

**WILLAMETTE VALLEY INNS OF COURT
COLLINS TEAM PRESENTATION – JANUARY 19, 2017**

DIVERSITY AND INCLUSION IN HIRING

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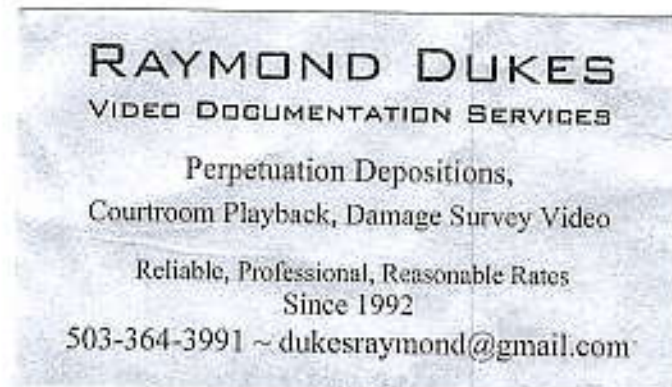
Willamette Valley Inns of Court
Collins Team Presentation – January 19, 2017

SPEAKER
LISA UMSCHIED

Lisa is one of three Members of the Oregon Employment Relations Board, the quasi-judicial state agency that decides cases under the Oregon Public Employee Collective Bargaining Act and the State Personnel Relations Law. Lisa was appointed to the Board by Governor Brown effective October 17, 2016.

Lisa earned her B.A. from Pomona College and her J.D. from Willamette University College of Law. Before joining the Employment Relations Board, Lisa worked for more than 20 years as a labor and employment attorney, representing both public and private employers. She served as labor and employment counsel for Metro, the regional government in the Portland area. She also represented public and private employers as a partner at Ball Janik LLP, and represented the State of Oregon in labor and employment matters in her capacity as Senior Assistant Attorney General at the Oregon Department of Justice. Lisa has served multiple terms on the Oregon State Bar Advisory Committee for Diversity and Inclusion, including serving as the chair, and is the former chair of the OSB Government Law Section.

VIDEOGRAPHY FOR SKITS



Basic Tips for Legal Hiring Practices

Presented by Lisa M. Umscheid

For Willamette Valley American Inn of Court – Team Collins, January 19, 2017

The best strategy to ensure a hiring process complies with the many applicable legal requirements and prohibitions is to focus on applicants' actual skills and abilities that are genuinely job-related (as opposed to focusing on whether an interviewer may feel comfortable or at ease with a particular applicant in the social interaction of a traditional job interview). Listed below are a few guidelines that focus on some of the basic legal requirements and prohibitions that apply to Oregon employers.

1. Do not ask questions that seek information about protected class status.

Employers may not discriminate against members of any protected class in hiring decisions. See the attached list from the Oregon Bureau of Labor and Industries listing classes protected under both federal and state law. Avoid questions that are veiled inquiries into protected class status. Examples:

- High school graduation year (age);
- Non-job-related organizational memberships (religion);
- Child care arrangements (sex, marital status);
- Hospitalization or workers' compensation claim status (disabilities, workers' compensation retaliation);
- How any foreign language skills were acquired (national origin);
- How the applicant spends a "typical Sunday" (religion, marital status);
- Questions about divorce or marital status (marital status);
- Questions about "starting a family" (sex, marital status);
- Questions about place of birth or citizenship status (national origin).

2. Advertise openings and career opportunities to multiple communities to reach a broad audience.

To ensure that the pool of applicants is fairly representative of the overall population and includes members of protected classes, consider advertising and outreach that will be seen by applicants from traditionally underrepresented communities.

3. Do not violate the prohibition on pre-employment medical inquiries.

Employers must avoid unlawful medical inquiries at all stages of the hiring process. From the EEOC's *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act*:

Under the ADA, an employer's ability to make disability-related inquiries or require medical examinations is analyzed in three stages: pre-offer, post-offer, and

employment. At the first stage (prior to an offer of employment), the ADA prohibits all disability-related inquiries and medical examinations, even if they are related to the job. At the second stage (after an applicant is given a conditional job offer, but before s/he starts work), an employer may make disability-related inquiries and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category. At the third stage (after employment begins), an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.

