Nature of Condition or Injury	Date of Injury/Date of Onset	Physician Name/Address	List permanent restrictions or limitations caused by this condition/injury

I certify that the information contained herein is complete and correct to the best of my knowledge. I understand that falsification of this information is grounds for disciplinary action up to and including termination from employment. If I am hired and any such information is later found to be incomplete, false or misleading in any respect, I may be discharged.

I have read and fully understand the above Notice Section.

Signature: _____ **Date:** _____

Witness: _____

Frequently Asked Questions (FAQs)

NHDOL FAQs

Note: The following information was downloaded from the NHDOL Web site on January 24, 2006. Members should be mindful that there are federal law requirements in addition to these state requirements. (See USDOL FAQs of this section – pages 8-6 through 8-12.)

Question: Do youths under the age of 18 need to have a NH Youth Employment Certificate?

Answer: Under the age of 16, they would have to have a New Hampshire Youth Employment Certificate. A 16- or 17-year-old would have to have written permissions from a parent or legal guardian giving the youth permission to work. You can find this under [RSA 276-A:4 II](#) and [RSA 276-A:4 VIII](#).

Question: Is a student that is home schooled considered duly enrolled in school, and do the school hours apply?

Answer: Yes, per New Hampshire Administrative Rules [Chapter LAB 1001.03 Duly Enrolled in School](#).

Question: If a person is 18 and still in high school, is the person considered to be a youth?

Answer: No, the term youth means any person under 18 years of age. [RSA 276-A:3 II](#)

Question: What are the hours that a youth can work during school time and on vacation?

Answer: It depends on the age of the youth as to the hours the youth can work and when the youth is working. You can find the hours a youth can work under [RSA 276-A:4 IV-Vii](#), [RSA 276-A:11](#), [RSA 276-A:13](#), [Chapter LAB 1002.03 Hours Limitations](#).

Question: How do youths get a NH Youth Employment Certificate?

Answer: First, the youth finds a job. The employer should then give the youth what is called an employer's request for child labor form completed. The youth then would bring that to their local school or superintendent's office and they will issue the certificate [RSA 276-A:5](#), which is brought back to the employer.

Question: When calculating the hours per week that a minor can work, is the workweek the employer's workweek?

Answer: No, the workweek shall be Sunday through Saturday. [RSA 276-A:4 VI](#)

Question: What does casual work mean?

Answer: Casual work shall mean employment of a brief duration of no more than 3 calendar days for any one employer. [RSA 276-A:VII](#) and New Hampshire Administrative Rules [Chapter LAB 1001.02 Brief Duration](#)

Question: If a 16- or 17-year-old youth is not enrolled in school, how many hours can the youth work per day or week?

Answer: Not more than 10 hours a day or 48 hours a week at manual or mechanical labor in a

manufacturing establishment. Not more than 10 ¼ hours a day or 54 hours a week at manual or mechanical labor in any other employment that is not exempt by statute. Not more than 8 hours in 24 or 48 hours during the week if working night work. [RSA 276-A:11](#) and [RSA 276-A:13](#).

Question: What is the minimum wage?

Answer: On 7/24/08 the federal minimum wage will increase to \$6.55/hour. The NH minimum wage will increase on 9/1/08 to \$7.25/hour.

Question: When must overtime be paid?

Answer: Unless exempt by the Fair Labor Standards Act, overtime is paid to hourly employees at the rate of time and one half of the employee’s regular rate of pay for all hours actually worked over 40 in any one week. [FLSA RSA 279:21 VIII](#)

Question: Is there a law concerning a lunch period?

Answer: An employer cannot require that an employee work more than five consecutive hours without granting a 30-minute lunch or eating period. If the employer cannot allow 30 minutes, the employee must be paid if the employee is eating and working at the same time. [RSA 275:30-A](#)

Question: Can an employee be fired without being given a reason or a notice?

Answer: In New Hampshire an employer can fire without giving a reason or a notice.

Question: What does an employee do to claim unpaid wages?

Answer: Contact the Department of Labor for assistance. If necessary, file a wage claim form. [RSA 275:51 V](#)

Question: What is the main difference between paying on salary vs. by the hour?

Answer: An hourly employee is paid for all time worked including overtime, if applicable. A salaried employee receives a fixed amount of money constituting compensation regardless of the quantity or quality of the work performed or of the number of days and hours which the work is performed. [RSA 275:43](#) and [RSA 275:43-b](#)

Question: What is the minimum number of hours per day an employee must be paid when reporting to work?

Answer: An employee who reports to work at the employer’s request must be paid for a minimum of two hours, unless the employer can contact the employee prior to the employee arriving to work. [RSA 275:43-a](#)

Question: When are wages due upon separation from employment?

Answer: If an employee quits or resigns, the wages are due by the next regular payday. If fired, the wages are due within 72 hours from the time of the termination. [RSA 275:44](#)

Question: Is an employer required to provide a payroll deduction stub?

Answer: An employer is required to provide the employee with a written statement of all deductions, which may include taxes, insurance premiums, contributions to charities, legitimate loans, and any other deductions made from gross wages. [RSA 275:49 IV](#)

Question: When is it legal to make deductions or withhold from wages?

Answer: An employer may only make deductions from wages when empowered or required by state or federal law, such as for taxes, or for a purpose which is accruing to the employee’s benefit with prior written authorization, such as an insurance premium or contributions to the employee’s charity. [RSA 275:48](#)

Question: When is the NH Youth Employment Certificate, also known as “Working Papers,” required?

Answer: The Youth Employment Certificate is required for any youth 12 to 15 years old and must be on file at the employer’s place of business within three business days of the first day of employment. Employers are required to have on file at the workplace, at the time employment begins, written permission by the parent or guardian of a 16- or 17-year-old permitting the youth’s employment. [RSA 276-A:4](#)

Question: If requested by a present or former employee, is the employer required to provide the employee with access to the employee’s personnel file?

Answer: Yes, an employee, whether past or current, must be given access to review or be given a copy of, if requested, the employee’s own personnel file, whether maintained in one or more locations. [RSA 275:56](#)

Question: Upon hiring an employee, is it necessary to put the employee’s rate of pay or any fringe benefits in writing?

Answer: Yes, employers must provide, in writing, an employee’s rate of pay at the time of hire. An employer must also furnish all policies pertaining to any fringe benefits in writing. [RSA 275:49](#)

Question: If an employer furnishes uniforms with the company logo, can the employee be charged for the cost, and, if the employee quits without returning the uniform, can the employer deduct the cost from the employee’s final wages?

Answer: Any garment with a logo or having a distinctive design must be provided at no cost to the employee. If not returned, the employer cannot make a deduction from the final wages of the employee. [RSA 275:48](#)

Question: Whose responsibility is it to keep records of hours worked and wages paid?

Answer: The employer must keep a true and accurate record of all hours worked and all wages paid each employee. These records must be kept for a minimum of at least four years. [RSA 279:27](#)

Question: Who are public employers in the State of New Hampshire?

Answer: Employer means the state or any of its political subdivisions operating a place of employment. RSA 277:1-b (II)

Question: Does an employer have to keep the workplace in good condition?

Answer: Yes, per New Hampshire Administrative Rules Chapter LAB 1403.01.

Question: Some of the machines where I work are old and dangerous. My boss says to be quiet and use them anyway. Is this illegal?

Answer: Yes, per New Hampshire Administrative Rules Chapter LAB 1403.01(d).

Question: What are the telephone numbers to contact the Department of Labor?

Answer: You can reach the Department of Labor by calling (603) 271-3176, 271-3177 or 271-3178. Our toll-free number for New Hampshire only is 1-800-272-4353.

Question: What are the fax numbers for the Department of Labor?

Answer: The fax number for the Workers’ Compensation Division is (603) 271-6149. The fax number for the Inspection Division is (603) 271-2668.

Question: What are the office hours for the Department of Labor?

Answer: The Department of Labor’s office hours are Monday through Friday from 8:00 a.m. to 4:30 p.m.

Question: Who do I contact if I have questions regarding federal labor regulations, ADA, FMLA & OSHA, COBRA, human rights, or unemployment?

U.S. Department of Labor	(603) 666-7716
ADA	(603) 271-2773
FMLA	(603) 666-7716
OSHA 200	(603) 225-1629
COBRA	(603) 271-2261
Human Rights	(603) 271-2767
Unemployment	(603) 224-3311

Question: Are leasing companies required to be bonded?

Answer: Yes, this is part of the licensing requirements.

Question: Does the leasing company provide Workers’ Compensation coverage?

Answer: Yes, under their name unless the leasing company is insured in the assigned risk market. In this instance, each client will have a policy in their name.

Question: Do clients retain authority to hire and fire employees?

Answer: Yes, the client becomes the on-site supervisor for employee leasing company.

Question: What is the definition of employee leasing company?

Answer: A company who assumes human resource functions on behalf of a client employer. The client and its employees become employees of the employee leasing company on a contractual basis.

Question: Do I have to send a copy of our safety program to the Labor Department?

