

The Pre-Employment Process

Introduction

An employer's viability frequently depends on the quality and reliability of its employees. As a result, employers often spend significant amounts of money recruiting and interviewing prospective employees in an attempt to hire individuals who are best suited to perform a particular job.

Employers also screen prospective employees to limit potential legal liability. Although there are a variety of ways in which the law can hold an employer liable for an employee's actions, the doctrine of vicarious liability and the tort of negligent hiring are the most significant.

Having an effective pre-employment process for hiring new agency staff can be the most critical step in hiring and retaining quality employees and minimizing potential liability exposure and workplace wrongdoings, including:

- Discriminatory practices (i.e., civil rights claims – race, religion, age, disability, disparate impact, violation of Equal Opportunity laws, etc.)
- Negligent Hiring
- General liability claims
- Employee injuries
- Vehicle accidents
- Violence in the workplace
- Workplace theft

By proactively adopting and implementing a pre-employment process, many of these risks can be avoided or reduced by having specific policies and procedures in place which are consistently applied throughout all departments within the agency.

An effective pre-employment process will better enable your agency to determine if a perspective employee:

- Can safely perform the essential functions of a job position.
- Has a positive past work history.
- Has a criminal background which may conflict with the job for which they are applying or automatically preclude employment in any capacity.
- Has an acceptable driving record and valid driver's license.
- Needs reasonable accommodation to perform an essential job function.

Investigation

PDRMA agencies should consider all available pre-employment screening methods and determine which are feasible and prudent for the particular position being sought, including volunteers. Written job descriptions should exist for paid positions. Each job description should identify the *essential functions* of the position. Essential functions are the basic duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each job to determine which functions or tasks are essential to performance (this is particularly important

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before taking an employment action such as recruiting, advertising, hiring, promoting or firing).

A comprehensive pre-employment process should consider and incorporate the following components:

- I. Employment Application Form
- II. Job Descriptions
- III. Employment Interview Questions
- IV. Reference and background checks
- V. Pre-Employment Physical Examination
- VI. Criminal Convictions Background Check
- VII. Driver Abstract Check
- VIII. Skills Testing

It is important to make final employment decisions contingent upon the successful completion of your entire pre-employment process for a job position. This should be communicated to potential job candidates at the start of the employment screening process and documented in your pre-employment screening policies. If job-screening contingencies are verbally related to the perspective employee, it should be noted in writing in the interview file or on the job application. The perspective employee should unequivocally understand that all offers of employment are contingent upon the employee successfully completing all background checks. Agencies may want to document all job contingencies on a form (Appendix A) and have the perspective employee sign this form.

The establishment of specific written pre-employment screening steps for each agency job position or groups of positions, and the training of supervisory staff responsible for hiring will help to ensure that pre-employment practices are effective, consistent, and fair.

All pre-employment policies and procedures should be reviewed by the District's corporate counsel and/or PDRMA prior to implementation.

Loss Control Program Components

I. Employment Application Form:

The employment application form is one of the initial steps in the employment screening process. The employment application can be used to formulate interview questions and provide important past work experience information.

A typical employment application will include important elements such as:

- An equal employment opportunity statement
- An at-will disclaimer
- A statement limiting the duration of the application

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- Name, address, phone, social security number.
- Legal eligibility to work in the United States.
- Education levels attained.
- Employment experience (employers, dates, work performed).
- Special skills and qualifications.
- References.
- Prior criminal convictions
- If applicable, a statement that any offer of employment is conditioned upon the results of a physical exam and/or drug

Of course, what NOT to include in your application is equally important. For example, your application should NOT request information such as:

- Age or birth date, except to verify that the applicant is legally old enough to work
- Gender or questions regarding marital status, children or pregnancy
- Race, national origin or citizenship
- Religion
- Disability – do not ask about physical or mental conditions or whether the applicant will need any accommodations to perform the job

If you are an employer collecting data for affirmative action purposes, do so only after the hiring decision is made

Your application should include specific statement such as:

- **THE PARK DISTRICT IS AN EQUAL OPPORTUNITY EMPLOYER. Employment with the Park District is governed on the basis of merit, competence and qualifications and will not be influenced in any manner by race, age, color, sex, religion, veteran status, national origin, marital status, mental or physical disability or any other legally protected status. THOSE APPLICANTS REQUIRING REASONABLE ACCOMODATION TO THE APPLICATION/INTERVIEW PROCESS SHOULD NOTIFY THE HUMAN RESOURCE MANAGER.**
- "Have you ever been **convicted** of a felony? Yes No

“If you answered “Yes”, please provide date of conviction, county of conviction and nature of conviction.”

