

Recruiting and Hiring Toolkit



California
Employers
Association™

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Introduction

The hiring process is one of the most important and complex tasks facing employers. Not only do you need to find the most qualified candidates for your open positions, you also have to make sure you've complied with both state and federal anti-discrimination laws at every stage of the hiring process. You'll need to draft job descriptions, recruit, screen, select and then hire the candidates.

In many sectors, it's become increasingly difficult for employers to find qualified employees to fill open positions. And, as you probably know, hiring the wrong candidate is almost worse than not finding a qualified candidate to fill a position at all, because a bad hire can negatively affect your team and, ultimately, the success of the company. According to the U.S. Department of Labor, a bad hire can cost at least one-third of that position's first-year wages. Not only is there a financial cost to the hiring process, but a bad hire can also negatively influence employee morale and productivity.

The hiring process can be complicated and time-consuming, but done right, it has the potential to significantly affect your organization in a positive way. This tool kit is a guide to the hiring process and offers best practices for the steps along the way. It also provides an overview of the compliance and legal considerations related to hiring employees.

This tool kit is informational and educational in nature. CEA is not a law firm and does not dispense legal advice. Please use this information in conjunction with your own legal counsel.

Hiring Compliance Considerations

Employment practices, including the hiring and interview process, are subject to many laws, most of which protect against various types of discrimination. Noncompliance, whether accidental or intentional, can have serious consequences, draining your time and finances and hurting your company's reputation. The first step in order to remain in compliance throughout the hiring process is to understand the protections that both federal and state laws provide to employees and prospective employees.

Federal and State Laws

Before beginning the hiring process, you should have a basic understanding of the federal and state laws that affect the hiring process to help you avoid some of the major legal pitfalls associated with recruiting and hiring. The main purpose of the labor and employment laws is to prevent employers from making employment or hiring decisions based on factors that are **not** job-related, and **to protect employees against various types of discrimination**. One thing to keep at the top of your mind, throughout the process, is to keep everything, from job descriptions to hiring decisions, **strictly job-related**.

Documentation of hiring decisions is key for an employer to show that decisions were based on job qualifications and not on a protected characteristic. Without detailed documentation, it can be difficult for an employer to defend itself against litigation brought on by a disgruntled candidate. While these laws generally pertain to employers with more than a certain number of employees, adhering to them makes good business sense for almost all employers. For example, although the courts may throw out an age discrimination suit if the employer has fewer than five employees (under the Fair Employment and Housing Act) or fewer than 20 employees (under the Age Discrimination in Employment Act), the adverse effect on the company reputation and litigation costs can be long-lasting.

Below are the classes of candidates and employees who are protected under federal Law.

- Race
- Color
- Sex (including sexual orientation)
- Religion
- National Origin
- Disability
- Age (40 +)
- Pregnancy

In addition to the federal protected classes, California has its own list of protected classes:

- Age (40+)
- Ancestry
- Disability (Physical/Mental)
- Genetics (*prohibits genetic discrimination in health insurance and employment*)
- Marital Status
- Military/Veteran Status
- Perceived Status
- Association Based on Status
- Medical Condition
- Reproductive Health Decision-making
- Gender, Gender Identity & Expression
- National Origin (*birthplace, ethnicity, ancestry, culture, and language*)
- Pregnancy
- Race (*including hair texture and protective hairstyles closely associated with race*)
- Color
- Religion
- Off-duty and Off-site Cannabis Use
- Sex, Sexual Orientation
- Crime Victims, as defined

Protected Information and Classes

According to a CareerBuilder survey, one in five employers has inadvertently asked an illegal interview question. In order to stay on the right side of the law and avoid discrimination, you need to know how to navigate these topics and what questions to avoid.

Avoid any questions that directly or indirectly ask about an individual's protected class status, or a factor that is not job-related. In addition to avoiding questions about the protected classes above, do not ask about finances, children/family planning, military discharge, union involvement, workers' compensation claims, or leave time taken in a previous job. These issues may be viewed as related to a protected class or activity.

