

# HR QUESTION ? of the month



## *Keep unqualified applicants under tightened screening process?*

**Question:** We post jobs and include the minimum requirements for applying for vacant positions. Based on the job description and when applicable, we also ask for proof of training or coursework. This information is derived from the job description. In the past, the screeners were more liberal and screened in unqualified applicants who either did not meet the minimum requirements and/or did not attach the appropriate documentation. Moving forward, the employer has aligned and posted the jobs accordingly. Is the employer obligated to screen in previous applicants who were screened in from the past?

**Response:** From an employment law standpoint and barring industry-specific qualification obligations, or implication under affirmative action and/or government contract compliance issues, we are not aware of any federal or state law that governs this particular issue. Most employers enjoy the discretion to determine qualifications and eligibility criteria for positions in their organizations. Employers are also typically free to establish lawful recruitment and hiring techniques and protocols designed to ensure that they are able to hire individuals who meet them (and ideally, are the most qualified for the position).

You indicate that the employer posts minimum requirements for applying for vacant positions and while proof of training or coursework or other qualification is ordinarily required, it appears that prior "screeners were more liberal and screened in unqualified applicants who either did not meet the minimum requirements and/or did not attach the appropriate documentation." The employer now seeks to correct this moving forward, such that individuals seeking employment in the future are subject to the more stringent requirement to show proof of their qualifications. The employer is certainly within its rights to make this adjustment.

Whether the employer must revisit prior applicants who were subject to the more lenient screening procedures is, again absent industry-specific or other regulatory requirements, generally up to the employer to do determine. If it does so, it may be that some individuals who were subject to the more lax screeners and became employees may lose their jobs on account of their lack of qualification -- is the employer prepared for this consequence? If these individuals are have not become employees yet, we are not aware of any obligation on the part of the employer to retain them in the hiring process if they do not meet minimum qualifications. On the other hand, if individuals who passed through the hiring process on account of the "more liberal" screeners are "grandfathered" in and allowed to continue with the recruitment process or remain employed (if they were already hired), there may be resentment among those who are or were held to the higher standards, and other issues associated with the fact that one or more people who did not meet minimum job qualifications became (and remained) employed.

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This response assumes that the employment relationships in question are at will (i.e., not governed by an employment contract) and that there are no industry-specific regulatory requirements governing employee qualification (i.e., if the employer is a school district, for example, there may be specific hiring requirements for teachers that the employer cannot overlook). Based on these assumptions, the employer has discretion to decide whether to "grandfather" in the existing applicants (or employees) or to disqualify them from further consideration or employment.

The employer may also wish to consider whether the "more liberal" screeners would benefit from further training to ensure that they are consistent in their approaches and do not again "screen in unqualified applicants who either did not meet the minimum requirements and/or did not attach the appropriate documentation." If in doing so these screeners did not meet their own job obligations and/or violated employer policy, disciplinary action may also be appropriate, depending upon the applicable facts and circumstances.

Want to learn more about how to handle issues like this? [Click here](#) to listen to our Podcast about hiring practices.

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