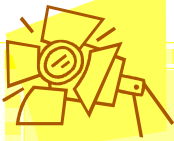


Spotlight on.....Job Applications



You Decide Case Study

Review the job application below and note any concerns.

Job Application for Billy's Bats

Name: _____ Today's Date: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone No. : _____

Social Security No. : _____ Birthdate: _____

Marital Status: Check one () Single () Married
() Divorced () Widowed

Number of Children: _____

Height: _____ Weight: _____

Hair Color: _____ Eye Color: _____

Position Desired: _____ Start Date: _____

Are you currently employed? () Yes () No

List current/past employers, position held, and dates of employment:

High School: _____

Graduated: () Yes () No Graduation Date: _____

College: _____

Degree: _____ Major: _____ Graduation Date: _____

Are you in the military or a member of the National Guard or Reserves? () Yes () No

Do you speak any foreign languages? () Yes () No

Language Spoken: _____

List Any Physical Defects: _____

Have you ever been injured? () Yes () No

Give details: _____

List Reference Names and Contact Information:

I hereby authorize Billie's Bats to contact the Background Check Company, Law Enforcement Division.

Signature _____

Did Billy's job application hit a homerun? Now that you have reviewed Billy's Bats' job application, what is your determination? Check any areas of concern that you noted:

- () Age Discrimination
- () Ancestry Discrimination
- () Color Discrimination
- () Disability Discrimination
- () Genetic Information Discrimination
- () National Origin Discrimination
- () Race Discrimination
- () Religious Discrimination
- () Sex Discrimination
- () Military Status Discrimination*
- () Other _____

* - Complaints of discrimination based on military status are not in the KHRC's jurisdiction.





Job Application for Billy's Bats: KHRC Analysis

Read the KHRC's review of the Job Application for Billy's Bats

Understanding employment law is crucial for the employee selection process, including job applications, because it is the goal of the employer to select the most qualified individual in the most equitable manner.

The Kansas Act Against Discrimination prohibits discrimination in employment on the basis of race, religion, color, sex, disability, national origin or ancestry. K.S.A. 44-1001 et seq. (the Kansas Act Against Discrimination). The Kansas Age Discrimination in Employment Act also prohibits employment discrimination on the basis of age, with "age" being defined as 40 or more years. K.S.A. 44-1101 et seq.; K.S.A. 44-1112.

These laws make it illegal to discriminate in the application and hiring process. As stated in K.S.A. 44-1009(a)(3), it is unlawful

For any employer. . . to use any form of application for employment . . . or to make any inquiry in connection with prospective employment . . ., which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, sex, disability, national origin or ancestry, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

K.S.A. 44-1113 (a)(4) likewise makes it unlawful for an employer to use a form of application for employment or to make inquiry in connection with prospective employment, which directly or indirectly expresses any intent to make any limitation or discrimination as to age.

The social security number and date of birth are not necessary inquiries at a pre-employment stage. The combination of these,

especially with other information on the application form, provides identity theft opportunities.

Moreover, the birthdate (or age) inquiry is inadvisable because both state and federal law prohibit age discrimination (for those 40 or over). A general age inquiry for all applicants indicates the potential employer cares about the age of the applicants, and tends to show an intent to illegally discriminate on the basis of age. There may be some instances in which the age of a younger applicant is relevant, due to a bona fide occupational qualification. For example, certain jobs restrictions apply to minors, and the question of whether an applicant is old enough to be legally allowed to perform a particular job (i.e., without violating child labor laws) would be a proper inquiry for that particular job. Age or date of birth should not be a routine question on an employment application, however.

Other questions on the application are also inadvisable. Questions about marital status and/or children tend to adversely affect female applicants; in particular because of stereotypes that women would be more likely to miss work due to family or childcare issues. Height and weight also tend to adversely affect women and should not be asked unless there is a particular, specific and bona fide reason why this matters to performing the specific

job. Hair color and eye color may be indirect inquiries into race, color, national origin or ancestry.

The questions about current military service and being in The Guard or Reserves are unwise. They tend to indicate an intent to discriminate against persons who serve in the armed forces. Such discrimination violates both Kansas law (K.S.A.44-1125 et seq.) and the federal Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301 et seq.). Refusal to hire an applicant because of his or her military service is prohibited. 38 U.S.C. §4311; K.S.A. 44-1126(a)(3). Complaints regarding alleged discrimination based on military service are not within the jurisdiction of the Kansas Human Rights Commission.

Unless speaking a foreign language is a requirement of the particular job position or considered an asset because of the nature of the particular job, questions about speaking foreign languages are inadvisable. There may be instances where bi-lingual abilities would be preferred, for example in a job where the employee would be dealing with the public, and speaks the languages spoken by the population in the general area. However, a question about speaking foreign languages generally, without any specific pertinence to the particular job, may be considered an indirect inquiry as to race, national origin or ancestry, and evidence of intent to discriminate based on race, national origin or ancestry.

The questions about physical defects and injuries show intent to discriminate based on disability, or perceived disability. Questions like this are unlawful in a pre-employment application; and severely restricted

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www.khrc.net/hiring.html
 for "Guidelines on Equal
 Employment Practices:
 Preventing
 Discrimination in Hiring"

(Continued on page 3)

to bona-fide job-related reasons for inquiry, even after employment. The law expressly prohibits employers from making pre-employment inquiries about disabilities. See, e.g., Americans with Disabilities Act Sec. 102 (d) (2), 42 U.S.C. § 12112.

The application form authorizes the employer to seek information from files of the “Background Check Company, Law Enforcement Division.” This is also problematic. These files would include arrest and conviction records. In some instances, specific to a particular job, conviction records may be pertinent. However, conviction records with no connection to the job requirements, and in particular arrest records when there has been no conviction, may show discriminatory intent on the basis of race, national origin or ancestry. This is because historically and statistically, minorities are more likely to be arrested than those with a Caucasian background; and an arrest record is only an accusation, and does not necessarily mean that the individual did anything illegal or wrong. If there is a bona fide occupational qualification for a particular job, an inquiry about convictions that would disqualify the individual (but not about arrests) may be made after a conditional job offer, rather than in a pre-offer job application.

In short, an employment application should only seek information essential for determining whether a person is in fact qualified for a particular job. Information about race, religion, color, sex, disability, national origin, or ancestry is not pertinent. Information about age is only pertinent if a person is too young to legally qualify to perform the particular job.