The ADA requires employers to treat any medical information obtained from a disability-related inquiry or medical examination (including medical information from voluntary health or wellness programs), as well as any medical information voluntarily disclosed by an employee, as a confidential medical record. Employers may share such information only in limited circumstances with supervisors, managers, first aid and safety personnel, and government officials investigating compliance with the ADA.

4. Provide reasonable accommodations to applicants with disabilities and applicants who request and need accommodations for religious beliefs, observances, or practices.

Federal and Oregon law require employers to provide reasonable accommodations to employees with disabling conditions, as well as employees whose religious beliefs, observances, or practices require reasonable accommodations, unless it would be an undue hardship to do so. (The standard for undue hardship is different under the laws protecting employees with disabilities and the civil rights laws requiring religious accommodations.) The duty to provide reasonable accommodations applies to employees and to applicants.

5. Do not unlawfully inquire into credit history.

An Oregon employer may not obtain or use for employment purposes an applicant's credit history information, unless one of the statutory exceptions applies. ORS 659A.320 (see attached) also specifically prohibits the refusal to hire or to promote, the termination, discipline or demotion of, or the retaliation or discrimination against an applicant based on an individual's credit history.

6. Do not unlawfully inquire into arrest and conviction history.

Be aware that inquiries into arrest history are viewed by civil rights enforcement agencies as having a disparate impact on applicants in certain protected classes and therefore may violate the anti-discrimination laws. See the attached EEOC guidance on pre-employment arrest and conviction information.

Subject to certain exceptions, ORS 659A.360 (the "ban the box" statute) prohibits employers from inquiring in an employment application whether the applicant has ever been convicted of a

crime. Moreover, even if that question does not appear on an employment application, the statute bars an employer from requiring an applicant to disclose a criminal conviction prior to an initial interview. Finally, if no initial interview is conducted, the applicant cannot be required to disclose a criminal conviction prior to the time the employer makes a conditional offer of employment.

7. Do not unlawfully inquire about religious beliefs, practices, or observances.

Do not ask questions that will screen out employees based on their religious beliefs, practices or observances (such as their availability to work at certain times). Some employers must staff shifts on Saturdays and Sundays, and are concerned about hiring applicants who are available to work those shifts, which implicates compliance with the duty under federal and Oregon law to provide reasonable accommodations to employees for religious beliefs, practices, and observances. See 29 CFR Section 1605.3, the applicable regulation promulgated by the U.S. Equal Employment Opportunity Commission:

§1605.3 Selection practices.

(b) Inquiries which determine an applicant's availability to work during an employer's scheduled working hours.

(1) The duty to accommodate pertains to prospective employees as well as current employees. Consequently, an employer may not permit an applicant's need for a religious accommodation to affect in any way its decision whether to hire the applicant unless it can demonstrate that it cannot reasonably accommodate the applicant's religious practices without undue hardship.

(2) As a result of the oral and written testimony submitted at the Commission's Hearings on Religious Discrimination, discussions with representatives of organizations interested in the issue of religious discrimination, and the comments received from the public on these Guidelines as proposed, the Commission has concluded that the use of pre-selection inquiries which determine an applicant's availability has an exclusionary effect on the employment opportunities of persons with certain religious practices. The use of such inquiries will, therefore, be considered to violate title VII unless the employer can show that it:

(i) Did not have an exclusionary effect on its employees or prospective employees needing an accommodation for the same religious practices; or

(ii) Was otherwise justified by business necessity.

Employers who believe they have a legitimate interest in knowing the availability of their applicants prior to selection must consider procedures which would serve this interest and which would have a lesser exclusionary effect on persons whose religious practices need accommodation. An example of such a procedure is for the employer to state the normal work hours for the

job and, after making it clear to the applicant that he or she is not required to indicate the need for any absences for religious practices during the scheduled work hours, ask the applicant whether he or she is otherwise available to work those hours. Then, after a position is offered, but before the applicant is hired, the employer can inquire into the need for a religious accommodation and determine, according to the principles of these Guidelines, whether an accommodation is possible. This type of inquiry would provide an employer with information concerning the availability of most of its applicants, while deferring until after a position is offered the identification of the usually small number of applicants who require an accommodation.