Answer: No, the only item that employers must send to the Department is the Safety Summary Form.

Question: Do I have to send this form in every year?

Answer: No, the law was changed to allow employers to file this form every other year (biennially) on or before January 1.

Question: What do I do if I am a seasonal business and I do not know who will be on the committee until I hire them in the summer?

Answer: File the form by the required date and note that the names of the committee members will be sent in after they are hired.

Question: How do I get a copy of the Safety Summary Form?

Answer: Either call and request a form from the Department of Labor or download the Safety Summary Form from our Web site.

Question: Do I count part-time employees as part of my total?

Answer: Yes, all employees, including part-time and seasonal, are to be counted as part of your company’s total workforce.

USDOL FAQs

Note: The following information was downloaded from the US Department of Labor Web site on January 24, 2006. Members should be mindful that there are state law requirements in addition to these federal laws. (See NHDOL FAQs of this section – pages 8-1 through 8-5.)

People with Disabilities

ADA

Question: What is the Americans with Disabilities Act (ADA)?

Answer: The Americans with Disabilities Act (ADA) is the disability-related law with which many Americans are most familiar. One part of the ADA, Title I, prohibits private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, job assignments, pay, benefits, job training, and other employment practices. This part of the law also requires that employers and other specified persons and organizations provide reasonable accommodation for a known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operations of the employer’s business. Other parts of the ADA apply to state and local government services and employment, public accommodations, transportation, and telecommunications. The Equal Employment Opportunity Commission (EEOC) has primary responsibility for enforcing the employment-related portions of the ADA, although other Federal agencies, such as DOL’s Office of Federal Contract Compliance Programs (OFCCP), also have responsibilities under those portions of the law.

People with Disabilities

LAWS & REGULATIONS

Question: What are my obligations as an employer under Title I of the Americans with Disabilities Act, and where can I get technical assistance?

Answer: Employers with fifteen or more employees are prohibited under the Americans with Disabilities Act (ADA) from discriminating against qualified applicants or employees with disabilities. Information about employer obligations under the ADA can be obtained from the U.S. Equal Employment Opportunity Commission at 1-800-669-4000 (voice), or 1-800-669-6820 (TTY). Information can also be obtained from the federally sponsored Disability and Business Technical Assistance Center in your area at 1-800-949-4232.

Employers should also determine obligations they may have under state law.

Health Plans & Benefits

COBRA CONTINUATION HEALTH COVERAGE

Question: Who is entitled to benefits under COBRA?

Answer: There are three elements to qualifying for COBRA benefits. COBRA establishes specific criteria for plans, qualified beneficiaries, and qualifying events:

Plan Coverage

Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full- and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

Qualified Beneficiaries

A qualified beneficiary generally is an individual covered by a group health plan on the day before a qualifying event who is either an employee, the employee’s spouse, or an employee’s dependent child. In certain cases, a retired employee, the retired employee’s spouse, and the retired employee’s dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

Qualifying Events

“Qualifying events” are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA. A plan, at its discretion, may provide longer periods of continuation coverage.

- Qualifying Events for Employees
 - Voluntary or involuntary termination of employment for reasons other than gross misconduct
 - Reduction in the number of hours of employment
- Qualifying Events for Spouses
 - Voluntary or involuntary termination of the covered employee’s employment for any reason other than gross misconduct
 - Reduction in the hours worked by the covered employee
 - Covered employee’s becoming entitled to Medicare
 - Divorce or legal separation of the covered employee
 - Death of the covered employee
- Qualifying Events for Dependent Children (same as for spouses with one addition)
 - Loss of dependent child status under the plan rules

Health Plans & Benefits

COBRA CONTINUATION HEALTH COVERAGE

Question: Who pays for COBRA coverage?

Answer: Beneficiaries may be required to pay for COBRA coverage. The premium cannot exceed 102 percent of the cost to the plan for similarly situated individuals who have not incurred a qualifying event, including both the portion paid by employees and any portion paid by the employer before the qualifying event, plus 2 percent for administrative costs.

For qualified beneficiaries receiving the 11-month disability extension of coverage, the premium for those additional months may be increased to 150 percent of the plan’s total cost of coverage.

COBRA premiums may be increased if the costs to the plan increase but generally must be fixed in advance of each 12-month premium cycle. The plan must allow qualified beneficiaries to pay premiums on a monthly basis if they ask to do so, and the plan may allow them to make payments at other intervals (weekly or quarterly).

The initial premium payment must be made within 45 days after the date of the COBRA election by the qualified beneficiary. Payment generally must cover the period of coverage from the date of COBRA election retroactive to the date of the loss of coverage due to the qualifying event. Premiums for successive periods of coverage are due on the date stated in the plan with a minimum 30-day grace period for payments. Payment is considered to be made on the date it is sent to the plan.

If premiums are not paid by the first day of the period of coverage, the plan has the option to cancel coverage until payment is received and then reinstate coverage retroactively to the beginning of the period of coverage.

If the amount of the payment made to the plan is made in error but is not significantly less than the amount due, the plan is required to notify the qualified beneficiary of the deficiency and grant a reasonable period (for this purpose, 30 days is considered reasonable) to pay the difference. The plan is not obligated to send monthly premium notices.

COBRA beneficiaries remain subject to the rules of the plan and, therefore, must satisfy all costs related to co-payments and deductibles, and are subject to catastrophic and other benefit limits.

Health Plans & Benefits

HEALTH COVERAGE PORTABILITY (HIPAA)

Question: What is the Health Insurance Portability and Accountability Act of 1996 (HIPAA)?

Answer: HIPAA amended the Employee Retirement Income Security Act (ERISA) to provide new rights and protections for participants and beneficiaries in group health plans. Understanding this amendment is important to your decisions about future health coverage. HIPAA contains protections both for health coverage offered in connection with employment (“group health plans”) and for individual insurance policies sold by insurance companies (“individual policies”).

If you find a new job that offers health coverage or if you are eligible for coverage under a family member’s employment-based plan, HIPAA includes protections for coverage under group health plans that:

- Limit exclusions for pre-existing conditions
- Prohibit discrimination against employees and dependents based on their health status
- Allow a special opportunity to enroll in a new plan to individuals in certain circumstances

If you choose to apply for an individual policy for yourself or your family, HIPAA includes protections for individual policies that:

- Guarantee access to individual policies for people who qualify
- Guarantee renewability of individual policies

Veterans

LEAVE

Question: Must employers grant leave to employees called up by the National Guard or Reserve?

Answer: Yes, an employee must be granted a leave of absence to perform military service.

Question: What is the Uniformed Services Employment and Reemployment Rights Act?

Answer: The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) was signed into law on October 13, 1994. USERRA clarifies and strengthens the Veterans’ Reemployment Rights (VRR) statute. The Act itself can be found in the United States Code at Chapter 43, Part III, Title 38.

USERRA is intended to minimize the disadvantages to an individual that occur when that person needs to be absent from his or her civilian employment to serve in this country’s uniformed services. USERRA makes major improvements in protecting servicemember rights and benefits by clarifying the law and improving enforcement mechanisms. It also provides employees with Department of Labor assistance in processing claims. Specifically, USERRA expands the cumulative length of time that an individual may be absent from work for uniformed services duty and retain reemployment rights.

EMPLOYMENT RIGHTS/USERRA

Question: Does the Uniformed Services Employment and Reemployment Rights Act (USERRA) require that an employee receive pension credit while absent to perform military service?

Answer: USERRA applies to a wide range of pension plans, including defined benefit and defined contribution plans. Upon reemployment following qualifying military service, an employee must be treated for vesting and benefit accrual purposes as if he or she had been continuously employed. If benefits are tied to employee contributions, the employee must be allowed a specified period of time to make up contributions missed during the period of military service.

EMPLOYMENT RIGHTS/USERRA

Question: What are the basic reemployment rights when an employee returns following military service?

Answer: The employer must promptly reemploy the service member. “Promptly” means within days, not months. Generally, the reemployment position should be the one the person would have attained had

he or she remained continuously employed during the period of military service.

EMPLOYMENT RIGHTS/USERRA

Question: Does the Uniformed Services Employment and Reemployment Rights Act (USERRA) apply to part-time employees?

Answer: Yes, both part-time and probationary employees are covered by USERRA.

Wages & Work Hours

WORK HOURS

Question: When is overtime due?

Answer: For covered, nonexempt employees, the Fair Labor Standards Act (FLSA) requires overtime pay at a rate of not less than one and one-half times an employee’s regular rate of pay after 40 hours of work in a workweek. Some exceptions to the 40 hours per week standard apply under special circumstances to police officers and firefighters employed by public agencies and to employees of hospitals and nursing homes.

Some states also have enacted overtime laws. Where an employee is subject to both the state and federal overtime laws, the employee is entitled to overtime according to the higher standard (i.e., the standard that will provide the higher rate of pay).

QUESTIONS AND ANSWERS ABOUT THE MINIMUM WAGE

Question: What is the federal minimum wage?

