

Beacon Group, LLC  
Staffing & HR Solutions

**EMPLOYEE SELECTION CHECKLIST FOR SUPERVISORS AND  
MANAGERS**



**This form doesn't help without time to  
follow-through options carefully.**

The laws are constantly changing and changes may apply which are not shown in this sample. Consult with an HR professional and/or attorney for questions about a specific situation. When you become a Beacon Group client, the laws for this particular topic may apply differently to your organization.

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## EMPLOYEE SELECTION CHECKLIST FOR MANAGERS & SUPERVISORS

Many state laws prohibit an employer from asking applicants certain pre-employment information such as sex, race, age, etc. While there is no such prohibition in the federal laws (except with regard to disability), the same types of inquiries can expose employers to liability.

The federal government will assume that, if an employer asks such a question, it meant to use the data for something. It becomes the employer's burden to explain that it was not using the data to discriminate against the applicants.

Because of the various state and local laws, it is very important that managers and supervisors consult these laws to determine what additional employee selection requirements are imposed.

### CHECKLIST

Set out below is a checklist that can be used by managers and supervisors to highlight compliance issues raised by the federal equal employment opportunity laws when screening, interviewing and selecting applicants.

- \_\_\_ 1. The failure to conduct job interviews in a consistent manner from one job applicant to the next may invite charges of discrimination. It is always wise to have more than one person interview an applicant.
- \_\_\_ 2. Don't ask the applicant's age unless age is really a job requirement. Instead, ask "Are you over the age of 18?"
- \_\_\_ 3. Generally, don't ask an applicant's birthplace because of national origin bias problems. Ask "Are you a U.S. citizen or do you have a work visa?" Or, "Do you have a legal right to remain permanently in the U.S.?"
- \_\_\_ 4. Asking whether an applicant owns, rents, or boards in his or her residence might discriminate against minorities.
- \_\_\_ 5. Managers and supervisors who interview applicants should ask about whatever particular skills are needed in their plant or office, but should avoid asking questions in terms of disability.
- \_\_\_ 6. Applicants who indicate a need for Saturdays, Sundays, or holidays off for religious reasons may not be discriminated against on that basis unless the company can demonstrate that the request for time off cannot be met without undue hardship.
- \_\_\_ 7. A "nepotism" policy that prohibits or limits employment opportunities of a spouse or other relative may be illegal if it has an adverse impact on job opportunities for either women or men as a group.
- \_\_\_ 8. Inquiries as to an applicant's financial status, such as bankruptcy, car ownership, rental or ownership of a house, length of residence at an address, or past garnishments of wages, if utilized to make employment decisions, may violate Title VII of the Civil Rights Act unless business necessity is shown.
- \_\_\_ 9. Motivation, ambition, interest in the trade, willingness to accept directions, the individual's attitude toward related instruction, maturity, personality and ability to communicate, as well as subjective qualities such as attractiveness and neatness, are generally permissible subjects of pre-employment inquiries.
- \_\_\_ 10. Managers should be aware of the potential for bias inherent in the exclusive use of non-minority personnel to interview minority applicants and of male personnel to evaluate female applicants.

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- \_\_\_\_\_ 11. If an employee can establish a strong case of discrimination by showing that particular physical ability tests disproportionately excluded a protected group or class from employment, the employer must show that the requirements are a business necessity and are related to the employment in question.
  
- \_\_\_\_\_ 12. Managers should be aware that specialized language in a test, such as trade jargon, may screen out persons in one of the protected groups who have been traditionally excluded from employment where they could become familiar with the language (e.g., females who are required to know technical jargon).
  
- \_\_\_\_\_ 13. Even requiring good grammar of job applicants might be racially discriminatory and unlawful unless good grammar is necessary to perform the duties of the job in question.

