



# 5 Questions to Ask As You Rethink Your Job Requirements

Insights

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Hiring the right people is one of the fundamental building blocks for creating a successful workforce. No doubt you have job requirements and expectations in place to ensure you hire workers who at least meet your minimum qualifications – but is it time to rethink those preconditions given the changing nature of the workplace? As a result of the COVID-19 pandemic, the rise of remote work practices, and shifting demographics, the available workforce is smaller than it's been in decades. According to the latest data from the U.S. Bureau of Labor Statistics, available workers per job opening is near a record low of .6 available workers per opening with unemployment running at 3.4%. With such a tight labor market, you should closely examine your job requirements to avoid being overly restrictive. When was the last time you evaluated your minimum qualifications to see if they are still meeting your needs and are still relevant to success in the position? Here are five ways you might want to rethink your job requirements.

## 1. Is a College Degree Necessary?

Numerous large employers like Google, IBM, and General Motors are reported to be removing degree requirements for positions that previously required degrees such as technicians and programmers. In addition, Pennsylvania, Colorado, Maryland, and Utah are dropping college graduation requirements for many state jobs, a signal that this trend is widespread and catching on across the country.

Accepting applications from candidates without degrees opens the door to literally thousands of applicants who might have the experience and capabilities to perform the job at an exceptional level. It is not uncommon for someone who completed a certification or apprenticeship program to have more practical, useful skills than an individual with a four-year degree.

Finally, a college degree requirement may impact the diversity of your hiring pool. Statistics show that Black and Hispanic people are less likely to have a college degree compared with White and Asian people, [according to the Census Bureau](#). Removing an unnecessary degree requirement could help you achieve greater diversity within your workforce.

## 2. Is a Four-Year Degree Necessary?

Maybe your company isn't ready to abandon your degree requirement. But does it have to be a four-year degree? Numerous states have invested heavily in advancing their two-year associate degree

programs, providing practical training and experience in technical careers as well as entry level business administration and healthcare. These two-year programs are often much more affordable and can be targeted to the skills and applications used in your specific workplace.

Some two-year programs have targeted local businesses to determine what skills and qualifications they're looking for and then developed programs to meet those specific needs. If you have a need for a certain worker profile that you don't believe is being trained at your local business school, you should consider communicating with them about the ways in which you could be of mutual benefit to each other.

### **3. Is Pre-Employment Drug Screening – Particularly for Cannabis – Worthwhile?**

Pre-employment drug testing is still permissible in many jurisdictions after you make a conditional offer of employment to a candidate. It is generally accepted that such testing promotes workplace safety, security, and reduces absenteeism. Such tests are not without cost, however, typically running anywhere from \$30 to \$75 per test. But there could be a larger cost at play: losing out on qualified candidates.

With the proliferation of legalized cannabis across the country, recent statistics show that over 16% of Americans regularly partake in the drug, – a figure that is double what it was just a decade ago. Which means many of your candidates might test positive for the drug and perhaps be disqualified from employment. Moreover, many are likely dissuaded from applying to any position that advertises the need for a drug screen. If the job in question doesn't involve a safety-sensitive function or a government drug-free requirement, you may want to reconsider your zero-tolerance stance against cannabis.

In addition, with the increasing legalization of cannabis for medical and recreational usage, you also run the risk of violating local laws limiting testing parameters and what an employer can do with a positive test result. Given the complex legal environment, some employers (especially those needing to comply with a multistate patchwork of laws) are choosing to forego test or at a minimum eliminating testing for cannabis altogether.

### **4. Have Your Essential Job Functions Changed?**

Under the Americans with Disabilities Act (ADA), an employer is prohibited from discriminating against a qualified individual with a disability: someone who meets the legitimate skill, experience, education, or other requirements of a position and who can perform the “essential functions” of the position with or without reasonable accommodation. COVID has changed many aspects of daily job functions – which may have resulted in changes to the essential functions of a job.

For example, many employers previously claimed that presence in the workplace is an essential function of the job and asserted that it is a job requirement. Now with the prevalence of remote work, it may be much more difficult to claim that physical presence at the worksite is essential. You

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should work closely with your counsel to ensure that functions which were previously deemed essential remain so.

## **5. Have you Reviewed your Hiring Process for Compliance with Local Laws?**

You may have created your hiring protocol at a time when there were few, if any, laws restricting the kind of inquiries you could make or qualifications you could establish for applicants. However, recent years have seen an explosion of new rules at the federal, state, and local level governing your actions at the time you post your job openings, solicit applications, conduct interviews, and oversee background checks.

At present, you need to take into consideration new rules for salary history inquiries, criminal backgrounds, and other evolving areas. For example, an increasing number of states, regulators, and courts have recently taken steps to impact the way you can – and should – communicate about pay. In general, these new laws require employers to make pay range information available to internal and external candidates when advertising open positions, or at some point during the hiring process.

Additionally, “ban the box” and similar criminal history laws were historically intended to prohibit employers from asking about criminal history on job applications. However, criminal history laws have expanded and evolved in recent years to not only prohibit inquiries into criminal history on employment applications but to also dictate the procedures that must be followed before an employer can assess a candidate ineligible for employment. As a consequence, these laws are often referred to now as “fair chance” laws.

So, it may be time to work with your attorney to revamp your hiring process to account for evolving requirements.

## **Conclusion**

As they say, “Past performance is no guarantee of future results.” Just because your hiring standards and practices worked in past labor markets, there’s no guarantee they will continue to work in the current environment and future markets. You should evaluate your hiring practices on an on-going basis and recognize that changes to daily practices can impact your job requirements for existing positions.

If you have questions regarding best practices for ensuring proper job requirements, please reach out to your Fisher Phillips attorney or the authors of this Insight. Make sure you are subscribed to Fisher Phillips’ Insight System to get the most up-to-date information on this and other employment topics directly to your inbox.

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