Answer: The federal minimum wage for covered nonexempt employees will increase on 7/24/08 to \$6.55/hour and will increase again on 7/24/09 to \$7.25/hour. The federal minimum wage provisions are contained in the Fair Labor Standards Act (FLSA). Many states also have minimum wage laws. Where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.

Various minimum wage exceptions apply under specific circumstances to workers with disabilities, full-time students, youth under age 20 in their first 90 consecutive calendar days of employment, tipped employees, and student-learners.

Question: What is the minimum wage for workers who receive tips?

Answer: An employer of a tipped employee is only required to pay \$2.13 an hour in direct wages if that amount plus the tips received equals at least the federal minimum wage; the employee retains all tips and the employee customarily and regularly receives more than \$30.00 a month in tips. If an employee’s tips combined with the employer’s direct wages of at least \$2.13 an hour do not equal the federal minimum hourly wage, the employer must make up the difference.

Some states have minimum wage laws specific to tipped employees. When an employee is subject to both the federal and state wage laws, the employee is entitled to the provisions of each law which provide the greater benefits.

Question: Must young workers be paid the minimum wage?

Answer: A minimum wage of \$4.25 per hour applies to young workers under the age of 20 during their first 90 consecutive calendar days of employment with an employer, as long as their work does not displace other workers. After 90 consecutive days of employment or the employee reaches 20 years of age, whichever comes first, the employee must receive a minimum wage of \$5.15 per hour.

Other programs that allow for payment of less than the full federal minimum wage apply to workers with disabilities, full-time students, and student-learners employed pursuant to sub-minimum wage certificates. These programs are not limited to the employment of young workers.

Question: What minimum wage exceptions apply to full-time students?

Answer: The Full-time Student Program is for full-time students employed in retail or service stores, agriculture, or colleges and universities. The employer that hires students can obtain a certificate from the Department of Labor which allows the student to be paid not less than 85 percent of the minimum wage. The certificate also limits the hours that the student may work to 8 hours in a day and no more than 20 hours a week when school is in session and 40 hours when school is out, and requires the employer to follow all child labor laws. Once students graduate or leave school for good, they must be paid the full federal minimum wage, or the state minimum wage if it is higher.

There are some limitations on the use of the Full-time Student Program. For information on the limitations or to obtain a certificate, contact the Department of Labor Wage and Hour Southwest Region Office at 525 S. Griffin Square, Suite 800, Dallas, TX, 75202, telephone: (972) 850-2603.

Question: What minimum wage exceptions apply to student-learners?

Answer: This program is for high school students at least 16 years old who are enrolled in vocational education (shop courses). The employer that hires the student can obtain a certificate from the Department of Labor which allows the student to be paid not less than 75 percent of the minimum wage, for as long as the student is enrolled in the vocational education program.

WORK HOURS

Question: When must breaks and meal periods be given?

Answer: The Fair Labor Standards Act (FLSA) does not require breaks or meal periods be given to workers. Some states may have requirements for breaks or meal periods. If you work in a state which does not require breaks or meal periods, these benefits are a matter of agreement between the employer and the employee (or the employee’s representative).

LEAVE

Question: What is the Family and Medical Leave Act?

Answer: The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 workweeks of unpaid, job-protected leave a year, and requires group health benefits to be maintained

during the leave as if employees continued to work instead of taking leave.

BREAKS AND MEAL PERIODS

Question: What is the Fair Labor Standards Act?

Answer: The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than \$6.55 an hour, effective July 24, 2008, and not less than \$7.25 an hour, effective July 24, 2009. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

TERMINATION

Question: What notices must be given before an employee is terminated or laid off?

Answer: The Fair Labor Standards Act (FLSA) has no requirements for notice to an employee prior to termination or layoff. In certain cases, employers must give the workers advance notice of mass layoffs or plant closure. The Warn Act provides specific information on advance notice, employer responsibility, and workers rights during mass layoffs or plant closure.

Some states may have requirements for employee notification prior to termination or layoff.

WORK HOURS

Question: How many hours per day or per week can an employee work?

Answer: The Fair Labor Standards Act (FLSA) does not limit the number of hours per day or per week that employees aged 16 years and older can be required to work.

LEAVE

Question: How are vacation pay, sick pay, and holiday pay computed and when are they due?

Answer: The Fair Labor Standards Act (FLSA) does not require payment for time not worked, such as vacations, sick leave, or holidays (federal or otherwise). These benefits are a matter of agreement between an employer and an employee (or the employee’s representative).

OVERTIME

Question: When is overtime due?

Answer: For covered, nonexempt employees, the Fair Labor Standards Act (FLSA) requires overtime pay at a rate of not less than one and one-half times an employee’s regular rate of pay after 40 hours of work in a workweek. Some exceptions to the 40 hours per week standard apply under special circumstances to police officers and firefighters employed by public agencies and to employees of

hospitals and nursing homes.

Some states also have enacted overtime laws. Where an employee is subject to both the state and federal overtime laws, the employee is entitled to overtime according to the higher standard (i.e., the standard that will provide the higher rate of pay).

- Devine, Millimet & Branch, P.A. Legal Hotline
1-603-695-8582
- United States Department of Labor Web site
www.dol.gov
- New Hampshire Department of Labor Web site
www.labor.state.nh.us
- Equal Employment Opportunity Commission (EEOC)
www.eeoc.gov
- The Fair Credit Reporting Act
www.ftc.gov/os/statutes/fcra.htm

THE HIRING PROCESS IN NEW HAMPSHIRE

By: Devine, Millimet & Branch, P.A.
Labor Employment and Employee Benefits Practice Group

1. THE HIRING STAGE

The process of hiring generally includes the following steps: identifying the needs, establishing the necessary qualifications for the job, advertising or using an employment agency, interviewing, testing, and making the decision of whether to hire a particular applicant. Making informed, intelligent hiring decisions is the most effective way to secure the best employees and reduce employee lawsuits and claims.

A. Pre-Screening Applicants

Many employers utilize screening interviews to streamline the hiring process. The purpose of a screening interview is to obtain answers to questions left blank or incomplete either on the resume or application for employment. A good screening interview is an employer's chance to determine whether the applicant has the qualifications the position requires. This interview should be brief and should focus on an applicant's abilities, skills, experience, job history, professional affiliations and other factors which are essential to the job. It is also an opportunity to inform the applicant about the position so that he or she may assess his or her further interest. In essence, this initial interview should cover the basics about the applicant and the position and should address any obvious discrepancies or gaps on the applicant's resume or application.

B. Pre-Employment Inquiries

In order to avoid discrimination in hiring, employers should ask applicants only those questions directly related to the job and the applicant's qualifications and not related to age, sex, pregnancy, race, color, religion, national origin, ancestry, marital status, physical or mental disability, or sexual orientation. Although an inquiry regarding the above characteristics may not in itself be unlawful, it is unlawful to make an employment decision based on the applicant's response to the inquiry. Because it is generally assumed that all answers given by an applicant are considered in deciding whether to make an offer for employment, questions related to the above protected areas should be avoided. An inquiry may also be unlawful if it has the purpose or effect of discouraging members of a protected class from applying for employment. (*Refer to Section 3, "Interview"*)

1. The Americans With Disabilities Act

The Americans with Disabilities Act ("ADA") places some specific restrictions on an employer's pre-employment inquiries. The ADA breaks the hiring process into two phases – the pre-offer stage and the post-conditional-offer stage.¹ At the pre-offer stage, disability-related questions and medical examinations are prohibited. In fact, an employer is precluded from asking any questions that are *likely to elicit* information about a disability. The purpose of these prohibitions is to prevent discrimination against individuals with hidden disabilities.

Under the ADA, an employer may not ask about the existence, nature, or severity of a disability and may not conduct medical examinations until after a conditional job offer is made to the applicant. However, drug testing is not a "medical examination" under the law; and, therefore, pre-employment screening

¹ The Equal Employment Opportunity Commission "Enforcement Guidance: Pre-employment Disability-Related Inquiries and Medical Examinations" describes in detail permissible pre-employment inquiries under the ADA. This Guidance (*found on pages 10-7 through 10-21 of this section*) can also be found at <http://www.eeoc.gov/policy/docs/qanda-inquiries.html>, along with others related to permissible inquiries under the ADA and other topics regulated by the EEOC.

tests for illegal drug use are permitted under the ADA. The prohibition against medical history questions and physical examinations ensures that an applicant’s hidden disability is not considered prior to the assessment of an applicant’s non-medical qualifications. At the pre-offer stage, an employer may only ask about an applicant’s ability to perform specific job-related functions and other non-disability-related questions.

Employers should develop thorough job descriptions that identify the essential elements of the jobs in their organizations and use these job descriptions during interviews to keep the discussion focused on job-related functions and the applicant’s qualifications. By relying on the job description, both the interviewer and the applicant will be aware of what will be required of the applicant in the event he or she is offered the position. Employers should also review their application forms to ensure that medical histories or questions that may elicit information about a disability (i.e., “Have you ever suffered a Worker’s Compensation injury?”) are not requested.

2. The Impact of the Anti-Discrimination Laws on Pre-Employment Inquiries

Employers must give careful consideration to the questions used in an employment application or asked during the course of a job interview.