(3) The Commission will infer that the need for an accommodation discriminatorily influenced a decision to reject an applicant when: (i) prior to an offer of employment the employer makes an inquiry into an applicant's availability without having a business necessity justification; and (ii) after the employer has determined the applicant's need for an accommodation, the employer rejects a qualified applicant. The burden is then on the employer to demonstrate that factors other than the need for an accommodation were the reason for rejecting the qualified applicant, or that a reasonable accommodation without undue hardship was not possible.

29 CFR Section 1603.5(b) (emphasis added).

8. Observe the social media privacy law.

Oregon employers may not require applicants to disclose or provide access to their social media accounts. See ORS 659A.330 (attached). Note that the statute does not prohibit an employer from accessing information available to the public about the employee or applicant that is accessible through an online account.

Credit History Inquiries

ORS 659A.320 Discrimination based on information in credit history prohibited; exceptions. (1) Except as provided in subsection (2) of this section, it is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Subsection (1) of this section does not apply to:

(a) Employers that are federally insured banks or credit unions;

(b) Employers that are required by state or federal law to use individual credit history for employment purposes;

(c) The application for employment or the employment of a public safety officer who will be or who is:

(A) A member of a law enforcement unit;

(B) Employed as a peace officer commissioned by a city, port, school district, mass transit district, county, university under ORS 352.121 or 353.125, Indian reservation, the Superintendent of State Police under ORS 181A.340, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor or employed as a regulatory specialist by the Oregon Liquor Control Commission; and

(C) Responsible for enforcing the criminal laws of this state or laws or ordinances related to airport security; or

(d) The obtainment or use by an employer of information in the credit history of an applicant or employee because the information is substantially job-related and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(3) An employee or an applicant for employment may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover the relief as provided by ORS 659A.885 (1) and (2).

(4) As used in this section, "credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity. [2010 c.102 §2; 2011 c.210 §6; 2011 c.506 §54; 2012 c.54 §25; 2012 c.67 §16; 2013 c.180 §49; 2015 c.614 §165]

Social Media Privacy

ORS 659A.330 Employee social media account privacy. (1) It is an unlawful employment practice for an employer to:

(a) Require or request an employee or an applicant for employment to establish or maintain a personal social media account, or to disclose or to provide access through the employee's or applicant's user name and password, password or other means of authentication that provides access to a personal social media account;

(b) Require an employee or an applicant for employment to authorize the employer to advertise on the personal social media account of the employee or applicant;

(c) Compel an employee or applicant for employment to add the employer or an employment agency to the employee's or applicant's list of contacts associated with a social media website;

(d) Except as provided in subsection (4)(b) of this section, compel an employee or applicant for employment to access a personal social media account in the presence of the employer and in a manner that enables the employer to view the contents of the personal social media account that are visible only when the personal social media account is accessed by the account holder's user name and password, password or other means of authentication;

(e) Take, or threaten to take, any action to discharge, discipline or otherwise penalize an employee for the employee's refusal to:

(A) Establish or maintain a personal social media account;

(B) Disclose, or provide access through, the employee's user name and password, password or other means of authentication that is associated with a personal social media account;

(C) Add the employer to the employee's list of contacts associated with a social media website; or

(D) Access a personal social media account as described in paragraph (d) of this subsection; or

(f) Fail or refuse to hire an applicant for employment because the applicant refused to:

(A) Establish or maintain a personal social media account;

(B) Disclose, or provide access through, the applicant's user name and password, password or other means of authentication that is associated with a personal social media account;

(C) Add the employer to the applicant's list of contacts associated with a social media website; or

(D) Access a personal social media account as described in paragraph (d) of this subsection.

(2) An employer may require an employee to disclose any user name and password, password or other means for accessing an account provided by, or on behalf of, the employer or to be used on behalf of the employer.

(3) An employer may not be held liable for the failure to request or require an employee or applicant to disclose the information specified in subsection (1)(a) of this section.

(4) Nothing in this section prevents an employer from:

(a) Conducting an investigation, without requiring an employee to provide a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on receipt by the employer of specific information about activity of the employee on a personal online account or service.