The Park District is required by state statute (70 ILCS 1205/8-23) to obtain criminal conviction information concerning **all** applicants, and shall perform a criminal background check for applicants for **all** positions. Pursuant to statute, any conviction of offenses enumerated in subsection (c) of said statute shall automatically disqualify the applicant from consideration for working for the Park District. Any other conviction(s) shall not automatically disqualify the applicant from consideration, but rather, the conviction(s) will be considered in relationship to the specific job. Applicants are not required to disclose any sealed or expunged records of convictions.

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- *I CERTIFY THAT ALL THE INFORMATION SUBMITTED BY ME ON THIS APPLICATION IS TRUE AND COMPLETE, AND I AUTHORIZE INVESTIGATION OF ALL STATEMENTS CONTAINED IN THIS APPLICATION FOR EMPLOYMENT AS MAY BE NECESSARY IN ARRIVING AT AN EMPLOYMENT DECISION AND HEREBY RELEASE AND WAIVE ANY CLAIM AGAINST THE PARK DISTRICT WHICH MAY ALLEGEDLY ARISE FROM SUCH INVESTIGATION. I FURTHER UNDERSTAND THAT IF ANY FALSE INFORMATION, OMISSIONS, OR MISREPRESENTATIONS ARE EITHER CONTAINED IN MY APPLICATION OR GIVEN DURING ANY INTERVIEW AND ARE DISCOVERED, MY APPLICATION MAY BE REJECTED AND, IF I AM EMPLOYED, MY EMPLOYMENT MAY BE TERMINATED AT ANY TIME. IN CONSIDERATION OF MY EMPLOYMENT, I AGREE TO CONFORM TO THE PARK DISTRICT'S RULES AND REGULATIONS, AND I AGREE THAT MY EMPLOYMENT IS "AT-WILL" AND MY EMPLOYMENT AND COMPENSATION CAN BE TERMINATED, WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE, AT ANYTIME, AT EITHER MY OR THE PARK DISTRICT'S OPTION. I ALSO UNDERSTAND AND AGREE THAT THE TERMS AND CONDITION OF MY EMPLOYMENT MAY BE CHANGED, WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE AT ANY TIME BY THE PARK DISTRICT.*
- I understand that if I am hired, I will be required to provide proof of identity and eligibility to work in the United States.

II. Job Descriptions:

Job descriptions are critical to the hiring process. Job descriptions should clearly state fundamental duties or "**essential functions**" of the job. This format maximizes an employer's ability to determine whether an applicant can perform the essential functions of the position being sought, with or without reasonable accommodation, and complies with the employment provisions of the Americans with Disabilities Act. Applicants that may have a disability cannot be disqualified due to any restrictions they may have if they can perform the "essential functions" of a job for which they are applying, with or without reasonable accommodation.

As earlier noted, essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each position to determine which functions or tasks are *truly* essential to performance.

Factors to consider in determining if a function is essential include:

- Whether the reason the position exists is to perform that function
- The number of other employees available to perform the function or among whom the performance of the function can be distributed
- The degree of expertise or skill required to perform the function

Your judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered by the Equal Employment Opportunity Commission (EEOC) as evidence of essential functions in reviewing and determining ADA claims.

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Other kinds of evidence that the EEOC will consider include:

- Actual work experience of present or past employees in the same job
- Time spent performing a function
- Consequences of not requiring that the employee perform a function
- Terms of a collective bargaining agreement

PDRMA's HELPLine resources include 17 sample job descriptions for member use. Please share these documents with your ADA coordinator and the person charged with developing, reviewing, or revising your job descriptions.

Understandably each agency should customize each job description to reflect the expectations and requirements of your agency for each position.

Job descriptions have many uses beyond recruitment and selection, including job orientation and training, job safety instruction, modified duty assignments, performance reviews, promotion, discipline and termination. They can also be used for the orientation of new employees, job safety instruction, modified duty assignments, performance reviews and discipline. If you should have any questions, please feel free to contact the PDRMA office.

III. Employment Interview Questions

Job interviews are used to determine the most qualified candidates and to eliminate unqualified candidates. They may also intentionally or unintentionally have the effect of denying employment opportunities to applicants in one or more protected classes. State and federal law prohibit the use of all pre-employment questions that have the effect of discriminating against applicants on the basis of race, color, sex, religion, national origin, citizenship, disability, age or any other recognized protected class or characteristic. Therefore, any question eliciting such information, irrespective of the interviewer's intent, should be avoided in order to minimize perceptions or inferences of discrimination.