Generally, age is not relevant in hiring decisions; and, therefore, date-of-birth and other age-related questions, such as questions about plans for retirement, are improper. Age-related questions should also be avoided because the federal Age Discrimination in Employment Act (“ADEA”) prohibits discrimination in hiring and employment against individuals age 40 and older. New Hampshire law prohibits age discrimination against applicants and employees of all ages. Although age-related questions should be avoided, it is permissible to ask whether an applicant is 18 years of age or older for purposes of determining whether the employer must comply with youth employment requirements. If an applicant is under the age of 18, the employer may ask for the applicant’s specific age after extending a conditional offer of employment so the employer can comply with the youth employment laws. If the date of birth is necessary for internal employment/benefits purposes; i.e., computations with respect to a pension or profit-sharing plan, this information should be obtained only after the person has been hired.

Questions relating to race, religion, or national origin should not be asked either on employment applications or during job interviews. The requirement that an applicant furnish a picture has been used to support a claim for race discrimination when it was demonstrated that an employer never hired a minority applicant. The theory proffered was that the picture was required so that an employer would remember which applicants were members of minority groups. A sexual harassment plaintiff might similarly argue that the employer pre-screened applicants for physical attractiveness. Title VII of the Civil Rights Act of 1964 requires that employers make reasonable accommodations for their employees’ religious practices, thus eliminating the necessity for asking whether an applicant’s religious beliefs would prohibit his or her working at certain times and on certain days in most situations.

It is appropriate to inquire whether an applicant has worked for an employer under a different name and, if so, what name. An employer may also ask whether the applicant is known by a name other than that indicated on the application for employment. However, it is not proper to inquire into an original/maiden name when such an inquiry is for an unlawful purpose such as divulging marital status, lineage, ancestry, national origin, or descent.

Height and weight requirements have been found to violate the law in situations where such requirements have eliminated disproportionate numbers of women applicants and individuals of certain nationalities, when in such cases the employer could not show that the physical standards were directly related to job performance. Such inquiries are only proper when they are required as a bona fide occupational qualification. It should also be noted that some courts have determined that obesity can be a disability or perceived disability triggering the protection of the laws against discrimination on the basis of disability.

It is not appropriate to ask questions concerning marital status. It is equally inappropriate to ask questions which elicit responses relating to children, including ages of children, arrangements for care of minor children, or plans to have children. These questions have been deemed to affect women more frequently than men and, therefore, may be regarded as discriminatory.

The anti-discrimination provision of the Immigration Reform and Control Act provides that an employer cannot discriminate because an applicant is not a United States citizen. Therefore, in order to avoid charges of discrimination under this Act, citizenship questions should be avoided on employment applications or during interviews. It is, however, permissible to inquire whether an applicant is legally authorized to work in the United States, since aliens who are not permitted to work in the United States are not afforded protection from discrimination. Moreover, employers who knowingly hire aliens whose status does not permit employment may be subject to penalties.

Pre-employment questions concerning an applicant’s membership in clubs or organizations may constitute evidence of discrimination unless they are otherwise explained. Thus, if the information does not have some bearing on job requirements, any application and interview questions regarding these subjects should be avoided. Similarly, questions about political or union affiliation should also be eliminated from applications and interviews since they leave an employer vulnerable to unfair labor practice charges under the National Labor Relations Act.

C. Verification of Information on Applications or Resumes

Employers sometimes discover that applicants have made misrepresentations or exaggerations when completing employment applications or when preparing resumes. Employers should verify all information contained in applications or resumes with a particular emphasis on education and work history. Although time consuming, this effort is time well spent, and employers are encouraged to be thorough in their investigations. Applications and resumes should also be reviewed for completeness, and gaps in information should be investigated.

D. Reference and Background Checks

1. Reference Checks

During the application and interview process, an employer should obtain information from several references who are willing to discuss the applicant’s prior work history. The purpose of conducting a reference check is to gather additional information. However, questions that are unlawful to ask during an interview are likewise unlawful to ask during a reference check. Employers should ask specific questions which focus on the applicant’s prior work experience. Employers should be cautioned that legal sanctions in the form of negligent hiring or negligent retention suits may be successful if an effort to check past references is not made. *[Refer to Attachment D, page 2-D(1)]*

Where former employers are reluctant to discuss an applicant’s work history for fear of defamation lawsuits or the like, one solution is to obtain a “reference authorization, waiver, and hold harmless agreement” from the applicant. This waiver authorizes the disclosure of past employment information and releases both prospective and past employers from all claims and liabilities arising from the release of such information. Without this waiver form, some employers will divulge only limited information, generally covering the date of hire, job title, and date of separation. *(Refer to Attachment D, page 2-D)*

2. Employee Polygraph Protection Act of 1988

The Employee Polygraph Protection Act of 1988 (“EPPA”) applies to most private employers. The law does not cover federal, state and local governments. The EPPA provides that employees have a right to employment opportunities without being subjected to lie detector tests, unless a specific exemption applies. The EPPA also provides employees the right to file a lawsuit for violation of the Act.

The EPPA prohibits most private employers from using lie detector tests, either for pre-employment screening or during the course of employment. Employers generally may not require or request any employee or job applicant to take a lie detector test or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or exercising other rights under the Act. Employers may not use or inquire about the results of a lie detector test or discharge or discriminate against an employee or job applicant on the basis of the results of a test.

Subject to certain restrictions, the EPPA permits polygraph tests to be administered to certain job applicants of security service firms (armored car, alarm, and guard) and of pharmaceutical manufacturers and dispensers. Subject to certain restrictions, the EPPA also permits polygraph testing of certain employees of private firms who are suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in specific economic loss injury to the employer.

Where polygraph examinations are allowed, they are subject to strict standards for the conduct of the test, including the pretest, testing, and post-testing phases. An examiner must be licensed and bonded or have professional liability coverage. The Act strictly limits the disclosure of information obtained during a polygraph test. A polygraph examiner may disclose information acquired from a polygraph test only to (1) the examinee or a person specifically designated by the examinee; (2) the employer that requested the test; or (3) any court, governmental agency, arbitrator, or mediator pursuant to an order from a court of competent jurisdiction. An employer may disclose such information only to a person listed above or a governmental agency but only insofar as the disclosed information is an admission of criminal conduct.

The Secretary of Labor can bring court action to restrain violators and assess civil money penalties up to \$10,000 for a violation of EPPA. An employer who violates the law may be liable to the employee or prospective employee for legal and equitable relief, including employment, reinstatement, promotion, and payment of lost wages and benefits. The EPPA does not preempt any provision of any state or local law or any collective bargaining agreement that is more restrictive with respect to lie detector tests.

3. Fair Credit Reporting Act

The Fair Credit Reporting Act (“FCRA”) governs credit and certain other background investigations on applicants and employees when the information is obtained through a third party without direct firsthand knowledge of the information. (*Refer to Section 3, “Fair Credit Reporting Act”*) Examples include requesting a criminal background check through a background check company rather than directly from the state police, obtaining a driver’s license record check through an auto insurance company rather than directly through the DMV, etc. Before requesting a consumer report, or an investigative consumer report, an employer must (1) provide the applicant or employee with a clear and conspicuous written disclosure that informs the individual that a report may be requested; and (2) obtain written consent from the applicant or employee authorizing the employer to procure such a report. If an investigative consumer report is requested, the employer must also disclose (1) that such a report, including information relative to the individual’s character, general reputation, and personal characteristics and mode of living, may be made and such disclosure is made in a writing mailed, or otherwise delivered, to the individual not later than three days after the date on which the report was first requested; (2) inform the applicant that he or she has the right to request a complete and accurate disclosure of the nature and scope of the investigation; and (3) the disclosure must state that the applicant, upon written request, may obtain a summary of rights under FCRA as prescribed by the Federal Trade Commission.

The employer must provide certification to the consumer reporting agency before requesting a report on an applicant. If the employer decides to take adverse action based in whole or part on the report, then the employer must provide the applicant with a copy of the report and a summary of rights under the FCRA as prescribed by the Federal Trade Commission. The employer may not take adverse action until these documents have been provided to the applicant. After taking adverse action, the employer must (1) provide notice of the adverse action to the individual; (2) provide the name, address, and telephone

number of the consumer reporting agency and a statement that the agency did not decide to take adverse action and is unable to provide specific reasons why the adverse action was taken; and (3) provide notice of the applicant’s right to obtain a free copy of the credit report and to dispute the accuracy or completeness of any information in a consumer report furnished by the agency.

The definition of “consumer report” excludes communications made by a third party to an employer in connection with an investigation of suspected misconduct relating to employment or compliance with applicable laws, regulations, or written employment policies. Employers, after taking an adverse action against an employee based on a report by a third-party investigator, are required to disclose to the employee a summary of the report. Employers do not have to disclose the sources of information for the report.