(b) Conducting an investigation permitted under this subsection that requires an employee, without providing a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, to share content that has been reported to the employer that is necessary for the employer to make a factual determination about the matter.

(c) Complying with state and federal laws, rules and regulations and the rules of self-regulatory organizations.

(5) Nothing in this section prohibits an employer from accessing information available to the public about the employee or applicant that is accessible through an online account.

(6) If an employer inadvertently receives the user name and password, password or other means of authentication that provides access to a personal social media account of an employee through the use of an electronic device or program that monitors usage of the employer's

network or employer-provided devices, the employer is not liable for having the information but may not use the information to access the personal social media account of the employee.

(7) As used in this section:

(a) "Personal social media account" means a social media account that is used by an employee or applicant for employment exclusively for personal purposes unrelated to any business purpose of the employer or prospective employer and that is not provided by or paid for by the employer or prospective employer.

(b) "Social media" means an electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet website profiles or locations. [2013 c.204 §2; 2015 c.229 §1]

Criminal History / "Ban the Box"

ORS 659A.360 Restricting criminal conviction inquiries; exceptions. (1) It is an unlawful practice for an employer to exclude an applicant from an initial interview solely because of a past criminal conviction.

(2) An employer excludes an applicant from an initial interview if the employer:

(a) Requires an applicant to disclose on an employment application a criminal conviction;

(b) Requires an applicant to disclose, prior to an initial interview, a criminal conviction; or

(c) If no interview is conducted, requires an applicant to disclose, prior to making a conditional offer of employment, a criminal conviction.

(3) Subject to subsections (1) and (2) of this section, nothing in this section prevents an employer from considering an applicant's conviction history when making a hiring decision.

(4) Subsections (1) and (2) of this section do not apply:

(a) If federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history;

(b) To an employer that is a law enforcement agency;

(c) To an employer in the criminal justice system; or

(d) To an employer seeking a nonemployee volunteer. [2015 c.559 §1]



BEST PRACTICES FOR EMPLOYERS AND HUMAN RESOURCES/EEO PROFESSIONALS

How to Prevent Race and Color Discrimination

General

- ☐ **Train** Human Resources managers and all employees on **EEO laws**. Implement a **strong EEO policy** that is **embraced at the top levels** of the organization. Train managers, supervisors and employees on its contents, enforce it, and hold them accountable.
- ☐ Promote an **inclusive culture** in the workplace by fostering an environment of professionalism and respect for personal differences.
- ☐ **Foster open communication** and early dispute resolution. This may minimize the chance of misunderstandings escalating into legally actionable EEO problems. An **alternative dispute-resolution (ADR) program** can help resolve EEO problems without the acrimony associated with an adversarial process.
- ☐ Establish neutral and objective criteria to **avoid subjective employment decisions** based on **personal stereotypes** or **hidden biases**.

Recruitment, Hiring, and Promotion

- ☐ Recruit, hire, and promote with EEO principles in mind, by implementing practices designed to widen and **diversify the pool of candidates** considered for employment openings, including openings in upper level management.
- ☐ Monitor for EEO compliance by **conducting self-analyses** to determine whether current employment practices disadvantage people of color, treat them differently, or leave uncorrected the effects of historical discrimination in the company.
- ☐ Analyze the duties, functions, and competencies relevant to jobs. Then create **objective, job-related qualification standards** related to those duties, functions, and competencies. Make sure they are **consistently applied** when choosing among candidates.
- ☐ Ensure **selection criteria** do not disproportionately exclude certain racial groups unless the criteria are valid predictors of successful job performance and meet the employer's business needs. For example, if educational requirements disproportionately exclude certain minority or racial groups, they may be illegal if not important for job performance or business needs.
- ☐ Make sure **promotion criteria** are made **known**, and that **job openings** are **communicated** to all eligible employees.

- ❑ When using an outside agency for recruitment, make sure the agency does not **search** for **candidates** of a particular race or color. Both the employer that made the request and the employment agency that honored it would be liable.

