

Hiring and Onboarding Best Practices

Application and Interview Process

6 Questions to Run Past an Attorney

When hiring a new employee for your organization, it's smart to have a local attorney review your employment application to confirm it complies with state and federal employment laws. It's also good to know the questions you may legally ask people during a job interview—and which ones to avoid. Keep in mind that some questions you aren't allowed to ask job applicants may be okay to ask people seeking unpaid or volunteer work. Ask a lawyer to be sure.

Here are 6 categories of questions to discuss with a local attorney before using in an application or interview. Proceed with caution before asking about a person's:

- Health and medical conditions.
- Traits or tendencies.
- Criminal record.
- Sexual misconduct.
- Religious beliefs.
- Wage history.

1. Health and Medical Conditions

Be careful when asking questions related to a person's health and medical conditions. This holds true on a number of levels. First, avoid violating the federal Americans with Disabilities Act (ADA). The ADA allows an employer to ask disability-related questions and require medical exams of a job applicant only after the applicant has been given a conditional job offer. An organization may be subject to the ADA if it employs 15 or more people. This article from the Equal Employment Opportunity Commission provides additional guidance about making [pre-employment inquiries into medical issues](#).

Questions about mental health diagnoses or treatment can be tricky, as well. Such queries could be seen as an illegal attempt to gain information about a person's disability or to discriminate against people with mental illness.

The federal ADA also addresses what employers can ask about past illegal drug addiction and alcoholism. See "[ADA: Alcoholism and illegal use of drugs.](#)"

Rather than asking applicants about mental health diagnoses or past issues with addiction, consider developing drug and alcohol policies that you require all employees and volunteers to sign. Such policies would generally prohibit a person from being under the influence of alcohol or illegal drugs while working or volunteering with your organization.

Your state may have additional laws governing what an employer may ask about a job applicant's disabilities, mental health, and past drug or alcohol use. It's always wise to consult with a local attorney before diving into these waters.

2. Criminal Record

If state law permits, some employment and volunteer application forms ask whether a prospective worker has ever been convicted of—or pleaded guilty or no contest to—any criminal offense. The answer to this question may alert the organization to further evaluate an applicant's suitability to serve in various ministries. By asking this question, employers can determine if additional information is necessary to make an informed decision about whether or not a prospective worker poses a threat to others.

Important note: Federal law doesn't bar employers from asking about criminal history during the application process, but it does prohibit employers from discriminating when they use criminal history information to make employment decisions.

State laws differ. Many states have laws specifying what you can—and can't—ask about a job applicant's criminal history. For example, some states won't allow you to inquire about criminal convictions that have been expunged, sealed, or deleted from court records. Others have adopted "ban-the-box" legislation that prohibits you from asking criminal history questions until after a conditional job offer has been made. Failing to comply with this type of state or local requirement could lead to lawsuits or fines.

Check with a local attorney to determine what types of criminal history questions your city and state allows employers to ask during the job application and interview process.

3. Abuse or Sexual Misconduct

Find out if your state allows employment and volunteer application forms to ask about sexual misconduct claims. Generally, the form would ask if a prospective worker has ever participated in (or been accused, convicted, or pleaded guilty or no contest to) abuse or any sexual misconduct. This question communicates the ministry organization's concern regarding a prospective worker's past record with sexual misconduct, regardless of whether that misconduct resulted in criminal prosecution or conviction.

4. Traits or Tendencies

Another question for your local attorney is whether you're allowed to inquire about the traits or tendencies of people who will serve with children or people who could be easily victimized. If so, we generally recommend including a "traits or tendencies" question on the application for paid or volunteer positions. This question asks whether an individual is aware of any traits or tendencies they possess that could pose any threat to children, youth, or vulnerable adults. "Traits or tendencies" might include struggles with pornography, anger management problems, etc. This question can assist in assessing the suitability of a person for certain roles and responsibilities, especially those that involve working with children, youth, or vulnerable adults.

5. Religious Beliefs

Asking about a person's religious beliefs is another area that merits a conversation with your attorney.

Federal law generally allows faith-based organizations to give employment preference to individuals who are members of the same religion. This "ministerial exception" lets ministries and other religious organizations to make hiring and firing decisions based on an employee's beliefs and practices, at least with respect to individuals who are considered to be "ministerial employees."

The ministerial exception has been traditionally applied to pastors, ministers, or other employees who are ordained or who function in a similar religious capacity. In 2020, the U.S. Supreme Court expanded this definition to include teachers.

You may wish to encourage non-ministerial employees to act in accordance with your organization's religious beliefs. Generally, employers may do so if the beliefs are clearly spelled out and employees are notified that they are expected to adhere to them.

