



Recruiting & Hiring

Courtesy of Meridian Benefits Consulting

Q

Is it illegal to ask job applicants about former arrests and convictions?

A

It is illegal to ask job applicants if they have ever been arrested, but in most states it is acceptable to ask if they have ever been convicted of a crime. However, several states have passed legislation that prohibits criminal history questions on job applications.

Asking applicants about previous arrests violates laws put in place by the Equal Employment Opportunity Commission (EEOC) because arrests have historically been biased against persons with protected statuses, specifically members of minority groups.

Asking about convictions is generally allowed. Whether this is done on the application or after an interview or conditional offer of employment may depend on your local or state laws. Should you decide to reject a candidate due to a prior conviction, there must be a legitimate business reason. Without such reason, you will be in violation of the EEOC rules. The legitimate business reason may be based on the following three factors:

- Type and severity of the crime
- How long ago the conviction took place
- How the conviction relates to the position applied for

If the job applicant intentionally misrepresents a conviction record, it may be appropriate to reject or terminate him or her for providing false information, regardless of whether or not the crime itself is grounds for such action.

Unless local or state legislation prohibits it, you may include questions pertaining to a candidate's criminal record on the employment application. The following (or similar) questions/statements should be considered on employment applications.

- Excluding minor traffic offenses, have you ever been convicted of a crime?
- The misrepresentation or withholding of information on this application provides sufficient reason for rejecting or immediately terminating a job applicant. Your signature below verifies that all information provided is true to the best of your knowledge.
- I understand that, in signing below, I am authorizing the Company to complete a background investigation, including a criminal background check.