FCRA contains prohibitions on the reporting of medical information by consumer reporting agencies to an employer unless the employee or prospective employee provides prior consent. Medical information contained in a consumer report furnished to an employer must be relevant to the employment, and the employee or prospective employee must sign a written consent form that describes in clear and conspicuous language the use for which the information will be furnished.

4. Criminal Background Investigations

Employers may inquire into convictions that have not been annulled by a court, such as “Have you ever been convicted of a crime that has not been annulled by a court?” The employer may not inquire into any arrest record, unless the employer can demonstrate a “business necessity” for such information.

New Hampshire law mandates that employers conduct criminal records checks for certain positions. These positions include positions that require direct contact with children, positions with residential care facilities, positions with home health care providers, and positions with entities authorized by the New Hampshire Department of Health and Human Services to offer personal care services.

5. Motor Vehicle Background Investigations

An employer may obtain the motor vehicle records of an employee or prospective employee if such person grants permission to the employer.

E. Hiring Replacements During a Strike or Lockout

If an employer, during the course of a strike, lockout, or other labor concern, advertises for employees or attempts to recruit employees to fill positions left vacant by strikers, the employer must plainly and explicitly state that a strike, lockout, or other labor disturbance exists. If a strike exists, the employer must plainly and explicitly state in his advertisement for employment that a “strike” exists.

If an applicant is on strike from another place of employment, employers may not punish such strikers by refusing to hire them simply because they have exercised their right to strike.

II. MAKING THE JOB OFFER

A. The Job Offer Letter

Many employers use some type of offer letter to communicate an offer of employment to a successful applicant. In New Hampshire, offer letters are often used as the vehicle for providing the information required by the Department of Labor regulations in writing at the time of hire (rate of pay/salary, frequency of pay, and day and place of payment). [*Refer to Attachment C, pages 2-C(1 and 2)*]

Written offer letters also provide helpful proof of any conditions placed on the offer. It is important

when offering a job to applicants in writing to ensure that the letter does not create an employment contract by promising continued employment for a specific period of time and/or promising continuation of benefits, unless that is the employer’s intention. For example, employers should describe the employee’s rate of pay in terms of an hourly rate or weekly salary rather than an annual rate so as not to imply that the employee will be employed for at least one year. It is very important to construct the language of the letter carefully so as to avoid liability for damages in the event the employment relationship is terminated.

B. The Application

Employers should specifically set forth on employment applications that the applicant, if hired, will be employed on an at-will basis, terminable at any time with or without notice or cause. The application should also indicate that an employee may be discharged for supplying false information on the application or otherwise in the hiring process. *[Refer to Attachment A, pages 2-A(1 and 2)]*

III. POST-OFFER INQUIRIES

Once the employer has extended a conditional offer for employment, the employer may then require that the applicant submit to a medical examination and/or answer a medical questionnaire. However, medical examinations and/or questions must be imposed for all applicants in the job category. Medical information gathered must be kept separate from the personnel file. *(Refer to Sections 5 and 6, “Pre-Placement Drug Test” and “Pre-Placement Physical and/or Capacity Examinations”)*

Employers may also inquire into an applicant’s medical history in order to establish a written record of pre-existing conditions in order to qualify for reimbursement from the Second Injury Fund in the event of a subsequent injury. Employers may also inquire as to prior sick leave usage and general physical and mental health. Disability-related questions and medical examinations at the post-offer stage do not have to be related to the job. However, an applicant may not be rejected for employment based on information revealed in answers to medical questions or medical examinations unless the individual is excluded for reasons that are job related and consistent with business necessity. *(Refer to Section 7, “Second Injury Fund”)*

After an applicant becomes an employee, an employer may make and keep records on the age, sex, race, color, marital status, religion, and national origin of an employee so long as it is for a non-discriminatory reason. For example, it is permissible to inquire about age, marital status, and dependents for purposes of administering benefits. The employer’s ability to ask medical questions is restricted once the applicant becomes an employee, as the employer may ask only those medical questions that are job related and consistent with business necessity. For example, if an employee suffers a work-related injury, the employer may ask questions about the injury and the employee’s medical status as part of administering the Workers’ Compensation claim. Likewise, if an employee requests a reasonable accommodation for a disability, the employer may request medical information to determine whether the employee is qualified under the Americans with Disabilities Act for an accommodation.

IV. CONCLUSION

There are various federal and state laws which regulate hiring practices and decisions. In order to decrease potential for liability, employers should be sure that their application and other hiring forms and their hiring process conform to the applicable laws. Employers should also provide training to their employees with responsibility for hiring.

ADA ENFORCEMENT GUIDANCE: PRE-EMPLOYMENT DISABILITY-RELATED QUESTIONS AND MEDICAL EXAMINATIONS

Introduction

Under the Americans with Disabilities Act of 1990 (the “ADA”),¹ an employer may ask disability-related questions and require medical examinations of an applicant only after the applicant has been given a conditional job offer. This Enforcement Guidance explains these ADA provisions.²

Background

In the past, some employment applications and interviews requested information about an applicant’s physical and/or mental condition. This information was often used to exclude applicants with disabilities before their ability to perform the job was even evaluated.

For example, applicants may have been asked about their medical conditions at the same time that they were engaging in other parts of the application process, such as completing a written job application or having references checked. If an applicant was then rejected, s/he did not necessarily know whether s/he was rejected because of disability or because of insufficient skills or experience or a bad report from a reference.

As a result, Congress established a process within the ADA to isolate an employer’s consideration of an applicant’s non-medical qualifications from any consideration of the applicant’s medical condition.

The Statutory and Regulatory Framework

Under the law, an employer may not ask disability-related questions and may not conduct medical examinations until *after* it makes a conditional job offer to the applicant.³ This helps ensure that an applicant’s possible hidden disability (including a prior history of a disability) is not considered before the employer evaluates an applicant’s non-medical qualifications. An employer may not ask disability-related questions or require a medical examination, *even* if the employer intends to shield itself from the answers to the questions or the results of the examination until the post-offer stage.

Although employers may not ask disability-related questions or require medical examinations at the pre-offer stage, they *may* do a wide variety of things to evaluate whether an applicant is qualified for the job, including the following:

- Employers *may* ask about an applicant’s ability to perform specific job functions. For example, an employer may state the physical requirements of a job (such as the ability to lift a certain amount of weight or the ability to climb ladders) and ask if an applicant can satisfy these requirements.

¹ Codified as amended at 42 U.S.C. §§ 12101-17, 12201-13 (Supp. V 1994).

² The analysis in this Guidance also applies to federal sector complaints of non-affirmative action employment discrimination arising under section 501 of the Rehabilitation Act of 1973. 29 U.S.C.A. § 791(g) (West Supp. 1994). In addition, the analysis applies to complaints of non-affirmative action employment discrimination arising under section 503 and employment discrimination under section 504 of the Rehabilitation Act. 29 U.S.C.A. §§ 793(d), 794(d) (West Supp. 1994).

³ 42 U.S.C. § 12112(d)(2); 29 C.F.R. §§ 1630.13(a), 1630.14(a),(b).

- Employers *may* ask about an applicant’s non-medical qualifications and skills, such as the applicant’s education, work history, and required certifications and licenses.
- Employers *may* ask applicants to describe or demonstrate how they would perform job tasks.

Once a conditional job offer is made, the employer may ask disability-related questions and require medical examinations as long as this is done for all entering employees in that job category. If the employer rejects the applicant after a disability-related question or medical examination, investigators will closely scrutinize whether the rejection was based on the results of that question or examination.

If the question or examination screens out an individual because of a disability, the employer must demonstrate that the reason for the rejection is “job-related and consistent with business necessity.”⁴

In addition, if the individual is screened out for safety reasons, the employer must demonstrate that the individual poses a “direct threat.” This means that the individual poses a significant risk of substantial harm to him/herself or others and that the risk cannot be reduced below the direct threat level through reasonable accommodation.⁵

The Pre-Offer Stage

What is a Disability-Related Question?

Definition: “Disability-Related Question” means a question that is likely to elicit information about a disability.

At the pre-offer stage, an employer cannot ask questions that are *likely to elicit* information about a disability. Of course, this includes directly asking whether an applicant has a particular disability. It also means that an employer cannot ask questions that are *closely related* to disability.

On the other hand, if there are many possible answers to a question and only one of those possible answers would contain disability-related information, that question is not “disability-related.”⁶

Below are some commonly asked questions about this area of the law.

- May an employer ask **whether an applicant can perform the job?**

Yes, an employer may ask whether applicants can perform any or all job functions, including whether applicants can perform job functions “with or without reasonable accommodation.”

- May an employer ask applicants to **describe or demonstrate how they would perform the job**

⁴ 42 U.S.C. § 12112(b); 29 C.F.R. § 1630.10.

⁵ 42 U.S.C. § 12113(b); See 29 C.F.R. pt. 1630 app. § 1630.2(r).

⁶ Sometimes, applicants disclose disability-related information in responding to an otherwise lawful pre-offer question. Although the employer has not asked an unlawful question, it still cannot refuse to hire an applicant based on disability unless the reason is “job-related and consistent with business necessity.”

(including any needed reasonable accommodations)?