A casual comment or seemingly harmless discussion during an interview may result in a claim and finding of discrimination. Agencies must be aware of problem areas and prepare for the interview. As a rule of thumb, narrow questions and discussions to job-related issues only. In seeking information from job candidates, the interviewer should consider:

- Will the answer to this question, if used in making a selection, have the effect of screening out members of a protected class?
- Is this information really needed to judge an applicant's competence or qualifications for the job in question?

Questions that should be avoided include:

- Age or Date of Birth – Don't ask unless age is really a job requirement. This may be necessary for minimum age requirements under state law (i.e. the employee must be over the age of 18 or 21)

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- Sex or Race – Do not ask. As a general rule, never make a comment about an applicant’s sex or race. Also, do not ask: “What is your sexual preference?”
- Birthplace or National Origin – Generally, don’t ask: “Your citizenship? Your parent’s citizenship? Birthplace? or What is your original name if your name has been changed?” Instead, ask: “Can you show that you are eligible to work in the U.S.?”
- Residence – “Do you own, rent, board?” might infer discrimination against minorities.
- Marital status, dependents or child care arrangements – Don’t ask: “What is your marital status? How many children do you have? or Who will care for your children while you are at work?”
- Arrest information – An arrest does not mean someone actually committed a crime. Minorities tend to be arrested more than non-minorities.
- Health or disabilities – Don’t ask: “Do you have any physical or mental disabilities that may prevent you from performing the duties of this position?” Instead, ask: “Given the description of the job duties, are you able to perform all of the essential job duties with or without some form of reasonable accommodation?” Do not ask whether a disability will cause problems for the applicant in getting to work. Also, do not ask whether the applicant will require time off because of the disability. You can ask if the applicant can meet the attendance requirements for the job.
- Religion – Never ask questions about an applicant’s religious beliefs directly or indirectly (i.e. “Do you belong to any church organizations” or “Do you have the names of any clergy as references”). You can ask questions about the availability to work on weekends and holidays (i.e. “Can you work weekends?”, “Are there any shifts that you can’t work?” , or “Can you work overtime”). However, never ask why the applicant can’t work on a Saturday or Sunday, or why he/she can’t work a particular shift.
- Fluency in English Requirements -- The EEOC views rejection of an applicant due to a thick foreign accent or inability to communicate well in English to be a sign of possible national origin discrimination. In addition, many state agencies concerned with enforcing anti-discrimination laws will similarly view these criteria as “suspect.” *However, an employer may reject an applicant due to his or her thick foreign accent or inability to communicate well in English if the employer can demonstrate a material effect on job performance.*

For a listing of acceptable and unacceptable pre-employment inquiries provided by the EEOC refer to Appendix B. For a listing of interview questions permitted and not permitted as well as other interview do's & don'ts per the ADA, refer to Appendix C (from ADA Consultants).

Keep in mind that the interview is important, not just in terms of avoiding liability, but in finding the best applicants and making a positive impression on the applicant. Interviewers are often the first and only contact the applicant will have with your agency. Therefore, consider the following tips:

- Convey a positive and confident image – body language should be professional, yet comfortable
- Never make notes during the interview that are not related to the applicant’s qualifications for the job – your notes can and will be evidence in any subsequent claim or lawsuit
- Ask the same questions of all applicants for the same position. Unless it is absolutely job-related and necessary for follow-up, don’t single out certain applicants for additional or different questions

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- Never use offensive language or expletives
- Always be well prepared – know the job requirements and essential duties for the position. Your interview should be planned in advance, after reviewing the applicant’s application, resume, and any other information provided by the applicant
- Do not make employment promises or unintended promises – offhanded comments about job security, salary, or the applicant will not be terminated without just cause may later be interpreted as creating a contract between your agency and the applicant
- Ask open-ended questions that allow the applicant to talk and the interviewer to listen
- Pre-plan closing statements – thank the applicant for the interview and offer to answer any questions the applicant may have. Be careful not to suggest intentionally or unintentionally that the applicant is getting the position – i.e. telling the applicant that he/she was the most qualified or best applicant, suggesting that if the decision could be made at that time, he/she would get the job, or suggesting that having to interview other candidates is now just a formality
- Complete a rating sheet and other paperwork as quickly and accurately as possible after the interview. Again, don’t ever jot down comments not related to the applicant’s abilities and qualifications. You can and should make note of any and all legitimate negative characteristics that are job-related. If the applicant was late for the interview, inarticulate, uninterested, poorly groomed, make note of it! Just as your notes and documentation can be used as evidence against you and/or your agency, notes and documentation can also be a shield to protect you and your agency and defeat any claim or lawsuit. Of course, choose your words carefully to reflect your professionalism

IV. Employment History/Reference Checks:

In-depth reference checks are critical to hiring qualified applicants, maintaining a safe and productive workplace, and protecting the agency from liability for negligent hiring. However, former employers are often hesitant or resistant to providing detailed information on ex-employees. Past employers fear that any statements or discussions about the termination or work history of an ex-employee may lead to a claim of defamation or tortious interference with a business expectancy.