If candidates offer private or protected information voluntarily, you should direct the conversation away from these topics and make sure that the information is not recorded or used as a factor for consideration. You can ask all candidates whether they can perform the essential functions listed in the job advertisement. If you **only** ask that question of someone with an obvious disability, that could be perceived as discrimination, if an adverse decision is made later. Don't inquire about a candidate's specific disability or medical condition. Stick to the essential functions of the job, and whether or not the candidate thinks they can perform those essential functions.

Also Prohibited in California

In California, there are restrictions on the types of information that can be gathered during the recruitment process, including restrictions on asking about prior salary history, restrictions on obtaining prior cannabis-use information, and restrictions on obtaining criminal history information before a conditional offer of employment has been extended. Refer to our [Criminal Background Checks Fact Sheet](#) for more information.

Pay Scale Disclosures

In California, **all employers** are required to disclose the pay scale (i.e., the salary or hourly wage range that the employer reasonably expects to pay for the position) to an applicant for the job upon a "*reasonable request*." California employers with **15 or more employees**, must include the pay scale for a position in *any job posting*. If you work with third-party recruiters, you must provide them with the pay scale and ensure they include it in any posting as well.

Social Media and the Hiring Process

During the interview and hiring process, using social media can be very risky as you might come across unverified information about a candidate that is protected, such their age, race, or disability. It is best to avoid viewing candidates' social media accounts. Make sure all hiring managers and anyone else who is involved in the hiring process know not to look at candidates' social media accounts.

Drivers Licenses

As of January 1, 2025, California employers are prohibited from stating that applicants must have a valid driver's license in any job advertisement, posting, application etc. *unless*: (1) the employer reasonably expects driving to be one of the job functions for the position, AND (2) the employer reasonably believes that satisfying the job function using an alternative form of transportation (walking, biking, taxi, etc.) would not be comparable in travel time or cost to employer. As such, employers should assess on a case-by-case basis whether driving is required of the posted position, and whether alternative methods of transportation may be available.

The Hiring Process – Best Practices

Now that you have become familiar with the compliance considerations, it is time to move forward with other steps in the hiring process.

Creating an Accurate Job Description

Having a well-written and compliant job description is the first step in the process. All other hiring activities flow from solid job descriptions. A job description is what a recruiter or hiring manager will use when hiring a new employee and it will also be a candidate's first interaction with your company. As such, it is critical that your company's job descriptions are thorough, clear, accurate and regularly updated. Refer to our [Job Descriptions Toolkit](#) for more information.

Job Description Development

A quality job description may not look the same for all positions at an organization, but each description should include similar aspects. It should be written clearly, detail job functions and duties, and list required skills, qualifications and expectations, providing examples as appropriate. Well-written job descriptions are concise, free from gendered or technical language, and specific.

Each job description should include:

1. Job Title
2. Job Summary
3. Essential (Core) Job Functions
4. Physical Requirements
5. Knowledge, Skills and Experience
 - a. Required (to perform the essential job functions)
 - b. Preferred
6. Reporting Relationships
7. Employee status (full-time, part-time, seasonal, etc.)
8. Pay rate
9. Exempt/non-exempt. California presumes that all employees are *non-exempt*. Use CEA's exempt analysis worksheets to help determine whether the position should be classified as exempt or non-exempt:
 - a. [Exempt Analysis Worksheet – Administrative Exemption](#)
 - b. [Exempt Analysis Worksheet – Salesperson Exemption](#)
 - c. [Exempt Analysis Worksheet – Executive/Managerial Exemption](#)
 - d. [Exempt Analysis Worksheet – Professional Exemption](#)
 - e. [Exempt Analysis Worksheet – Computer Professional Exemption](#)

The term "[essential functions](#)" should be used and clearly described in the job description. The job description should explicitly state the manner (if there is one) that an individual is to perform the job. Job descriptions should be updated periodically to reflect the essential functions of altered positions or to reflect any other pertinent changes. All levels of management and human resources should review job descriptions. The

essential functions not only describe the position qualifications but will be necessary to review should a reasonable accommodation be necessary later in employment.