Yes, an employer may ask applicants to describe how they would perform any or all job functions as long as all applicants in the job category are asked to do this.

Employers should remember that, if an applicant says that s/he will need a reasonable accommodation to do a job demonstration, the employer must either:

- provide a reasonable accommodation that does not create an undue hardship; or
 - allow the applicant to simply describe how s/he would perform the job function.
- May an employer ask a particular applicant to **describe or demonstrate how s/he would perform the job** if other applicants aren’t asked to do this?

When an employer could reasonably believe that an applicant will not be able to perform a job function because of a known disability, the employer may ask that particular applicant to describe or demonstrate how s/he would perform the function. An applicant’s disability would be a “known disability” either because it is obvious (for example, the applicant uses a wheelchair) or because the applicant has voluntarily disclosed that s/he has a hidden disability.

- May an employer ask applicants **whether they will need reasonable accommodation for the hiring process?**

Yes, an employer may tell applicants what the hiring process involves (for example, an interview, timed written test, or job demonstration) and may ask applicants whether they will need a reasonable accommodation for this process.

- May an employer ask an applicant for **documentation of his/her disability when the applicant requests reasonable accommodation for the hiring process?**

Yes, if the need for accommodation is not obvious, an employer may ask an applicant for *reasonable* documentation about his/her disability if the applicant requests reasonable accommodation for the hiring process (such as a request for the employer to reformat an examination or a request for an accommodation in connection with a job demonstration). The employer is entitled to know that the applicant has a covered disability and that s/he needs an accommodation.

So, the applicant may be required to provide documentation from an appropriate professional, such as a doctor or a rehabilitation counsellor, concerning the applicant’s disability and functional limitations.

- May an employer ask applicants **whether they will need reasonable accommodation for the job itself?**

In general, an employer may not ask isolated questions on an application or in an interview about whether an applicant will need reasonable accommodation for a job. This is because these questions are likely to elicit whether the applicant has a disability (generally, only people who have disabilities will need reasonable accommodations).

Example: An employment application may not ask, “Do you need reasonable accommodation to perform this job?”

Example: An employment application may not ask, “Can you do these functions with ___ without ___ reasonable accommodation? (Check One)”

Example: An applicant, with no known disability, is being interviewed for a job. He has not asked for any reasonable accommodation, either for the application process or for the job. The employer may not ask him, “Will you need reasonable accommodation to perform this job?”

However, when an employer could reasonably believe that an applicant will need reasonable accommodation to perform job functions, the employer may ask that applicant whether s/he needs reasonable accommodation and what type of reasonable accommodation would be needed.⁷ For example, the employer could ask these questions if:

- the employer reasonably believes the applicant will need reasonable accommodation because of an obvious disability;
- the employer reasonably believes the applicant will need reasonable accommodation because of a hidden disability that the applicant has voluntarily disclosed to the employer;
- an applicant has voluntarily disclosed to the employer that s/he needs reasonable accommodation to perform the job; or
- an applicant has otherwise disclosed information as part of the application process that would lead the employer to reasonably believe the applicant will need reasonable accommodation to perform the job.

Example: An applicant with diabetes voluntarily discloses that she will need periodic breaks to take medication. The employer may ask the applicant questions about the reasonable accommodation, such as how often s/he will need breaks and how long the breaks must be.

- May an employer ask **whether an applicant can meet the employer’s attendance requirements?**

Yes, an employer may state its attendance requirements and ask whether an applicant can meet them. An employer also may ask about an applicant’s prior attendance record (for example, how many days the applicant was absent from his/her last job). These questions are not likely to elicit information about a disability because there may be many reasons unrelated to disability why someone cannot meet attendance requirements or was frequently absent from a previous job (for example, an applicant may have day-care problems).

An employer also may ask questions designed to detect whether an applicant abused his/her leave because these questions are not likely to elicit information about a disability.

Example: An employer may ask an applicant, “How many Mondays or Fridays were you absent last year on leave other than approved vacation leave?”

However, at the pre-offer stage, an employer may not ask how many days an applicant was *sick*, because these questions relate directly to the *severity of an individual’s impairments*. Therefore, these questions are likely to elicit information about a disability.

⁷ It should be remembered that sometimes, an employer might lawfully ask questions about the need for reasonable accommodation on the job and then fail to extend a job offer. It is possible that, in such a case, the rejected applicant might claim that the refusal to hire was based on the need for accommodation. Under these facts, the EEOC will consider the employer’s pre-offer questions as evidence that the employer *knew* about the need for reasonable accommodation and will carefully scrutinize whether the need to provide accommodation was the reason for rejecting the applicant.

- May an employer ask applicants about their **certifications and licenses**?

Yes, an employer may ask an applicant at the pre-offer stage whether s/he has certifications or licenses required for any job duties. An employer also may ask an applicant whether s/he intends to get a particular job-related certification or license or why s/he does not have the certification or license. These questions are not likely to elicit information about an applicant’s disability because there may be a number of reasons unrelated to disability why someone does not have – or does not intend to get – a certification/license.

- May an employer ask applicants about their **arrest or conviction records**?

Yes, questions about an applicant’s arrest or conviction records are not likely to elicit information about disability because there are many reasons unrelated to disability why someone may have an arrest/conviction record.⁸

- May an employer ask questions about an **applicant’s impairments**?

That depends on whether the particular question is likely to elicit information about whether the applicant has a disability. It is important to remember that not all impairments will be disabilities; an impairment is a disability *only* if it substantially limits a major life activity. So, an employer may certainly ask an applicant with a broken leg how she broke her leg. This is not likely to disclose whether the applicant has a disability. But, it *would* be disability related if the employer asked questions about the prognosis of the leg, such as “How extensive was the break?” or “Do you expect the leg to heal normally?” Certainly, an employer may not ask a broad question about impairments that is likely to elicit information about disability, such as, “What impairments do you have?”

- May an employer ask **whether applicants can perform major life activities**, such as standing, lifting, walking, etc.?

Most of the time, questions about whether an applicant can perform major life activities *are* disability related because they are likely to elicit information about a disability. For example, if an applicant cannot stand or walk, it is likely to be a result of a disability. So, these questions are prohibited at the pre-offer stage *unless* they are specifically about the ability to perform job functions.

- May an employer ask applicants about their **workers’ compensation history**?

No, an employer may not ask applicants about job-related injuries or workers’ compensation history. These questions relate directly to the *severity of an applicant’s impairments*. Therefore, these questions are likely to elicit information about disability.

- May an employer ask applicants about their **current illegal drug use**?

Yes, an employer may ask applicants about current illegal drug use⁹ because an individual who currently

⁸ However, investigators should be aware that Title VII of the Civil Rights Act of 1964, as amended, applies to such questions and that nothing in this Enforcement Guidance relieves an employer of its obligations to comply with Title VII. The Commission has previously provided guidance for investigators to follow concerning an employer’s use of arrest/conviction records. *See* Policy Guidance No. N-915-061 (9/7/90) [“Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (1982)”]; EEOC Compliance Manual, Vol. II, Appendices 604-A (“Conviction Records”) and 604-B (“Conviction Records - Statistics”).

illegally uses drugs is not protected under the ADA (when the employer acts on the basis of the drug use).¹⁰

- May an employer ask applicants about their **lawful drug use**?

That depends on whether the particular question is likely to elicit information about disability. Employers should know that many questions about current or prior lawful drug use are likely to elicit information about a disability and are, therefore, impermissible at the pre-offer stage. For example, questions like, “What medications are you currently taking?” or “Have you ever taken AZT?” certainly elicit information about whether an applicant has a disability.

However, some innocuous questions about lawful drug use are not likely to elicit information about disability.

Example: During her interview, an applicant volunteers to the interviewer that she is coughing and wheezing because her allergies are acting up as a result of pollen in the air. The interviewer, who also has allergies, tells the applicant that he finds “Lemebreathe” (an over-the-counter antihistamine) to be effective and asks the applicant if she has tried it. There are many reasons why someone might have tried “Lemebreathe” which have nothing to do with disability. Therefore, this question is not likely to elicit information about a disability.

- May an employer ask applicants about their **lawful drug use** if the employer is administering a test for illegal use of drugs?

Yes, *if* an applicant tests positive for illegal drug use. In that case, the employer may validate the test results by asking about lawful drug use or possible explanations for the positive result other than the illegal use of drugs.

Example: If an applicant tests positive for use of a controlled substance, the employer may lawfully ask questions such as, “What medications have you taken that might have resulted in this positive test result? Are you taking this medication under a lawful prescription?”

- May an employer ask applicants about their **prior illegal drug use**?

That depends on whether the particular question is likely to elicit information about a disability. It is important to remember that past illegal drug *addiction* is a covered disability under the ADA (as long as the person is not a current illegal drug user), but past *casual* use is not a covered disability. Therefore, whether the question is likely to elicit information about a disability depends on whether it goes to past drug *addiction*.

Example: An employer may ask, “Have you ever used illegal drugs?” “When is the last time you used illegal drugs?” or “Have you used illegal drugs in the last six months?” These questions are not likely to tell the employer anything about whether the applicant was addicted to drugs.