Terms, Conditions, and Privileges of Employment

- ❑ **Monitor** compensation practices and performance appraisal systems for **patterns of potential discrimination**. Make sure performance appraisals are based on employees' actual job performance. Ensure consistency, i.e., that comparable job performances receive comparable ratings regardless of the evaluator, and that appraisals are neither artificially low nor artificially high.
- ❑ Develop the potential of employees, supervisors, and managers with EEO in mind, by providing **training and mentoring** that provides workers of all backgrounds the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs. In addition, employees of all backgrounds should have **equal access to workplace networks**.
- ❑ Protect against retaliation. Provide clear and credible assurances that if employees make complaints or provide information related to complaints, the employer will **protect employees from retaliation**, and consistently follow through on this guarantee.

Harassment

Adopt a strong anti-harassment **policy**, periodically **train** each employees on its contents, and vigorously **follow and enforce** it. The policy should include:

- A clear **explanation** of prohibited conduct, including examples;
- Clear assurance that employees who make complaints or provide information related to complaints will be **protected against retaliation**;
- A clearly described **complaint process** that provides multiple, accessible avenues of complaint;
- Assurance that the employer will protect the **confidentiality** of harassment complaints to the extent possible;
- A complaint process that provides a **prompt, thorough, and impartial investigation**; and
- Assurance that the employer will take **immediate and appropriate corrective action** when it determines that harassment has occurred.

General Information: www.eeoc.gov

Additional Information on Race and Color Discrimination: www.eeoc.gov/types/race.html

Technical Assistance: www.eeotraining.eeoc.gov





U.S. Equal Employment Opportunity Commission

Pre-Employment Inquiries and Arrest & Conviction

See also:

- [What You Should Know About the EEOC and Arrest and Conviction Records](#)
- Enforcement Guidance on [Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964](#)

Federal law does not prohibit employers from asking about your criminal history. But, federal EEO laws do prohibit employers from discriminating when they use criminal history information. Using criminal history information to make employment decisions may violate Title VII of the Civil Rights Act of 1964, as amended (Title VII).

1. Title VII prohibits employers from treating people with similar criminal records differently because of their race, national origin, or another Title VII-protected characteristic (which includes color, sex, and religion).
2. Title VII prohibits employers from using policies or practices that screen individuals based on criminal history information if:
 - They significantly disadvantage Title VII-protected individuals such as African Americans and Hispanics; AND
 - They do not help the employer accurately decide if the person is likely to be a responsible, reliable, or safe employee.

Difference Between Arrest Records and Conviction Records

The fact that an individual was arrested is not proof that he engaged in criminal conduct. Therefore, an individual's arrest record standing alone may not be used by an employer to take a negative employment action (e.g., not hiring, firing or suspending an applicant or employee). However, an arrest may trigger an inquiry into whether the conduct underlying the arrest justifies such action.

In contrast, a conviction record will usually be sufficient to demonstrate that a person engaged in particular criminal conduct. In certain circumstances, however, there may be reasons for an employer not to rely on the conviction record alone when making an employment decision.

Several states' laws limit employers' use of arrest and conviction records to make employment decisions. These laws may prohibit employers from asking about arrest records or require employers to

wait until late in the hiring process to ask about conviction records. If you have questions about these kinds of laws, you should contact your state fair employment agency for more information.

Consumer Protections and Criminal Background Checks

Employers that obtain an applicant's or employee's criminal history information from consumer reporting agencies (CRAs) also must follow the Fair Credit Reporting Act (FCRA). For example, FCRA requires employers to:

- Get your permission before asking a CRA for a criminal history report;
- Give you a copy of the report and a summary of your rights under FCRA before taking a negative employment action based on information in the report.
- Send you certain notices if it decides not to hire or promote you based on the information in the CRA report.

If you would like to know more about FCRA, visit the [Federal Trade Commission's \(FTC\) website](#) (the federal agency that enforces FCRA). Or contact the FTC at 1-877-FTC-HELP (1-877-832-4357); TTY: 1-866-653-4261.

Pre-Employment Inquiries

Federal and state law prohibits employers from advertising or making any inquiry expressing a preference based on protected class status. Therefore, all pre-employment questions should be designed to obtain information relating only to qualifications for successful job performance.

Q. What kind of questions should be avoided?

A. The following are the types of questions that employers should avoid asking of job aspirants:

- Questions asking for direct information about an individual's race, sex, age, marital status, etc.
- Questions asking for information typically evaluated differently for men and women, such as questions regarding child care arrangements.
- Questions asking for information that could be used to screen out members of protected classes, such as questions about height or weight.

