

# Employment Law Corner

## Monthly Report



FOLEY & FOLEY<sup>PC</sup>  
ATTORNEYS AT LAW

May 2021 - Volume 9

### May Updates

- [1. Change in Independent Contractor Test](#)
- [2. New Guidelines on Masks](#)
- [3. COVID-19 OSHA Investigations are Here to Stay](#)
- [4. Does Medical Leave End after FMLA is Exhausted?](#)
- [5. New DOL Cybersecurity Guidelines](#)

### Hiring Guidelines: Employee Applications

We are rounding the corner in the pandemic – and many employers are getting ready to hire and fill in vacant roles. When ramping back up, it's a good idea to make sure that your hiring processes are compliant with the law.

While employment applications are not mandatory, a precisely tailored application can be a powerful asset to match applicants with a particular position. Applications can be tricky though and badly done will raise discrimination issues. Questions must be justified by some business purpose and not to screen out members of a protected class. Even innocent meaning questions can solicit information that is not needed and can be viewed as discriminatory.

Common application missteps include:

- Asking for the year of graduation from high school/college. This question provides information on the applicant's age and hiring decisions could be influenced on that. You could instead ask if they have graduated or not.
- Asking about criminal history. Most states, including Massachusetts, have implemented a "ban the box" law that restricts employers from asking about criminal convictions on the initial employment application.
- Health-related inquiries. Employers generally cannot ask disability-related questions or require medical examinations until after an applicant has been given a conditional job offer. This is because this information is frequently used to exclude applicants with disabilities before their ability to perform a job is evaluated.

### Don't Ask These Interview Questions

There are certain questions you just can't ask an applicant or employee. Some questions only produce a response that indicate an employee's membership in a protected class, such as age, race, disability, or national origin. These types of inquiries may be used as evidence of an employer's intent to discriminate, so be sure to avoid these pitfalls and don't ask.

When were you born? When did you graduate high school?

**Instead** confirm they are old enough to work.

Have you ever been arrested?

**Instead** ask whether they have been convicted of a crime related to the position.

Are you a US citizen?

**Instead** ask do you have proof of eligibility to work in the US.

Are you disabled?

**Instead** ask whether they are able to perform the duties with or without a reasonable accommodation.

### COBRA Subsidy Notices

May 31<sup>st</sup> is the last day notices can be sent out to individuals who qualify for the COBRA premium subsidy. Be sure to send out notices to anyone terminated, laid off, or lost insurance because of reduction in hours.

Questions about the subsidy? Contact us!

## Contact Us

Foley & Foley, PC

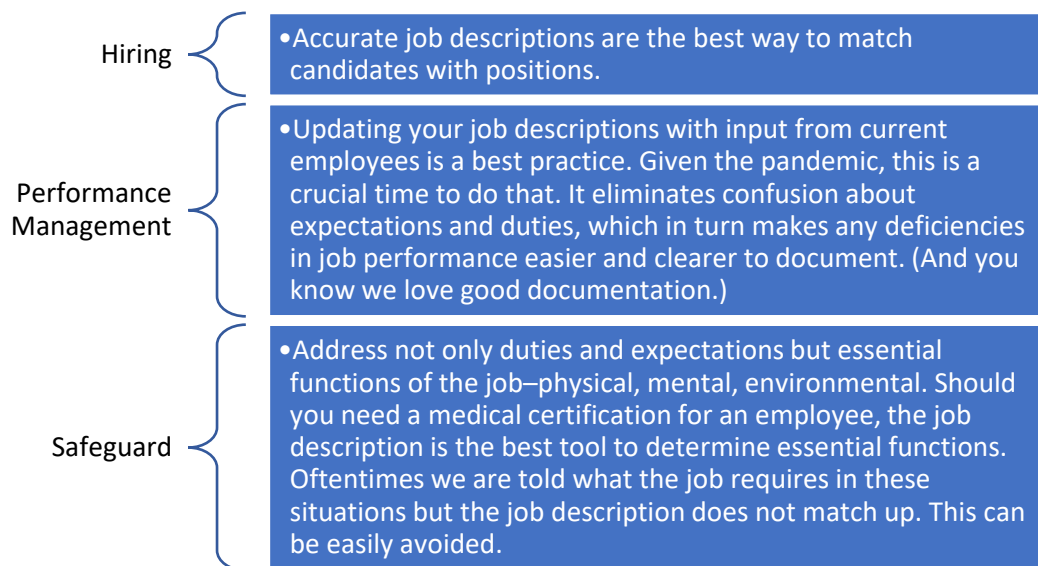
[info@foleylawpractice.com](mailto:info@foleylawpractice.com)

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## Job Descriptions

After a year of remote work, changed schedules, changed duties even—this is a good time to find out what duties your employees are actually performing, and determine if it is what the business needs. You might be surprised to find many positions have deviated substantially from the current (possibly old) job descriptions.

No job descriptions, no worries? Don't discount their value. Here are three ways job descriptions help your business:



It has been a long, stressful pandemic—we get it. But do yourself a favor and take a look at your hiring practices to avoid costly issues later.

## Our Services

Through our decades of representing employers in many industries and sizes, we have crafted fixed fee services to help employers through human resources issues and compliance headaches. This is just a small sampling of the services we offer:

1. [Proactive Employment Advice](#)
2. [Litigation of Employment Disputes](#)
3. [Employment Counsel On-Call](#)
4. [Training](#)
5. [Sexual Harassment Prevention Toolkit](#)

## Kaitlyn MacLeod

Meet our Associate Kaitlyn MacLeod who focuses her practice on protecting employers' interests by advising clients on day-to-day human resources issues and providing counsel on compliance with Federal, State, and local employment law. Kaitlyn prepares employer handbooks, settlement agreements, employment agreements, and other employer policies.