However, questions that ask how much the applicant used drugs in the past *are* likely to elicit information about whether the applicant was a past drug addict. These questions are, therefore,

⁹ “Drug” means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812). 29 C.F.R. § 1630.3(a)(1).

¹⁰ 42 U.S.C. § 12114(a); 29 C.F.R. § 1630.3(a).

impermissible at the pre-offer stage.

Example: At the pre-offer stage, an employer may not ask an applicant questions such as, “How often did you use illegal drugs in the past?” “Have you ever been addicted to drugs?” “Have you ever been treated for drug addiction?” or “Have you ever been treated for drug abuse?”

- May an employer ask applicants about their **drinking habits**?

That depends on whether the particular question is likely to elicit information about alcoholism, which is a disability. An employer may certainly ask an applicant whether s/he drinks alcohol because that does not reveal whether someone has alcoholism. However, questions asking *how much* alcohol an applicant drinks *are* likely to elicit information about whether the applicant has alcoholism.

- May an employer ask applicants to “**self-identify**” as individuals with disabilities for purposes of the **employer’s affirmative action program**?

Yes, under certain circumstances. An employer may invite applicants to voluntarily self-identify for purposes of the employer’s affirmative action program *if*:

- the employer is undertaking affirmative action because of a federal, state, or local law (including a veterans’ preference law) that requires affirmative action for individuals with disabilities (that is, the law requires some action to be taken on behalf of such individuals); *or*
- the employer is *voluntarily* using the information to benefit individuals with disabilities.

Employers should remember that state or local laws sometimes permit or encourage affirmative action. In those cases, an employer may invite voluntary self-identification *only* if the employer uses the information to benefit individuals with disabilities.

- Are there any **special steps an employer should take if it asks applicants to “self-identify”** for purposes of the **employer’s affirmative action program**?

Yes. If the employer invites applicants to voluntarily self-identify in connection with providing affirmative action, the employer must do the following:

- state clearly on any written questionnaire, or state clearly orally (if no written questionnaire is used), that the information requested is used solely in connection with its affirmative action obligations or efforts; and
- state clearly that the information is being requested on a voluntary basis, that it will be kept confidential in accordance with the ADA, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with the ADA.

In order to ensure that the self-identification information is kept confidential, the information must be on a form that is kept separate from the application.

- May an employer ask **third parties questions it could not ask the applicant directly**?

No. An employer may not ask a third party (such as a service that provides information about workers’

compensation claims, a state agency, or an applicant’s friends, family, or former employers) any questions that it could not directly ask the applicant.

What is a Medical Examination?

Definition: A “Medical Examination” is a procedure or test that seeks information about an individual’s physical or mental impairments or health.

At the pre-offer stage, an employer cannot require examinations that seek information about physical or mental impairments or health. It is not always easy to determine whether something is a *medical* examination. The following factors are helpful in determining whether a procedure or test is *medical*:

- Is it administered by a health care professional or someone trained by a health care professional?
- Are the results interpreted by a health care professional or someone trained by a health care professional?
- Is it designed to reveal an impairment or physical or mental health?
- Is the employer trying to determine the applicant’s physical or mental health or impairments?
- Is it invasive (for example, does it require the drawing of blood, urine or breath)?
- Does it measure an applicant’s performance of a task, *or* does it measure the applicant’s physiological responses to performing the task?
- Is it normally given in a medical setting (for example, a health care professional’s office)?
- Is medical equipment used?

In many cases, a combination of factors will be relevant in figuring out whether a procedure or test is a *medical* examination. In some cases, one factor may be enough to determine that a procedure or test is *medical*.

Example: An employer requires applicants to lift a thirty-pound box and carry it twenty feet. This is not a medical examination; it is just a test of whether the applicant can perform this task. But, if the employer takes the applicant’s blood pressure or heart rate after the lifting and carrying, the test *would* be a medical examination because it is measuring the applicant’s physiological response to lifting and carrying, as opposed to the applicant’s ability to lift and carry.

Example: A psychological test is designed to reveal mental illness, but a particular employer says it does not give the test to disclose mental illness (for example, the employer says it uses the test to disclose just tastes and habits). But, the test also is interpreted by a psychologist and is routinely used in a clinical setting to provide evidence that can be used to diagnose mental health (for example, whether an applicant has paranoid tendencies, or is depressed). Under these facts, this test is a medical examination.

Below are some commonly asked questions about the ADA’s restrictions on pre-offer medical examinations.

- May an employer require applicants to take **physical agility tests**?

A physical agility test, in which an applicant demonstrates the ability to perform actual or simulated job tasks, is not a medical examination under the ADA.¹¹

Example: A police department tests police officer applicants’ ability to run through an obstacle course designed to simulate a suspect chase in an urban setting. This is not a medical examination.

- May an employer require applicants to take **physical fitness tests**?

Yes. A physical fitness test, in which an applicant’s performance of physical tasks – such as running or lifting – is measured, is not a medical examination.¹²

However, if an employer measures an applicant’s *physiological or biological responses* to performance, the test would be medical.

Example: A messenger service tests applicants’ ability to run one mile in 15 minutes. At the end of the run, the employer takes the applicants’ blood pressure and heart rate. Measuring the applicant’s physiological responses makes this a medical examination.

- May an employer ask an applicant to provide **medical certification that s/he can safely perform a physical agility or physical fitness test**?

Yes. Although an employer cannot ask disability-related questions, it may give the applicant a description of the agility or fitness test and ask the applicant to have a private physician simply state whether s/he can safely perform the test.

- May an employer ask an applicant to **assume liability for injuries incurred in performing a physical agility or physical fitness test**?

Yes. An employer may ask an applicant to assume responsibility and release the employer of liability for injuries incurred in performing a physical agility or fitness test.

- May an employer give **psychological examinations** to applicants?

That depends on whether the particular examination is *medical*. This determination would be based on some of the factors listed above, such as the purpose of the test and the intent of the employer in giving the test. Psychological examinations are medical if they provide evidence that would lead to identifying a mental disorder or impairment, listed in the American Psychiatric Association’s most recent Diagnostic and Statistical Manual of Mental Disorders (DSM).

Example: An employer gives applicants the RUOK Test (hypothetical), an examination which reflects whether applicants have characteristics that lead to identifying whether the individual has excessive

¹¹ Of course, if a test has an adverse impact under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, or the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.*, it must be shown to be job-related and consistent with business necessity.

¹² Although physical agility tests and physical fitness tests are not “medical” examinations, these tests are still subject to other parts of the ADA. For example, if a physical fitness test which requires applicants to run one mile in ten minutes screens out an applicant on the basis of disability, the employer must be prepared to demonstrate that the test is “job-related and consistent with business necessity.”

anxiety, depression, and certain compulsive disorders (DSM-listed conditions). This test is medical.

On the other hand, if a test is designed and used to measure only things such as honesty, tastes, and habits, it is not *medical*.

Example: An employer gives the IFIB Personality Test (hypothetical), an examination designed and used to reflect only whether an applicant is likely to lie. This test, as used by the employer, is not a medical examination.

- May an employer give **polygraph examinations** to applicants?

Although most employers are prohibited by federal and state laws from giving polygraph examinations, some employers are not prohibited from giving these examinations. Under the ADA, polygraph examinations are not medical examinations.¹³ Many times, however, polygraph examinations contain disability-related questions, such as questions about what lawful medications the applicant is taking. Employers cannot ask disability-related questions as part of a pre-offer examination, even if the examination is not itself “medical.”

- May an employer give **vision tests** to applicants?

That depends on whether the particular test is *medical*. Evaluating someone’s ability to read labels or distinguish objects as part of a demonstration of the person’s ability to do the job is not a medical examination. However, an ophthalmologist’s or optometrist’s analysis of someone’s vision *is* medical.

- May an employer give applicants **tests to determine illegal use of controlled substances**?

Yes, the ADA specifically states that, for purposes of the ADA, tests to determine the current illegal use of controlled substances are not considered medical examinations.

- May an employer give **alcohol tests** to applicants?

No, tests to determine whether and/or how much alcohol an individual has consumed are medical, and there is no statutory exemption.

The Post-Offer Stage

After giving a job offer to an applicant, an employer may ask disability-related questions and perform medical examinations. Of course, the job offer may be conditioned on the results of post-offer disability-related questions or medical examinations.

At the “post-offer” stage, an employer may ask about an individual’s workers’ compensation history, prior sick leave usage, illnesses/diseases, and general physical and mental health. Disability-related

¹³ A polygraph examination purportedly measures whether a person believes s/he is telling the truth in response to a particular inquiry. The examination does not measure health or impairments. Rather, it just measures relative *changes* in physiological responses of the test taker.

questions and medical examinations at the post-offer stage do not have to be related to the job.¹⁴

If an employer asks post-offer disability-related questions or requires post-offer medical examinations, it must make sure that it follows certain procedures:

- all entering employees in the same job category must be subjected to the examination/inquiry, regardless of disability;¹⁵ and
- medical information obtained must be kept confidential.¹⁶

Below are some commonly asked questions about the post-offer stage.