Review for Consistency

In addition to regularly reviewing your job descriptions for accuracy, you should review them for organizational consistency. Maintaining consistent messaging in your company's job descriptions creates cohesiveness and can help ensure equitable comparisons across jobs. Also, organizationally consistent job descriptions can be useful when developing a framework for companywide performance evaluations, policies and annual reports.

Job Description Best Practices

The job description that you provide will probably be the first interaction prospective candidates have with your organization. That is why it is so important to make sure your job descriptions are accurate, engaging and compliant. Refer to our [Job Descriptions Toolkit](#) for more information.

Recruiting

Job ads, in order to be compliant, they should:

- Comply with all California and federal anti-discrimination laws and other laws relating to hiring
- Avoid any reference that would contradict at-will employment (the employer or employee can terminate the employment relationship at any time, with or without cause and/or advance notice)
- If you have *15 or more employees*, the job ad must include the pay scale information (i.e., hourly or salary wage range) for the position
- Not include anything that a “reasonable person” would interpret as deterring or limiting people with protected status from applying.

Appropriate Language in Job Ads

Examples of some right and wrong ways to express what you are looking for:

DO USE	DO <u>NOT</u> USE
Enthusiastic salesperson	Young and energetic salesman
Food Server	Waitress
Repair Person	Repairman
Travel Required	Perfect for a single person willing to travel

Sourcing Candidates

Sources for finding candidates can include:

- Recruiting Firms – [CEA offers outstanding recruiting services](#)
- Professional Online Communities, such as:
 - LinkedIn
 - Glassdoor
- Job Boards, such as:
 - Monster
 - ZipRecruiter

- Colleges and Universities
- Professional Associations
- Networking
- Community Resources

Job Applications

CEA has an [Digital Employment Application in our store](#) for purchase on our website that collects important information directly from a job applicant that you do not usually find on a resume necessary to effectively evaluate position qualifications and applicant's references. It includes:

- Four-page employment application
- Attorney-reviewed to guarantee compliance

To make sure your job application is compliant with both federal and state law, do not include questions about:

- Prior Salary
- Criminal History
- Prior Cannabis Use
- Credit History
- Social Security Number

Interviewing

Many factors influence what your hiring and interview process will look like, including your company type and size, your personal interviewing style and the position in question. Regardless, there are some best practices that generally apply to most interviews. Below are suggestions to help facilitate an efficient interview process.

Interview Questions

When asking candidates questions, always make sure that they tie back to the job responsibilities (remember, job-specific). Avoid questions that are illegal or solicit discriminatory information. Find and use the questions that best enable you to gather the information you need about a candidate in order to make a sound hiring decision. You can find guidance about interview questions for [customer contact and sales applicants](#), and [exempt and management applicants](#) on CEA's website.

Reference Checking Best Practices

CEA offers a [Telephone Reference Check](#) form you can use when calling references. Before you reach out to a candidate's personal or professional references:

- Make sure applications note that a background check and reference check will be required and that falsified information is grounds for application rejection or termination.
- Require candidates to sign a release form to obtain their consent for a background check or reference check. Be sure to send a copy of this release and your credentials to the reference(s) you will be contacting.

- Clarify with the candidate who may, and may not, be contacted as a reference.

When talking with a candidate's reference(s):

- Introduce yourself, explain the reason you are contacting them and provide an overview of the position.
- Let the reference know that you would appreciate their candor.
- Ask a mix of easy questions, such as the candidate's employment dates and job responsibilities, to help you verify the information given by the candidate. This step also helps the reference warm up to the conversation.
- Ask the reference if they would rehire the former employee. Think about asking specific questions regarding a candidate's work ethic, past work environment and any issues that were present during their tenure to ensure you get as candid of a response as possible.