To pursue this option, your organization should clearly communicate the beliefs and expected moral conduct to job applicants and employees. This information could be expressed in a statement of faith or a morals clause in the ministry's employment handbook. It could also be incorporated into the organization's bylaws, constitution, etc. Referencing Scripture in these documents in support of the organization's sincerely held religious beliefs and expected

moral conduct can help reinforce the religious nature of your position.

Some religious nonprofits include a copy of their sincerely held religious beliefs with an employment application and have job applicants sign a form that states they have reviewed the statement of faith, understand it, and agree to comply with it.

State and local laws may allow faith-based employers to give hiring preference on the basis of religion only to those serving a purely religious function or in cases where a bona fide occupational qualification exists.

6. Wage History

Many cities and states don't allow employers to ask about a person's past wages or current compensation during the hiring process. Such laws aim to promote pay equity for people who do similar work. Before making wage inquiries during the hiring process, it's a good idea to ask a local attorney whether similar state or local restrictions apply to you, since they vary by locale.

Onboarding Process

Before hiring employees, it's helpful to develop a clear onboarding process for your staff and new employees to follow. Typically, the process starts with one or more candidates submitting an application for employment. (The application should include candidates' written permission to conduct a background check). Once you have completed the interview process and are ready to make a job offer, the onboarding process begins. It generally involves the following tasks, at a minimum.

- Prepare an offer letter *{Link to Sample Offer Letters}*, job description *{Link to Sample Job Description}*, and any related documents (such as a confidentiality agreement).
- Deliver employment documents to the job candidate obtain all necessary signatures.
- Complete a background check. (See more details about background checks, below.)
- Have the employee complete new-hire paperwork, such as benefit enrollment forms and employment verification documents.
- Verify the employee's identity and eligibility for employment, as required by law.
- Complete the employer side of the IRS I-9 form within three days of the employee's start date. (See more about I-9 forms, below).
- Add the new employee to your organization's website (if needed).
- Create accounts granting employee access to email, websites, etc. (if needed).
- Conduct new employee orientation.
- Deliver an employment handbook and obtain a signature confirming that the employee received it.

This list offers a starting point for developing an onboarding process. You may wish to include additional steps to support new hires in developing the skills and knowledge they need to be successful in your organization.

Performing a Background Check and Screening Workers

Conducting background checks on job and volunteer candidates is one component of a four-part screening process that Brotherhood Mutual recommends for all faith-based organizations.

Generally, candidates should be screened with the following four tools:

- A criminal record check (as permitted by applicable law).
- An application that asks about a person's sexual misconduct, criminal history, and traits or tendencies that could pose a threat to vulnerable individuals (as allowed by law).
- A personal interview.
- Professional references that are checked by your organization.

Screening job and volunteer applicants can help organizations make informed decisions about the people they choose. Plus, it can reduce the risk being accused of negligent hiring or selection.

Timing is a factor to consider. State laws may dictate when employers may conduct criminal background checks on job candidates. Some states may not allow background checks until after interviews are completed and an offer is extended. Other states are silent on the issue. You are encouraged to check with a local attorney to understand what guidance your state provides on performing background checks on prospective employees.

Accuracy can vary. Criminal background checks can vary in both depth and accuracy. It is a good idea to have a reputable background screening company conduct your criminal records check.

It's important to include local criminal records as part of your review. Some state and counties do not report convictions to national databases, which leaves national background checks with invisible gaps, regardless of who does the screening. It's a good risk management practice to review criminal records from counties where an applicant currently lives or has lived for a significant period of time.

For more about conducting criminal background checks, see the [Background Screening](#) section of the Brotherhood Mutual website which includes a background screening checklist and FAQs about why it is important to screen, who to screen, what to look for in a provider, and more.

Verifying Employment Eligibility (IRS Form I-9)

Employers are typically required to complete [IRS Form I-9](#) to verify the identity and employment eligibility of new employees. *The I-9 form should never be used as part of the applicant screening process or a background check. It may be used **only after a candidate has accepted your job offer.*** After a person is hired, follow this timeline for completion.

- **First workday:** Have the new hire complete Section 1 of the I-9 form by the end of the first day of paid work.
- **Third workday:** Complete Section 2 of the I-9 by the end of the new employee's third workday. (If a person will work for fewer than three days, you must verify an employee's identification documents *on the first day of work for pay.*)

Encourage new hires to present their identification documents as soon after completing Section 1 of the form as possible. You must allow up to three days for new hires to provide proof of identity from the list of acceptable documents found in the Form I-9 instructions. If a new hire doesn't present acceptable proof of identity by the end of the third business day, you may terminate the employee for failing to complete the I-9 form.