Q. What questions can be asked concerning an applicant's disabilities?

A. Employers can ask questions relating to an individual's ability to perform essential tasks, but the Americans with Disabilities Act (ADA) prohibits questions relating to physical impairments or disabilities.

Below are some examples of inappropriate questions that could violate an applicant's protected class status: **Marital status:** Are you married? Divorced? Separated?

Since it is illegal to discriminate on the basis of marital status, such inquiries are inappropriate.

Age: Birthdate? How old are you?

If it is necessary to know if an applicant is over a certain age for legal reasons, this question could better be stated as "Are you 21 or over?" or, "Are you 18 or older?"

Race, gender: What is your race? Gender? Furnish a photograph. Hair and eye color.

If it is necessary to ask for this information for affirmative action purposes, such inquiries should be accompanied by a statement indicating that the information is needed for affirmative action reporting purposes and will not be used to discriminate. A photograph should not be required unless physical appearance is a bona fide occupational requirement for the job.

Sex: Are you pregnant? Do you plan to start a family?

Oregon law clearly states that discrimination on the basis of pregnancy is sex discrimination. According to the law, pregnant employees must receive the same benefits as other employees in similar job classifications. *ORS 659.029*

Injured worker: Have you ever applied for workers' compensation?

This question is unlawful under the ADA. In addition, Oregon employers with six or more employees cannot refuse to hire an applicant because of that person's prior workers' compensation claims.

Religion: What is your religious affiliation? Are you able to work Saturdays and Sundays?

Since it is unlawful to refuse to hire an applicant because of his/her religion, such questions could be perceived as discriminatory.

National origin: Were you born in the U.S.? Are you a citizen of the U.S.?

It is better to state that if hired, it will be necessary to present identification in accordance with IRCA requirements.

Family relationship: Do you have any relatives currently employed in this company?

An employer cannot refuse to hire because the applicant has a relative working for the same company, unless one family member would work in a supervisory capacity over the other, or unless the employer could prove the existence of some other bona fide occupational qualification.

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THIS INFORMATION IS AVAILABLE IN AN ALTERNATE FORMAT.

Credit History

FACT SHEET Credit History Information in Employment

Most employers cannot legally obtain or use, for employment purposes, an applicant or employee's credit history information.

Q: What does "credit history" mean?

A: [ORS 659A.320\(4\)](#), defines "credit history" as any communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

Q: What does the law prohibit?

A: It is unlawful to obtain or use for employment purposes an applicant's or employee's credit history information. The law also specifically prohibits the refusal to hire or to promote, the termination, discipline or demotion of, or the retaliation or discrimination against an applicant or employee based on that individual's credit history.

Q: Are all employers covered by the law?

A: No. The law makes exceptions for: 1) federally insured banks and credit unions, 2) for law enforcement agencies (the exception applies to continuing employees, without mentioning applicants) and 3) for employers that are required by law to use individual credit histories for employment purposes. Finally, there is an exception for employers that obtain or use credit history information because it is "substantially job-related" and only then if the reasons for use of the information are disclosed in writing to the employee or applicant.

Q: What does "substantially job-related" mean?

A: Credit history information is substantially job-related by definition if: (1) an essential function of the job requires access to financial information not customarily required in a retail transaction other than a loan or extension of credit (i.e., beyond check information, credit card numbers or debit card numbers); or (2) the employer is required to obtain credit history information as a condition of bonding or insuring the employee.

Employers should use the substantially job-related exception with care. For many positions, such as mechanics, cashiers, receptionists, housekeepers and wait-staff, a credit history is not going to be substantially job-related. On the other hand, if an essential job function of an employee requires that employee to obtain such things as financial institution account numbers and amounts and sources of income, the employer could make an argument that obtaining that clerk's credit history information is "substantially job-related" and therefore permissible.

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attorney. We attempt to update the information on this website as soon as practicable following changes or developments in the laws and rules affecting Oregon employers, but we make no warranties or representations, express or implied, about whether the information provided is current. We urge you to check the applicable statutes and administrative rules yourself and to consult with legal counsel prior to taking action that may invoke employee rights or employer responsibilities or omitting to act when required by law to act.