Because many employers will not respond to calls and/or are reluctant to provide any meaningful information, agencies should require all applicants to sign a release authorizing the release of information from current and former employers. The release should include language waiving and releasing any and all claims and damages against you *and* the former employer arising out of the reference check. Members should refuse to hire or consider for hire any applicant who refuses to sign the release and authorization. Here is a sample Authorization to Release Information:

Company Address

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Telephone Number _____

AUTHORIZATION TO RELEASE INFORMATION

To: (Prior employer, school attended, etc.)

As an applicant for a position with the Anytown Park District, I have been asked to furnish information for use in reviewing my background and qualifications. In this connection, I hereby authorize the Anytown Park District to investigate my past and present work, character, education, military and police records to ascertain any and all information which may be pertinent to my employment qualifications. I agree to cooperate in such investigation.

WAIVER AND RELEASE OF ALL CLAIMS

I agree to release from all liability or responsibility all persons and corporations requesting or supplying such information. I further agree to waive and relinquish all claims I may have (or accrue to me) as a result of requesting or supplying such information and do hereby fully release and forever discharge all cooperating parties from any and all claims for injuries, damages, or loss that I may have or which may accrue to me and arising out of, connected with, or in any way associated with this requesting or supplying such information.

This authorization shall be valid for three months from the date of my signature below. You may retain this copy of my Waiver and Release of All Claims for your files. Thank you for your assistance.

Name: _____ Date: _____

Signature: _____

Witness: _____ Date: _____

When former employers are be reluctant to release information (and for applicants with little, if any, past employment history), personal references may be a source of important background information. Therefore, the checking of listed personal references on the job application should also be completed and documented.

V. Pre-Employment Physical:

The most important law restricting pre-employment medical testing is the ADA. The ADA provides that no examinations prior to the date at which the applicant is evaluated as otherwise fully qualified are allowed. Examinations are allowed after the applicant is evaluated as otherwise qualified, but only if (1) an offer of employment conditioned on the result of the examination has been made; (2) all entering employees are subjected to such an examination; and (3) the information is treated as a confidential medical record. Examinations may only be conducted to determine ability to perform the job or what accommodations will be necessary.

Pre-employment physicals and drug screening are recommended for all full-time employees, part-time safety or security-sensitive positions and positions requiring heavy or continuous lifting or

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other rigorous physical activities. The pre-employment physical process should include:

- forwarding an ADA updated job description to physician for review
- physical assessment/lab tests
- drug screening
- physician's recommendations
- the use of a waiver for physical agility tests

Note: All medical records are confidential and must be kept separated from personnel files.

The Americans with Disabilities Act (ADA) has specific rules restricting use of medical tests and physical exams for applicants. The rules differ on what kinds of tests can be administered before a job offer is made and after an offer is made. The general rule is that you may not administer "medical tests" to an applicant until after you have offered him a job. Medical tests include:

- physical exams
- vision tests
- blood, urine, breath, saliva, or hair analysis
- blood pressure screening and cholesterol testing
- pulmonary function tests
- diagnostic procedures such as X-rays, CAT scans, and MRIs
- personality or psychological tests if they measure whether the applicant has a recognized mental disorder or impairment
- other tests that might elicit information about a disability

However, once you make a job offer, you may condition it on the successful completion of a medical exam. Currently, there are virtually no limits on the scope of the post-offer medical exam. But if you do require post-offer exams, you must:

- Perform them on all entering employees in the same job category
- Collect any and all information obtained in a confidential manner and maintain it in a separate, confidential file
- Use the results to revoke the employment offer only if the applicant cannot perform the essential functions of the job with or without reasonable accommodation

Understandably, the physical should also take place prior to the first day of employment. Similarly, physicians should be made aware of the "essential functions" of a position before any medical determination is made on whether or not the employee can safely perform the job duties of the position.

VI. Criminal Conviction Records Check:

All park districts are required by state statute (70 ILCS 1205/8-23) to obtain criminal conviction information concerning **all** applicants (including minors), and must perform a criminal background check for applicants for **all** positions (including seasonal employees). Park Districts are statutorily required to process criminal background checks through the Illinois State Police. However,

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applicants must be advised that they are not required to disclose sealed or expunged records of convictions – this must be noted on the application form.