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## **AGE DISCRIMINATION CHECKLIST FOR MANAGERS & SUPERVISORS**

**Individuals 40 years of age and older are protected from employment discrimination on the basis of age by the Age Discrimination in Employment Act of 1967 (ADEA). Under the ADEA, most workers age 40 and over are protected from mandatory retirement.**

Because of the various state and local laws, it is very important that managers and supervisors consult these laws to determine what additional age discrimination requirements are imposed.

### **CHECKLIST**

Set out below is a checklist that can be used by managers and supervisors to highlight compliance issues raised by the Age Discrimination in Employment Act.

- 1. It is against federal policy for contractors and subcontractors, in the performance of federal government contracts, to discriminate against employees or job applicants because of age.
- 2. An employer, generally, cannot refuse to hire or promote an individual because he or she is age 40 or older, and cannot force an employee to retire after turning a specified age.
- 3. An employer has an affirmative duty under the law to maintain a work environment free from age harassment. This duty encompasses a requirement to take positive steps to eliminate age harassment in the form of intimidation or insults in the workplace, for example.
- 4. A desire to find employees who will remain on the job for a long time might be considered unlawful if it leads to the exclusion of older workers.
- 5. An employer must show a bona fide occupational qualification if challenged on a practice of eliminating applicants or employees from certain positions because of age. Usually, this requires the showing of some legitimate safety factor that would affect the company.
- 6. Subjective hiring decisions made on the basis of interviews should be carefully controlled. Since interviewers may be looking for such qualities as energy, flexibility, willingness to take orders, or ability to be trained, the preconceptions concerning the older applicant may hinder an objective evaluation.
- 7. Many companies now use an employee's performance record rather than, or along with, seniority in making layoff decisions. If individual performance evaluations are used in layoff decisions and this results in a significantly greater number of employees age 40 and older being laid off, a court might decide that the employer violated age discrimination laws and require the employer to explain its business reason for its action.
- 8. In general, job advertisements cannot discriminate because of age against persons 40 years of age or older.

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## **SEX DISCRIMINATION CHECKLIST FOR MANAGERS & SUPERVISORS**

**Discrimination in employment against any individual, male or female, on the basis of sex is barred by Title VII of the Civil Rights Act of 1964.**

Because of the various state and local laws, it is very important that managers and supervisors consult these laws to determine what additional sex discrimination requirements are imposed.

### **CHECKLIST**

The checklist below can be used by managers and supervisors to highlight compliance issues raised by Title VII of the Civil Rights Act of 1964.

- 1. When the sex of an individual is one of the factors upon which a decision is based, the resulting employment decision is probably unlawful.
- 2. There are two general exceptions to the use of sex as a factor in employment decisions: bona fide occupational qualification (BFOQ) and business necessity.
- 3. The BFOQ exception recognizes that in some extremely rare instances a person's sex, religion, or national origin may be reasonably necessary to carrying out a particular job function in the normal operation of an employer's business or enterprise.
- 4. Business necessity is a defense to a charge of discrimination. It is primarily used if it is reasonably necessary to such factors as the safety or efficiency of the operation. Reasons such as "Women are less stable and have poorer attendance records" and "A male image is desired" are not sufficient to justify a business necessity for discrimination.
- 5. Justifications such as "We tried a few females and they could not do the work," "The work is too dangerous or unpleasant for females," and concern about women working alone on late night shifts are not supportive of a sex BFOQ or business necessity.
- 6. Reasons such as "a male image is desired" or "the presence of females would create a morale problem" will not justify discrimination.
- 7. The use of height and weight standards as part of the requirements of a job may be challenged and discriminatory if those standards eliminate a significantly greater number of females than males.
- 8. While some states and local governments prohibit discrimination against homosexuals, it is not prohibited by federal EEO laws.
- 9. To avoid a charge of sex discrimination, any rule against husband-wife employment should provide the two individuals with a choice as to which one will stay.
- 10. The assumption that parenthood may result in a female employee being absent is not a lawful basis for refusing employment to a mother.
- 11. Sex stereotyping can often result in unlawful discrimination. An example of this type of stereotyping might be when a male manager evaluates the performance of a female employee who has demonstrated assertive behavior. Because the manager views assertive behavior as a masculine characteristic, he rates her more critically.

