

Federal government defines online job “applicant”

In 1978, the Equal Employment Opportunity Commission (EEOC) issued the Uniform Guidelines on Employee Selection Procedures (UGESP) to inform employers of their obligation to gather race, ethnicity and gender information on job applicants to ensure that their selection procedures do not discriminate against groups based on race, color, religion, sex or national origin. The UGESP defined an applicant as any person who indicated an interest in being considered for hiring, promotion, or other employment opportunities.

In the 1990s, the hiring process changed dramatically with the sudden increase in Internet use. For example, in a single day, an employer could receive hundreds of emails inquiring about jobs, or a recruiter could search through thousands of resumes on a jobs database. This explosion of information created a problem for human resource personnel who were required to track information about applicants. Who exactly qualified as an applicant?

On March 4, 2004, the EEOC, the Department of Labor, the Department of Justice and the Office of Personnel Management issued a joint clarification to the UGESP. The clarification defines a job applicant for purposes of tracking the race, ethnicity and gender of online job applicants. The document explains that for an individual to be considered an applicant in the context of the Internet and related electronic data processing technologies, the following must occur:

- The employer acts to fill a particular position
- The individual follows the employer’s standard procedures for submitting an application
- The individual indicates an interest in the particular position

The new record keeping guidelines apply only to Internet and related technologies, including internet resume banks and job boards, and employers’ own web sites, resume databases, and online job listings. Existing UGESP guidelines continue to apply to traditional non-electronic recruitment and selection.

Employers must remember that race, ethnicity and gender information must be collected and stored separately from other applicant information to keep the information from being used unlawfully in the hiring process. Employers may gather information from online candidates using a variety of methods. For example, employers can send a hard-copy form to applicants requesting the information, or they may create an electronic “tear off” sheet which can be filled out when a resume or application is submitted online.

What these new guidelines mean to counties

These guidelines apply to all private and public employers covered by Title VII of the Civil Rights Act and all federal government contractors and subcontractors covered by Executive Order 11246 which both prohibit discrimination based on race, color, religion, sex or national origin.

Furthermore, tracking race, ethnicity and gender data is the best way for a county to defend itself in the event of a hiring discrimination lawsuit. If you get hit with a discrimination claim relating to job applicants, any applicant data on your computers can (and probably will) be used to assess the claim.

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