Pursuant to statute, any conviction of offenses enumerated in subsection (c) of said statute shall automatically disqualify the applicant from consideration for working for a park district. Any other conviction(s) shall not automatically disqualify the applicant from consideration, but rather, the conviction(s) will be considered in relationship to the specific job.

Subsection (c) of the statute specifically states:

- No park district shall knowingly employ a person who has been convicted for committing attempted first degree murder or for committing or attempting to commit first degree murder, a Class X felony, or any one or more of the following offenses: (i) those defined in Sections 11-6 (indecent solicitation of a child), 11-9 (public indecency), 11-14 (prostitution), 11-15 (soliciting for a prostitute), 11-15.1 (soliciting for a juvenile prostitute), 11-16 (pandering), 11-17 (keeping a place of prostitution), 11-18 (patronizing a prostitute), 11-19 (pimping), 11-19.1 (juvenile pimping), 11-19.2 (exploitation of a child), 11-20 (obscenity), 11-20.1 (child pornography), 11-21 (harmful material), 12-13 (criminal sexual assault), 12-14 (aggravated criminal sexual assault), 12-14.1 (predatory criminal sexual assault of a child), 12-15 (criminal sexual abuse), and 12-16 (aggravated criminal sexual abuse) of the Criminal Code of 1961; (ii) those defined in the Cannabis Control Act, except those defined in Sections 4(a)(not more than 2.5 grams of any substance containing cannabis), 4(b)(more than 2.5 grams but not more than 10 grams of any substance containing cannabis), and 5(a)(more than 10 grams but not more than 30 grams of any substance containing cannabis; provided it is a first offense) of that Act; (iii) those defined in the Illinois Controlled Substances Act; and (iv) any offense committed or attempted in any other state or against the laws of the United States, which, if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses. Further, no park district shall knowingly employ a person who has been found to be the perpetrator of sexual or physical abuse of any minor under 18 years of age pursuant to proceedings under Article II of the Juvenile Court Act of 1987. No park district shall knowingly employ a person for whom a criminal background investigation has not been initiated.

Applicants may be required to submit fingerprints and/or other identification information in order to facilitate such an investigation. All information concerning the record of convictions shall be confidential and will only be transmitted to those persons who are necessary to the decision process.

For convictions not automatically precluding disqualification under the Park District Code, members should consider the following in deciding whether to refuse hiring an applicant because of a criminal conviction:

- The time of the conviction
- The nature of the conviction
- The number of convictions
- The applicant's immediate past employment record
- The nature of the conviction in relation to the position being offered

This statutory requirement does not apply to forest preserve districts or SRAs. Nonetheless, criminal background checks are an important tool to avoid hiring someone who might pose a threat to other employees and patrons and minimizing workplace theft. PDRMA recommends that forest preserve districts and SRAs should conduct criminal background checks for all new full-time positions and both full and part-time sensitive positions.

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Sensitive Positions, include but are not limited to the following:

- Day care/preschool teachers and aides.
- Bus/Van Drivers.
- Park Police.
- Camp Counselors.
- Employees who may work on a one-to-one basis with children.
- Upper level staff (i.e. Director, Superintendent of Parks/Recreation).
- Persons who handle money
- Persons with access to inventory
- Informational technology employees

Forest preserve districts and SRAs do not have to adopt the stringent requirements of the Park District Code. Forest preserve districts and SRAs should use common sense and consult with your corporate counsel and/or PDRMA before implementing a criminal background check policy.

The Department of State Police shall charge the agency a fee for conducting the investigation (without fingerprints, \$7/each – with LAPLINK software and modem, or \$12/each – without software). The fee shall not exceed the cost of the inquiry.

Contact the Illinois State Police Bureau of Identification at the Joliet Division - 815/740-5160 for additional information and forms.

Please note: Directions on the criminal conviction background check forms should be followed very closely, or they will be returned without a refund.

Because the Illinois State Police will only provide information on *Illinois* convictions, members should consider requiring additional criminal background checks through the FBI for new employees who have a recent history of working and/or living out-of-state.

VII. Driver Abstract Review:

The review of a perspective employee's driving record will confirm that the candidate has a valid drivers license, determine the type of vehicle which can be legally operated, and highlight any vehicle-related convictions that may reflect driving habits that could be of concern regarding work-related driving.

Unlike many theories of general liability where Illinois public park and recreation agencies and public employees are afforded statutory tort immunity, such immunities are generally not available in auto liability actions. Fault in such cases is determined by the traffic laws of Illinois and ordinary negligence standards.

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With the large fleet of vehicles within the PDRMA Risk Pool, it is very important that each agency manage their fleet drivers by establishing driver qualifications and reviewing driver records on a pre-employment and annual basis (see PDRMA Driver Qualifications for additional information).