- What is considered a **real job offer**?

Since an employer can ask disability-related questions and require medical examinations after a job offer, it is important that the job offer be *real*. A job offer is real if the employer has evaluated all relevant non-medical information which it reasonably could have obtained and analyzed prior to giving the offer. Of course, there are times when an employer cannot reasonably obtain and evaluate *all* non-medical information at the pre-offer stage. If an employer can show that is the case, the offer would still be considered a real offer.

Example: It may be too costly for a law enforcement employer wishing to administer a polygraph examination to administer a pre-offer examination asking non-disability-related questions and a post-offer examination asking disability-related questions. In this case, the employer may be able to demonstrate that it could not reasonably obtain and evaluate the non-medical polygraph information at the pre-offer stage.

Example: An applicant might state that his current employer should not be asked for a reference check until the potential employer makes a conditional job offer. In this case, the potential employer could not reasonably obtain and evaluate the non-medical information from the reference at the pre-offer stage.

- Do offers have to be limited to **current vacancies**?

No. An employer may give offers to fill current vacancies *or* reasonably anticipated openings.

- May an employer give **offers that exceed the number of vacancies or reasonably anticipated openings**?

Yes, the offers will still be considered *real* if the employer can demonstrate that it needs to give more offers in order to actually fill vacancies or reasonably anticipated openings. For example, an employer may demonstrate that a certain percentage of the offerees will likely be disqualified or will withdraw from the pool.

Example: A police department may be able to demonstrate that it needs to make offers to 50 applicants

¹⁴ But, if an individual is screened out because of disability, the employer must show that the exclusionary criterion is job-related and consistent with business necessity. 42 U.S.C. § 12112(b); 29 C.F.R. § 1630.10.

¹⁵ 42 U.S.C. § 12112(d)(3); 29 C.F.R. § 1630.14(b)(1),(2).

¹⁶ *Id.*

for 25 available positions because about half of the offers will likely be revoked based on post-offer medical tests and/or security checks and because some applicants may voluntarily withdraw from consideration.

Of course, an employer must comply with the ADA when taking people out of the pool to fill actual vacancies. For example, an individual might allege that a post-offer examination has affected his placement into an actual vacancy. The EEOC will carefully scrutinize whether disability was a reason for any adverse action by the employer and, if so, whether the action was job-related and consistent with business necessity.

- After an employer has obtained basic medical information from all individuals who have been given conditional offers in a job category, may it ask **specific individuals for more medical information**?

Yes, if the follow-up examinations or questions are medically related to the previously obtained medical information.¹⁷

Example: At the post-offer stage, an employer asks new hires whether they have had back injuries and learns that some of the individuals have had such injuries. The employer may give medical examinations designed to diagnose back impairments to persons who stated that they had prior back injuries as long as these examinations are medically related to those injuries.

- At the post-offer stage, may an employer ask all individuals **whether they need reasonable accommodation to perform the job**?

Yes.

- If, at the post-offer stage, someone requests **reasonable accommodation to perform the job**, may the employer ask him/her for **documentation of his/her disability**?

Yes. If, someone requests reasonable accommodation so s/he will be able to perform a job and the need for the accommodation is not obvious, the employer may require *reasonable* documentation of the individual’s entitlement to reasonable accommodation. So, the employer may require documentation showing that the individual has a *covered disability* and stating his/her *functional limitations*.

Example: An entering employee states that she will need a 15-minute break every two hours to eat a snack in order to maintain her blood sugar level. The employer may ask her to provide documentation from her doctor showing that: (1) she has an impairment that substantially limits a major life activity; and (2) she actually needs the requested breaks because of the impairment.

¹⁷ Once again, if an examination or inquiry screens out someone *because of disability*, the exclusionary criteria must be “job-related and consistent with business necessity.” Where safety considerations are the reason, the individual can only be screened out because s/he poses a “direct threat.”

Confidentiality

An employer must keep *any* medical information on applicants or employees confidential, with the following limited exceptions:

- supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations;
- first aid and safety personnel may be told *if* the disability might require emergency treatment;
- government officials investigating compliance with the ADA must be given relevant information on request;¹⁸
- employers may give information to state workers’ compensation offices, state second injury funds, or workers’ compensation insurance carriers in accordance with state workers’ compensation laws;¹⁹ and
- employers may use the information for insurance purposes.²⁰

Below are some commonly asked questions about the ADA’s confidentiality requirements.

- May **medical information** be given to **decision-makers involved in the hiring process**?

Yes, medical information may be given to – and used by – appropriate decision-makers involved in the hiring process so they can make employment decisions consistent with the ADA. In addition, the employer may use the information to determine reasonable accommodations for the individual. For example, the employer may share the information with a health care professional to determine whether a reasonable accommodation is possible for a particular individual.

Of course, the employer may only share the medical information with individuals involved in the hiring process (or in implementing an affirmative action program) who *need to know* the information. For example, in some cases, a number of people may be involved in evaluating an applicant; some individuals may simply be responsible for evaluating an applicant’s references. These individuals may have no need to know an applicant’s medical condition and, therefore, should not have access to the information.

- Can an individual **voluntarily disclose his/her own medical information** to persons beyond those to whom an employer can disclose such information?

Yes, as long as it’s *really* voluntary. The employer cannot request, persuade, coerce, or otherwise pressure the individual to get him/her to disclose medical information.

¹⁸ 29 C.F.R. § 1630.14(b)(1)(i-iii).

¹⁹ See 42 U.S.C. § 12201(b); 29 C.F.R. pt. 1630 app. § 1630.14(b).

²⁰ See 42 U.S.C. § 12201(c); 29 C.F.R. pt. 1630 app. § 1630.14(b). For example, an employer may submit medical information to the company’s health insurance carrier if the information is needed to administer a health insurance plan in accordance with § 501(c) of the ADA.

- Does the employer’s confidentiality obligation extend to **medical information that an individual voluntarily tells the employer?**

Yes.

- Can **medical information be kept in an employee’s regular personnel file?**

No, medical information must be collected and maintained on separate forms and in separate medical files. An employer should not place any medical-related material in an employee’s non-medical personnel file. If an employer wants to put a document in a personnel file and that document happens to contain some medical information, the employer must simply remove the medical information from the document before putting it in the personnel file.

- Does the **confidentiality obligation end when the person is no longer an applicant or employee?**

No, an employer must keep medical information confidential *even if* someone is no longer an applicant (for example, s/he wasn’t hired) or is no longer an employee.

- Is information **obtained before the ADA’s effective date** subject to the ADA’s confidentiality requirements?

No, a covered entity does not have a duty of confidentiality for medical information it obtained before the ADA’s effective date.



New Hampshire Department of Safety
DIVISION OF STATE POLICE
Central Repository for Criminal Records
33 Hazen Drive, Concord, NH 03305

CRIMINAL RECORD RELEASE AUTHORIZATION FORM

SECTION I

PLEASE TYPE OR PRINT CLEARLY, ALL INFORMATION IN THIS SECTION **MUST BE COMPLETED**

NAME _____
LAST (MAIDEN/ALIAS) FIRST MI

ADDRESS _____
STREET CITY STATE ZIP CODE

DATE OF BIRTH _____ **HAIR COLOR** _____ **EYE COLOR** _____ **SEX** _____

DRIVER LICENSE NUMBER _____ **STATE** _____

PURPOSE FOR RECORD: Housing Employment Annulment/Expungement Other _____

My below signature certifies I am the individual listed above and that the information provided is true.

YOUR SIGNATURE: _____ **DATE** _____
Signed under penalty of unsworn falsification pursuant to NH RSA 641:3

SECTION II

IF RECORD IS TO BE MAILED TO YOU, OR RECEIVED BY SOMEONE OTHER THAN YOURSELF,

ALL OF SECTION II MUST BE COMPLETED

I hereby authorize the release of my criminal record conviction(s), if any, to the following individual:

NAME OF PERSON / FIRM TO RECEIVE RECORD _____

ADDRESS _____
STREET CITY STATE ZIP CODE

YOUR SIGNATURE _____ DATE _____

NOTARY'S SIGNATURE _____ DATE _____
(Affix Seal) (Comm. Exp.)

SIGNATURE OF PERSON / FIRM TO RECEIVE RECORD DATE _____

NOTE: A \$25.00 fee is required for each request- make checks payable to: State of NH – Criminal Records.

Print Form

CONDITIONAL JOB OFFER MATRIX

GENERIC INFORMATION	SPECIFIC INFORMATION
Today's Date	
Applicant's Name	
Applicant's Address	
Applicant's City, State Zip Code	
Name of Position	
Start Date	
Manager or Supervisor of Position	
Location of Position	
Terms of Payment Commission Agreement ___Yes ___No	
Benefits	
Approximate Hours per Week	
Types of Background Checks to be Performed	
Name of Company Performing the Drug Test	
Name of Person Responsible for Hiring	

Manager's Signature: _____ Date: _____