If a new hire isn't a permanent U.S. resident (such as a green card holder), employers may petition the U.S. Department of State for temporary visa on the person's behalf. Nonimmigrant visas are usually granted on the basis of applicants' employment prospects and the type of industry or field in which they would be employed. If a new hire would be coming to the U.S. temporarily for religious work, you may wish to review the qualifications for [R-1 nonimmigrant religious workers](#).

Sample Offer Letter – Exempt from FLSA

Include on your organization’s letterhead.

[DATE]

[NAME]

[ADDRESS]

[ADDRESS]

[EMAIL ADDRESS – optional]

Dear [NAME]:

This letter extends to you a formal offer of employment for the full-time, exempt, position of [INSERT JOB TITLE] for [INSERT NAME OF ORGANIZATION] (“Employer”). This offer of employment is pending the approval of a background check. *[Note: Include background check language only if allowed by applicable law.]*

Your starting compensation for this position will be [\$XXXXX] annually. Employer retains the right to review and adjust your compensation at any time. The enclosed Benefit Guide highlights information regarding benefits.

During the course of your employment, you are free to resign from the Employer at any time for any reason, and the Employer has the right to terminate your employment at any time, with or without advance notice and with or without cause. This is described as “employment at will.” It is further understood that no commitment for any length, duration, or permanence of employment shall be valid unless made specifically to you, by name and in writing, by the Employer.

We would appreciate knowing your official decision concerning this offer by **[DATE]**. As discussed, if you choose to accept this offer of employment, we will anticipate your start date of **[START DATE]**.

If you have any questions regarding this offer, please contact me at [INSERT PHONE NUMBER OR EMAIL].

Sincerely,

[INSERT NAME OF HIRING REPRESENTATIVE], [TITLE]
[NAME OF ORGANIZATION]

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Sample Offer Letter – Nonexempt from FLSA

Include on your organization’s letterhead.

[DATE]

[NAME]

[ADDRESS]

[ADDRESS]

[EMAIL ADDRESS – optional]

Dear [NAME]:

This letter extends to you a formal offer of employment for the full-time, non-exempt, position of [INSERT JOB TITLE] for [INSERT NAME OF ORGANIZATION] (“Employer”). This offer of employment is pending the approval of a background check. *[Note: Include background check language only if allowed by applicable law].*

Your starting compensation for this position will be [\$XX] per hour. Employer retains the right to review and adjust your compensation at any time. The enclosed Benefit Guide highlights information regarding benefits.

During the course of your employment, you are free to resign from the Employer at any time for any reason, and the Employer has the right to terminate your employment at any time, with or without advance notice and with or without cause. This is described as “employment at will.” It is further understood that no commitment for any length, duration, or permanence of employment shall be valid unless made specifically to you, by name and in writing, by the Employer.

We would appreciate knowing your official decisions concerning this offer by **[DATE]**. As discussed, if you choose to accept this offer of employment, we will anticipate your start date of **[START DATE]**.

If you have any questions regarding this offer, please contact me at [INSERT PHONE NUMBER OR EMAIL].

Sincerely,

[INSERT NAME OF HIRING REPRESENTATIVE], [TITLE]

[NAME OF ORGANIZATION]

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Sample Position Description

[Insert Organization Name and Logo]

POSITION DESCRIPTION

POSITION TITLE:

FLSA Status:

REPORTS TO:

DATE:

POSITION PURPOSE:

In the position of (name of position), employee will be responsible for (add detail here).

STANDARDS OF PERFORMANCE:

Insert standards of performance. Below are examples.

- Actively supports and incorporates company mission and core values into daily activities.
- Maintains a positive and respectful attitude with colleagues.
- Works as a team member to achieve department goals and overall company goals.
- Demonstrates positive customer service skills, internally and externally, with effective communication, respect, and integrity.
- Maintains confidentiality of all information related to (add info here).
- Consistently reports to work on time, prepared to perform duties of position.
- Demonstrates leadership skills and continually leads by example.

ESSENTIAL FUNCTIONS:

Insert essential functions of the job.

QUALIFICATION REQUIREMENTS

(Insert key qualification requirements. See examples below.)

- Possesses a high school diploma or higher.
- Has ability to perform multiple tasks in complex working environment accurately and efficiently.
- Possesses above-average computer knowledge and skills.
- Has knowledge and experience necessary for independent decision-making.
- Possesses a supportive and responsive manner with customers.

BUSINESS SKILLS REQUIRED:

(Insert business skills required for job. See example below.)

- Identifying and troubleshooting problems.
- Writing a business letter.
- Handling difficult clients.
- Giving and taking criticism.

- Reading body language.
- Managing time.
- Working independently and being self-motivated.
- Dealing with stress.
- Combining speed with accuracy.

RELIGIOUS FUNCTIONS:

(Insert key religious functions of the job to connect the position to the organization’s religious purpose.)

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