Each employee, new or current who drives as a part of his/her employment (including personal vehicles for agency use) should receive a driver record abstract review through the Secretary of State's office at least on initial employment, and annually thereafter. This service is free to public agencies who submit a listing of names and drivers license numbers on agency letterhead signed by the agency director. For pre-employment purposes, it may be easier to ask an applicant to provide their own current driver abstract record which they can obtain for \$2.00 at any Illinois Secretary of State office.

Illinois driver abstract records can be obtained by submitting your request as described above to:

Illinois Secretary of State
Driver Services
2701 Dirksen Parkway
Springfield, IL 60231

Phone: (217) 785-1434 or (217) 782-2201

VIII. CREDIT REPORTS

Federal law imposes strict limits and disclosure requirements on an employer's use of credit and consumer reports in making hiring decisions. The Fair Credit Reporting Act (FRCA) applies any time you decide to use a third party to investigate applicants.

Before you can get a consumer or credit report for employment purposes, you must notify the individual in writing – in a document consisting solely of this notice – that a report may be used. You must also get the person's written authorization before you ask for a consumer reporting agency (CRA) for the report.

If you rely on a consumer report for an "adverse action" – i.e. denying a job application, you must:

- Before you take the adverse action, you must give the individual a pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" – a document prescribed by the Federal Trade Commission. The CRA that furnishes the individual's report will give you the summary of consumer rights
- After you've taken an adverse action, you must give the individual notice – orally, in writing, or electronically – that the action has been taken in an adverse action notice. It must include:
 1. The name, address, and phone number of the CRA that supplied the report;
 2. a statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
 3. a notice of the individual's right to dispute the accuracy or completeness of any

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information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

Before giving you an individual's consumer report, the CRA will require you to certify that you are in compliance with the FCRA and that you will not misuse any information in the report in violation of federal or state equal employment opportunity laws or regulations.

Be extremely careful if you decide to use an outside agency to investigate job applicants. The numerous legal requirements can result in legal challenge to your decision-making and substantial fines for not complying with the rule. If you do decide that an applicant's "good credit" is going to be part of the criteria for a specific job – justified by business necessity – make sure you have a full understanding of the circumstances before denying employment based solely on a poor credit rating. Give the applicant an opportunity to explain the reasons for a poor report, and consider the length of time since the last incident of poor credit. Stay away from asking about personal details, such as divorce, but give the applicant an opportunity to let you know of extenuating circumstances. If he/she is otherwise well qualified for the position, don't deny employment if his/her credit has been satisfactory in the recent past.

Lastly, when performing any type of background check:

- Make sure any outside agency you use is properly licensed and knowledgeable about all applicable state and federal laws, and get a written agreement to that effect
- Prepare form documents to comply with various disclosure requirements
- Establish and enforce policies that tightly control the acquisition and use of reports prepared by third parties
- Identify the specific job positions for which you feel a credit report is required, and document the business necessity for it
- Make sure that employees reviewing reports have been adequately trained to fully understand and interpret them and that they verify that the name and social security number contained in the report matches the applicant to avoid mistakes

IX. Skills Testing

Skills testing encompasses a variety of tests designed to determine whether a prospective employee has the aptitude, strength or physical agility needed to perform a particular job. As with other methods of pre-employment testing, an employer must ensure that such tests are not applied in a discriminatory fashion.

X. HOW TO TURN DOWN AN APPLICANT

An employer is not legally obligated to explain to an applicant the reasons for rejection. Therefore, something generic, such as "we felt that another applicant was better for the position" is proper. If a specific reason is given, and the applicant files a lawsuit, the employer will be hard-pressed to

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change or supplement the proffered reason. For example, it may be tempting to use an inaccurate euphemism, such as “someone else had more experience,” when the real reason was the applicant’s arrogant demeanor. If, however, the applicant then brings a discrimination lawsuit and, in fact, the person hired has less experience than the alleged discriminate, the fact that the employer gave an inaccurate reason for rejection could be considered evidence of discrimination.

APPENDIX A

Important Job Applicant Information

The offer of employment at the _____ is contingent upon the successful completion of all pre-employment screening requirements of the position for which you are now applying.

Applicant Name (Please Print) _____

Position Applied For _____

Please note the checked pre-employment screening items below that you will be required to pass prior to being hired.

- Interview
- Reference Checks
- Physical Examination
- Physical Agility Test
- Criminal Background Check
- Driver Abstract Check
- Drug Screen
- Psychological Test
- Other _____

I understand that I must successfully pass the above pre-employment screening methods to be considered for employment at the _____. I authorize the investigation of all information pertaining to the above pre-employment screening items listed above as may be necessary in arriving at an employment decision.