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A Summary of Protected Classifications

FEDERAL LAW	OREGON LAW
TITLE VII OF CIVIL RIGHTS ACT OF 1964 Federal laws apply when an employer has 15 or more employees (except where noted) Race Color National Origin Sex (includes pregnancy-related conditions) Religion Retaliation Association with Protected Class Genetic Information (under Genetic Information Nondiscrimination Act)	OREGON REVISED STATUTES CHAPTER 659A State laws apply when an employer has 1 or more employees (except where noted) Race Color National Origin Sex (includes pregnancy-related conditions) Religion Retaliation Association with Protected Class Prohibition on Genetic Screening and Brain-wave Testing
AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 Age (40 and older in companies with 20+ employees)	OREGON REVISED STATUTES CHAPTER 659A Age (18 and older)
Uniformed Services Employment and Reemployment Rights Act of 1994 and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (all employers) Veteran Status Leave to Serve in the Military Veterans Preference in Hiring and Promotion (Public Employers)	Members of the Uniformed Services (ORS 659A.082) Taking leave to Serve in State-organized Militia (ORS 399.065) Veteran Status Leave to Serve in State-organized Militia Veterans' Preference in Hiring and Promotion (Public Employers)
AMERICANS WITH DISABILITIES ACT OF 1990 Physical or Mental Disability	OREGON REVISED STATUTES CHAPTER 659A Physical or Mental Disability (in companies with 6+ employees)
Family and Medical Leave Act of 1993 (in companies with 50+ employees) Protected leave for: <ul style="list-style-type: none"> Serious health condition of employee (including pregnancy-related conditions) Serious health condition of employee's family Member (includes spouse, parent, biological or adopted or foster child) Parental leave for birth or placement of newborn, adopted or newly-placed foster child Leave by Spouse, Son, Daughter or Parent of a Covered Military Service Member on active duty or call to active duty status for a qualifying exigency Leave by Parent, Spouse or Child of Next of Kin to care for a seriously ill or injured service member or veteran (26 weeks)	Oregon Family Leave Act (in companies with 25+ employees) Protected leave for: <ul style="list-style-type: none"> Serious health condition of employee (including pregnancy-related conditions) Serious health condition of employee's family Member (includes spouse, parent, biological or adopted or foster child, parent-in-law, grandparent, grandchild, same-sex domestic partner and parent or child of same-sex domestic partner) Bereavement due to death of covered family Member (effective January 1, 2014) Parental leave for birth or placement of newborn, adopted or newly-placed foster child Non-serious health condition of a child requiring home care Leave by Spouse or Same-sex Domestic Partner of Member of the Armed Forces prior to or during leave from deployment (in companies with 25+ employees)

ADDITIONAL CLASSES PROTECTED BY OREGON LAW

OREGON REVISED STATUTES CHAPTER 659A (Except where noted, laws apply when an employer has 1 or more employees)

Access to Employer-owned Housing
Credit Records or Credit History
Expunged Juvenile Record
Injured Workers (in companies with 6+ employees)
Lawful Use of Tobacco Products on off-duty hours
Leave to Donate Bone Marrow
Leave to perform fire-fighting services (ORS 476.574)
Leave to Serve on Jury (ORS 10.090)
Leave to Serve in the State Legislature (ORS 171.120-125)
Limits on Breathalyzer and Blood Alcohol Testing
Marital Status
Medical Release as a Condition of Continued Employment
Opposition to Health or Safety Conditions (ORS 654.062(5)(a))
Prohibition on Employer Requiring Medical Release unless Employer Pays Out-of-Pocket Costs (ORS 659A.306)
Prohibition on Polygraph Exams
Family Relationship
Right to File a Lawsuit, Testify in Criminal or Civil Proceedings or Report Criminal Activities
Right to Report Health Care Violations
Right to Testify at Employment Division Hearings
Right to Testify Before the State Legislature
Sexual Orientation and Gender Identity
Under a child support withholding order (ORS 25.424)
Victims of Domestic Violence, Harassment, Sexual Assault or Stalking, including Leave Provisions

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