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Is your company's job applicant-tracking system making compliant inquiries?

By MaryEllen O'Neill, JD, CCEP

MaryEllen O'Neill (meocos@hotmail.com) is a consultant based in Washington, DC, with 20 years of compliance experience.

One of the first impressions a job applicant and potential new employee has of your company is your online job applicant-tracking system (ATS), so when was the last time you or someone on your team reviewed your company's ATS for compliance with current employment and other laws? I have been surprised by the number of systems that directly or indirectly request information prohibited by either federal or state law—and often both. And these are not small operations that lack the knowledge or manpower (but who would nonetheless be liable); they are substantial companies with large legal and compliance departments. Pre-employment inquiries should be solely geared to an applicant's job capability. When using an ATS to screen applicants, the overriding question should be: What do I need to know prior to the interview about a candidate's ability to do the job? These are just some of the most common issues I have seen with ATSs in use.

Revealing an applicant's age

The US Age Discrimination in Employment Act (ADEA)^[1] of 1967 is a very robust, well-developed, and frequently invoked age-discrimination law. The ADEA protects workers and *potential* workers from age-based discrimination in terms of hiring, firing, and other conditions of employment. In addition to the federal ADEA, individual states have their own laws protecting workers from discrimination based on age.

Despite the robustness of the law, I have discovered systems that require applicants to put in birthdates; without providing a year, the applicant cannot proceed. Although an applicant can lie, they should not be put in this position. In addition, a question that is always asked at the end of the application process is whether you have answered the questions truthfully, followed with a warning that failure to tell the truth can be grounds for revocation of a job offer and/or termination.

Where some systems directly ask for an applicant's age, some systems ask questions designed to subtly (or not so subtly) determine this information, such as requiring a candidate to put in the year they graduated from college. There should be little doubt how a court faced with whether such a question could be used for discriminatory purposes would rule. Some states, such as New York, for example, have specifically found that asking a candidate about years of school attendance and/or dates of graduation are illegal because the questions are subtle methods of asking a candidate's age. Some systems ask the question but do not make an answer to this question mandatory. Unsophisticated applicants may provide the information nonetheless, and once they do, the company has information to potentially discriminate against an applicant based on age. It would fall to the company to prove age bias was not the reason they did not hire the applicant.

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