Signature

Date

Appendix B

EEOC Guidelines for Pre-employment Inquiries

Subject Area	Acceptable	Unacceptable
Name	For access purposes, whether applicant work records are under another name.	To ask if a woman is a Miss, Mrs. or Ms., or to ask for maiden name.
Residence	a) Place and length of current and previous address. b) Applicant's phone number or how applicant can be reached.	None
Age	After hiring, proof of age by birth certificate.	a) Age or age group of applicant.
National Origin	None	a) Birthplace of applicant, parents, grandparents or spouse. b) Any other inquiry into national origin.
Race	Race for affirmative action plan statistics, <u>after hiring</u> .	Any inquiry that would indicate race or color.
Sex	Inquiry for affirmative action plan statistics, <u>after hiring</u> .	Inquiry which would indicate sex unless job-related.
Religion or Creed	None	a) Birthplace of applicant, parents, grandparents or spouse. b) Recommendations or references from church officials.
Citizenship	a) If U.S. residence is legal. b) Required proof of citizenship, <u>after hiring</u> .	a) If native-born or naturalized. b) Proof of citizenship before hiring. c) Whether parents or spouse native-born or naturalized. d) Date of citizenship.

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Subject Area	Acceptable	Unacceptable
Marital Status	a) Status (only married or single) <u>after hiring</u> for insurance and tax purposes.	a) To ask marital status before hiring. b) To ask the number and age of children, who cares for them, and if applicant plans to have children.
Military Service	a) Service in the U.S. Armed Forces, including branch and rank attained. b) Any job-related experience. c) Require military discharge certification <u>after</u> hiring.	a) Military service records. b) Military service for any country other than U.S. c) Type of discharge.
Education	a) Academic, professional, or vocational schools attended. b) Language skills, such as reading and writing foreign languages.	a) Nationality, racial or religious affiliation of schools attended. b) How foreign language ability was acquired.
Criminal Record	Listing of all felony convictions and misdemeanors involving violent or sexual conduct.	Arrest record.
References	General and work references not relating to race, color, religion, sex, national origin or a ancestry.	References specifically from clergy or any other person who might reflect race color, religion, sex, national origin, or ancestry.
Organizations	a) Organizational membership - professional, social, etc., so long as affiliation is not used to discriminate on the basis of race, sex, national origin, or ancestry.	Listing of <u>all</u> clubs applicant belongs to or has belonged to.
Photographs	May be required <u>after hiring</u> for identification purposes.	a) Request photograph before hiring. b) To take pictures of applicants during interview.
Work Schedule	a) Willingness to work required	Willingness to work any

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Subject Area	Acceptable	Unacceptable
	work schedule. b) Whether applicant has military reservist obligations.	particular religions holidays.
Physical Data	a) To require applicant to prove ability to do manual labor, lifting and other physical requirements of the job, if any. b) Require a physical examination after a job offer is made.	To ask height and weight, impairment or other non-specified job related physical data.
Disability	If the applicant can perform the essential functions of the job with or without reasonable accommodation.	To exclude disabled applicants as a class on the basis of their disability. Each case must be determined individually.
Other Qualifications	Any area that has a direct reflection of the job applied.	Any non-job related inquiry that may present unlawful discrimination.

Appendix C
Questions Not Permitted Under The ADA

1. How did you become disabled?
2. Are you in good health?
3. Have you recovered from your prior disability?
4. How much can you lift?
5. How far can you walk?
6. Do you have a drivers license? (If the job doesn't require driving or if a reasonable accommodation can't eliminate the driving.)
7. Does your wife or husband or roommate have a disability?
8. Who takes care of your disabled husband?
9. Have you ever been injured in an accident?
10. Have you ever filed a claim for workers' compensation?
11. Do you have any physical conditions that would prevent you from doing your job?
12. Do you have a good back?
13. Have you ever been hospitalized?
14. Have you ever had a problem with the illegal use of drugs?
15. Have you ever had a problem with alcohol?
16. Have you ever had a disease or illness that caused you to miss work?
17. Have you ever failed a drug test?
18. How did you lose your arm, or leg, or eye or eye site?
19. How did you get burned?
20. Have you been in a wheelchair your whole life?
21. Why do you use a cane, or splint, or other device?
22. Have you ever seen a psychiatrist?
23. Is it true that you can't read because of your learning disability?