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## **PREGNANCY DISCRIMINATION CHECKLIST FOR MANAGERS & SUPERVISORS**

**Under the Pregnancy Discrimination Act of 1978, a female applicant or employee may not be treated differently from a male applicant or employee because of the female's pregnancy or capacity to become pregnant.**

Because of the various state and local laws, it is very important that managers and supervisors consult these laws to determine what additional pregnancy discrimination requirements are imposed.

### **CHECKLIST**

The checklist below can be used by managers and supervisors to highlight compliance issues raised by the Pregnancy Discrimination Act of 1978.

- 1. A woman is protected against such practices as being fired or refused a job or promotion merely because she is pregnant or has had an abortion.
- 2. In terms of employment decisions, leave policies, and receipt of benefits, an employer should treat pregnancy and related medical conditions the same as other disability conditions are treated.
- 3. An employer would have to show a business necessity in order to refuse to hire a pregnant applicant.
- 4. As long as they can still work, expectant employees cannot be forced to go on leave.
- 5. If other employees who take disability leave are entitled to get their jobs back when they are able to work again, women who have been unable to work because of pregnancy must also be entitled to do so.
- 6. Disability leave due to pregnancy does not include leave taken or requested for personal reasons related to maternity, e.g., preparing for the birth of a child or caring for an infant where there is no accompanying disability.
- 7. An employer may not condition the availability of maternity leave on an employee's having been employed for a specified period of time that is different from other disabilities (e.g., one year).
- 8. Special problems arise when a company deals with materials or processes that may have a harmful effect on female reproductivity or unborn offspring. A policy that expressly excludes women only from the workplace because of reproductive or fetal hazards will violate Title VII. As long as pregnant or potentially pregnant women are as capable of doing their jobs as their male counterparts, they cannot be forced away from jobs on the basis of pregnancy or reproductive capacity.

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## **AIDS DISCRIMINATION CHECKLIST FOR MANAGERS & SUPERVISORS**

**Individuals with AIDS and/or the HIV virus are protected from employment discrimination under Title I of the Americans with Disabilities Act of 1990. The ADA and the Rehabilitation Act of 1973 specify that their protections do not extend to a person who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who is unable to perform the duties of the job. There are few jobs in which an individual with AIDS or HIV would pose a direct threat.**

Remember: the laws protecting individuals with disabilities do not protect an individual whose disability, even with reasonable accommodation, prevents him from performing the essential functions of the job.

**Expert advice:** Employers who wait until they are confronted with an AIDS case before developing a comprehensive AIDS policy risk being unprepared to handle what could become a crisis if workers' responses to an AIDS-infected coworker are extreme. Human resources experts advise that managers' and supervisors' efforts to educate workers about the medical evidence against the contraction of AIDS through casual contact will not appear to be genuine to workers if not begun until after a problem arises.

Some state and local jurisdictions have specifically indicated that they consider AIDS to be a protected disability.

### **CHECKLIST**

The checklist below can be used by managers and supervisors to highlight compliance issues raised by the federal disability discrimination laws.

- \_\_\_ 1. Supervisors and managers should strictly observe applicable Privacy Act requirements in connection with any medical documentation that becomes part of the personnel record of an employee with AIDS.
- \_\_\_ 2. Managers considering changes such as job restructuring, detail reassignment, or flexible scheduling for HIV-infected employees should do so in the same manner as they would for other employees whose medical conditions affect the employee's ability to perform in a safe and reliable manner.
- \_\_\_ 3. For jobs where drug testing or regular physical examinations are considered necessary, HIV testing may also be desirable to alert the manager to potential safety problems. State laws should be checked for restrictions on the employer's right to require HIV testing.
- \_\_\_ 4. If the U.S. Secretary of Health and Human Services determines that AIDS can be transmitted to others through the handling of food, an employer may refuse to assign or continue to assign and HIV-positive employee to a job involving food handling if the risk of transmission cannot be eliminated by reasonable accommodation.

