



# Your Job: Background Checks, Medical and Drug Tests and More

## What can an employer ask for?

Your employer can ask you for all kinds of information about you. They can ask for references, credit records and criminal records. They can ask questions to see if you can do the job and can even ask you to take tests. **BUT** employers **can't** ask questions that discriminate. Unless there is a legal reason for doing it, there are things an employer can't ask about in an interview or on a job application.

They can't ask about your:

- age
- marital status (*single, married, divorced*)
- sex
- sexual orientation
- gender identity
- race
- color
- creed
- religion
- national origin
- public benefits
- disability
- pregnancy
- familial status (*having kids or being pregnant*)

See our fact sheet [Discrimination and Harassment at Work](#).

## BACKGROUND CHECKS

### References

Employers can require you to give a list of references – people who you have worked for or who know you.



### Credit Records

Employers can get your credit records from a credit reporting agency. They have to tell you first that they are going to do that AND get your permission in writing. They have to tell you if anything in the credit report is used against you in the hiring decision. They have to give you a copy of the report and a summary of your rights.

You have the right to fix or argue about information in the report. See our fact sheet, [Credit Reports](#).

## Criminal Records

Employers can check criminal records. They don't need your permission to get county records themselves, but they do need your permission if they use a background check company. You also have to give permission if they want to look at FBI or state BCA records. If you say no, they can turn you down for the job.

The law says that a private employer can't ask you about your criminal record or do a criminal background check until you are asked to do an interview or get a conditional job offer. Initial job applications can't have a check box asking if you have a criminal record.

Employers have to do a criminal record check for some jobs like health care workers, public school employees and apartment managers. They should only use conviction records if there is a business reason for it. The employer cannot make you pay for a record check.

**Tell the truth about your criminal history.** It is much worse to lie about a conviction than to tell about it up front and explain what you have done since then to turn your life around. If you are not truthful about your criminal history, and are fired, you may not be able to get unemployment benefits.

**Public Employers:** This means city, state, and county governments and agencies. Minnesota Law says that a conviction can't keep you from getting public jobs or keep you from getting a state license unless the crime directly relates to the work. Even then, you should not be turned down for the job if you can show that you can do the job and are "rehabilitated." Rehabilitated means you have changed and are not likely to commit the crime again.



Public employers can't use information about arrests, annulled or expunged convictions and petty misdemeanors when you apply for a public job or a license, like a barber's license.

## TESTING

### Before Being Hired

Employers can use personality or psychological tests to screen job applicants, but only **after** a job offer. They can't use lie detector tests or genetic tests.

- **Drug and Alcohol Tests**

If an employer wants you take a drug or alcohol test you have to get notice in writing. They can only do the test after they give you a job offer. Everyone who is told they can have the job if they pass the test must be given the same test.

The employer can take back the job offer if you refuse to take the test or if you don't pass it. If they take back the offer, they have to tell you why and give you written notice about your right to explain or argue the results. If your test is positive for drugs or alcohol, you can ask for a re-test, but your employer can make you pay. If you want a re-test, you have

to tell the employer in writing within 5 working days of the day the employer told you that you failed the first test.

- **Medical Exams**

The employer can only say you have to take a medical exam after they give you a job offer. All other applicants in the same job as yours must be asked to take the same exam you are. The employer must pay for the medical exam. If the exam shows you can't do the main duties of the job, they can take back the job offer. They have to tell you the reason for the decision within 10 days of the final decision.

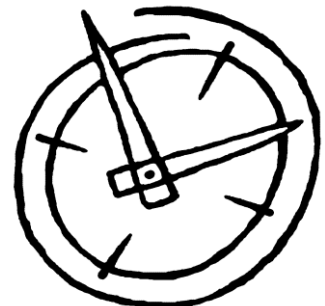
- **Disabilities and Medical Conditions**

The employer can take back the job offer if you won't be able to do the main parts of the job because of a physical or mental medical condition. If you have a disability but can do the job with a "reasonable accommodation" the employer has to give you that accommodation. (See below.) But an employer can take back the offer if your disability is a serious threat to health and safety at work.

- **Reasonable Accommodations**

If you have a disability, the employer must make "reasonable accommodations" if needed to help you do the job. The accommodations can't be an "undue hardship" on the employer. This means that the employer must make reasonable changes in the workplace or work policies.

For example, if you need extra time for restroom breaks or need to make a change in work schedule for doctor visits. If you can do the main duties of a job with reasonable accommodation, a job offer cannot be taken back because you have a disability.



## **After You Have the Job**

- **Drug and Alcohol Tests**

Employers can make you take tests for illegal drugs or alcohol. They must have a written drug and alcohol testing policy. Generally, employers can require a drug test as part of a physical exam, but not more than once a year. At most jobs, the employer has to give you 2 weeks written notice that you will be tested.

The rules for safety sensitive jobs like driving buses or cabs or running heavy machines are different and can be stricter. Drug and alcohol tests can be done without advance warning (randomly) for employees in safety sensitive jobs.

If you use a commercial driver's license to do your job, federal law may apply. Federal law had different standards about drug and alcohol testing.

No matter what kind of job you have, the employer can make you take a drug or alcohol test, without prior notice, if:

- They have reason to think that you are under the influence of drugs or alcohol at work.
- You break the employer's written rules against the sale, possession or use of drugs or alcohol during work.
- You are hurt or you hurt another employee on the job.
- You cause a work-related accident or are operating machinery that is involved in an accident.

You have the right to a copy of the test results. You also have the right to have the sample re-tested.

If the re-test is positive for drugs or alcohol, they can discipline you. They can't normally fire you for the first positive test during your employment unless they offer you the chance to be evaluated for treatment and you either refuse or don't finish it successfully. You might have to pay for the evaluation and any recommended treatment unless it is offered under an employee benefit plan. But the employer CAN suspend you without pay while waiting for the results of the test if they think there is a safety reason to do so.



If you pass the test or re-test, your employer has to take you back and pay you for the time you were suspended.

- **Medical Exams**

Your employer can only make you take a medical exam if there is a job-related reason for it. Your employer has to pay for the exam.

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

© 2023 Minnesota Legal Services Coalition. This document may be reproduced and used for non-commercial personal and educational purposes only. All other rights reserved. This notice must remain on all copies. Reproduction, distribution, and use for commercial purposes are strictly prohibited.