Making the Offer

When making your offer of employment, consider the following:

- Clearly state the at-will nature of employment.
- Make all offers in writing using a standard format. You can use CEA's [Sample Offer Letter](#) for this purpose.
- Review your employee handbook and make sure it contains a disclaimer that it is not a contract and clearly states the at-will nature of employment. Remove any statements that could be interpreted to imply contractual rights
- Make sure that jobs that require equal skill, effort and responsibility and are performed under similar working conditions are equal in pay.

Pre-Employment Screenings

If your company uses pre-employment screenings, **use caution. Do NOT request consent or complete any pre-employment screenings until the conditional offer letter has been accepted by the applicant.**

- **Drugs and Alcohol.** If you screen applicants for drugs and/or alcohol, CEA has a sample [Drug and Alcohol policy](#) (your policy may include information about pre-employment testing as well as Reasonable Suspicion testing), and a sample [Drug/Alcohol Testing Consent/Declination Form](#). Note that as of January 1, 2024, applicants and employees are protected under the FEHA when using cannabis off-duty and off-site. For any pre-employment drug screening, you may not test an applicant for non-psychoactive cannabis metabolites (i.e., you may only test for active THC). Work with a qualified drug screening provider.
- **Physicals.** If your company uses pre-employment physicals, CEA provides a [Pre-Employment Physical Notification](#).
- **Background Checks.** If you conduct criminal background checks, please review CEA's fact sheet, [Criminal Background Checks](#).

Employing Minors

If you are considering hiring a minor, please check out these two resources: [Employing Minors Summary Chart](#) and [Minor Work Permit](#). Also, CEA has an extremely useful [Employing Minors Toolkit](#).

Onboarding New Hires

Congratulations! You have now filled one or more of your open positions and, in utilizing this tool kit, have remained compliant along the way.

Onboarding is a process that involves teaching new hires the social and performance aspects of their jobs, introducing them to company culture and helping them get acclimated as quickly as possible. Onboarding takes training and orientation programs to the next level. Unlike a traditional orientation program, onboarding is a systematic process that extends well beyond the first day of employment.

For your reference, you can access CEA's comprehensive [New Hire and Orientation Checklist](#) to ensure that you are giving all the required notices and brochures to each new hire. There is a slightly different [Employee Orientation Checklist for Minors](#) you should be using for all new hires who are under 18 years of age. Also, available on the CEA Store for purchase is a complete [New Hire Packet in our store](#) of downloadable forms and pamphlets ready for immediate printing.

Employers who have high retention rates typically have a formalized onboarding program in place. Below are some best practices to consider regarding your company's onboarding process:

- **Communicate** with new hires before their first day to help alleviate some of the stress that accompanies first-day jitters. Send a welcome letter or email along with information about the company and any other useful first-day information.
- **Foster the manager-employee relationship from the day one** – the first day is a good opportunity for managers to meet with their new hires, introduce them to other team members, take them out to lunch and make them feel comfortable.
- **Try an ice breaker activity to help the new employee get to know their coworkers** – one idea is to find out from the new employee, ahead of time, what their favorite candy is. Buy a small supply of that candy, put it in a container (could be company-branded) and place it on the employee's desk with a welcome note on their first day. Send an email to the rest of the employees letting them know what the new employee's favorite candy is and telling them that there is a supply of that candy at the new employee's desk. Encourage employees to stop by the new employee's desk to grab a piece of candy and chat with the new employee (maybe telling the new employee what *their* favorite candy is).
- **Consider a mentoring program** – assigning mentors to new hires can be highly advantageous to both parties. New hires know who to contact with questions, and mentors develop confidence and pride in their jobs.
- **Communicate management expectations early on** – It's important for the manager to communicate the department's goals, as well as how the goals are tracked. This ensures new hires are set up for success.
- **Onboarding is an ongoing process** – it takes dedication and follow-through from both the new hires and whoever is guiding them. An easy pitfall to slip into is leaving new hires to their own devices during the onboarding period, perhaps to review training materials. Try to avoid isolating new employees, and instead encourage them to talk with others and establish contacts who can help them with questions during their onboarding.