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## **DISABILITY DISCRIMINATION CHECKLIST FOR MANAGERS & SUPERVISORS**

**Federal law prohibits discrimination against qualified individuals with a disability and requires that an employer make reasonable accommodation to an individual's disability.**

The duty to accommodate the needs of individuals with disabilities has its basis in the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974, neither of which has as broad applicability as the Civil Rights Act of 1964. The Americans With Disabilities Act of 1990 expanded these prohibitions on disability discrimination to private sector employers with 15 or more employees and to state and local governments.

An individual with a disability is defined as a person who:

- 1. has a physical or mental impairment that substantially limits one or more of the person's major life activities, or
- 2. has a record of such an impairment, or
- 3. is regarded as having such an impairment.

## **VETERANS' AFFAIRS CHECKLIST FOR MANAGERS & SUPERVISORS**

**The Vietnam Era Veterans' Readjustment Assistance Act of 1974 requires federal contractors and subcontractors with contracts of \$25,000 or more (including construction contracts) to not discriminate against and to take affirmative action to employ and promote qualified disabled veterans, veterans of the Vietnam era, and other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.**

Exemptions to VEVRAA relate to work done outside the US by employees not recruited in the US, contracts with state and local governments, facilities not connected with contract work, national security concerns, and special waivers in the national interest. There is no affirmative action requirement applicable to programs receiving federal financial assistance.

**Employment discrimination because of past, current, or future military obligations is prohibited by the Uniformed Services Employment and Reemployment Rights Act of 1994, which also grants reemployment protection in the for of leave-of-absence rights.**

### **CHECKLIST**

The checklist below can be used by managers and supervisors to highlight compliance issues raised by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 and the Uniformed Services Employment and Reemployment Rights Act of 1994.

- 1. If an employer's voluntary veterans' preference has an adverse impact on female employees or applicants for employment, the preference violates Title VII as sex discrimination unless the employer can show that the preference serves, in a significant way, the legitimate employment goals of the employer.
- 2. A qualified disabled veteran is one who is capable of performing a particular job with or without reasonable accommodation to his or her disability.
- 3. VEVRAA requires that the results of a pre-employment physical or mental examination be kept confidential. However, they may be revealed to supervisors and managers to the extent that restrictions are imposed on the duties of the disabled veteran and to the extent that

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accommodations must be made.

- \_\_\_\_\_ 4. Veterans must be invited to identify themselves as entitled to protection under VEVRAA. Except in limited circumstances, the invitation should be extended to an applicant after a job offer has been made and before the applicant begins work. The contractor may also distribute the invitation to employees.
- \_\_\_\_\_ 5. Management can invite job applicants or employees who are disabled veterans to indicate any changes that the employer can consider (such as purchase of special equipment) toward making it possible for them to do the pertinent work.
- \_\_\_\_\_ 6. Where accommodations to the physical and mental limitations of disabled veterans can be made without imposing an undue hardship on the business in terms of safety and efficiency or financial costs and expenses, the contractor is required to make such arrangements.
- \_\_\_\_\_ 7. Discrimination on the basis of military obligation is prohibited in most employment areas, including hiring, promotion, reemployment, termination, and benefits.
- \_\_\_\_\_ 8. Reemployment protection in the form of leave-of-absence rights is afforded under federal law. However, persons who leave civilian employment to serve in the military do not have an absolute right to reemployment in their pre-service jobs when they return-several criteria must be met to satisfy the basic eligibility requirements of USERRA. However, even if these requirements are met, changed employer circumstances could result in the elimination of any reemployment right that might otherwise have been available.

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