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1. The job you are applying for requires lifting fifty pound sacks of fertilizer from the floor to a table several times each hour. Are you able to do that?
2. Have you held a job like this in the past and were you able to perform all of the duties?
3. Can you explain (or show me) how you would carry files with crutches in both hands?
4. How would you respond to a code if you are unable to hear it?
5. This job requires that you drive to the blood bank twice a day. Would you be able to do that and do you have a valid drivers license?
6. Are you currently using illegal drugs?
7. Are you able to climb a ladder? (if this is an essential job function)
8. How would you reach the top drawer of the file cabinet from your wheelchair?
9. Are you able to work around flashing lights (if applicable to the job)?
10. Can you work around dusty conditions (if applicable to the job)?
11. Show me how you would do....
12. Explain how you would do.... (an essential job function).
13. Would you be able to meet the production standards for this position?
14. This is a high pressure position with many deadlines, a loud work environment and lots of constant activity. Can you work under these conditions?

More Interview Do's & Don'ts

1. Don't make notes about an individual's physical or mental condition.
2. Do discuss reasonable accommodations where possible. The interviewee is an expert on accommodating his or her disability.
3. Don't rely on body language as a measure during the interview process. Lack of eye contact or a mild grip handshake may be caused by an applicant's disability - not his or her lack of confidence.
4. Do remember that individuals with disabilities may make poor interviewees if judged against many "traditional" interviewing standards.
5. Don't try to put yourself in the applicant's place and ask yourself "Could I do this job if I were disabled?"
6. Do offer an applicant a job based on his or her abilities - not disabilities.
7. Don't job stereotype.
8. Do remember that communications skills are often an inaccurate measure of the intelligence, ability or confidence of an individual with a speech or hearing problem.
9. Don't patronize the applicant with a disability with your own body language.

SAMPLE INTERNAL POLICY ON CONVICTION INFORMATION REQUESTS

FOR PARK DISTRICTS

All park districts are required by state statute (70 ILCS 1205/8-23) to obtain criminal conviction information concerning **all** applicants, and must perform a criminal background check for applicants for **all** positions. Pursuant to statute, any conviction of offenses enumerated in subsection (c) of said statute shall automatically disqualify the applicant from consideration for working for a park district. Any other conviction(s) shall not automatically disqualify the applicant from consideration, but rather, the conviction(s) will be considered in relationship to the specific position. Applicants are not required to disclose sealed or expunged records of convictions.

FOR FOREST PRESERVE DISTRICTS AND SRAS

For the safety of employees and program participants, it shall be the policy of the (forest preserve district/SRA) to submit a Conviction Information Request form to the Illinois State Police for designated prospective new employees as part of their pre-employment background check. New employees with a recent history of living or working outside of Illinois may be required to submit to an FBI criminal background check. A conviction(s) shall not automatically disqualify the applicant from consideration, but rather, the conviction(s) will be considered in relationship to the specific position. Applicants are not required to disclose sealed or expunged records of convictions.

Applicants may be required to submit fingerprints and/or other identification information in order to facilitate such an investigation. All information concerning the record of convictions shall be confidential and will only be transmitted to those persons who are necessary to the decision process.

The Conviction Information Request Form shall be included as part of the pre-employment screening process and the signature of the prospective employee shall be required on the Request form. The report from the Illinois State Police will be marked "confidential" and addressed to the _____ Director. All offers of employment shall be contingent upon the review of the Conviction Information Report to determine if the perspective employee has had criminal convictions that would affect the job for which they are applying.

If the Request report states "No conviction was identified", the report shall be filed in the employee's personnel file.

If the Request report states "Conviction information was identified" and contains a report on any convictions, the following steps shall be taken:

1. The Director shall check to match the name, date of birth, social security number, and the description of the individual given on the report to help ensure that the Conviction Report matches the applicant.
2. (Park districts only) The conviction(s) must be crosschecked with those enumerated offenses contained in the Park Code and which automatically disqualifies the applicant from employment.

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3. If the information on the job application matches that in the Conviction Information Request report, the Director shall check the employee's original application to determine whether "yes" or "no" had been marked for the question "Have you ever been convicted of a Felony or misdemeanor involving violent or sexual conduct?"
4. After completing the above two directives, the Agency Director may request additional information, meet with legal counsel, police authorities, or others to determine if further action is necessary.
5. Further information may be requested from the prospective employee concerning a conviction record. This investigation may result in no further action being taken or the prospective employee not being hired.
6. Reasonable effort shall be made to timely obtain the Request for Conviction Information Report prior to effectuating any employment relationship. However, the District(s) reserves its/their right to exercise discretion in determining whether an employment relationship, at will or otherwise may be entered into pending the receipt of the Conviction Information Report. In such circumstances, the District(s) reserve the right to terminate, modify or limit the employment relationship subsequent to receipt and review of the Conviction Information Report.
7. Any conviction information received shall be placed in a secured location at the _____ Park District/Agency.