What Constitutes Being Considered an Applicant?



According to the Equal Employment Opportunity Commission (EEOC) there are four requirements that determine whether an individual is indeed an applicant, and all four must be met in order to count this individual an applicant. Outlined here is each of these requirements, with implications for employers in terms of their selection procedures.

1. “The individual submits an expression of interest in employment through the internet or related electronic data technologies.”

IMPLICATION:

Employers may want to include some electronic response option for all open positions since this new definition will allow all the applicants to be counted in the same way (and this new way is more favorable to employers than in the past, which required employers to count all those who responded to be counted as applicants, even though they did not meet basic qualifications). This means candidates who are not “basically qualified” will not be counted as applicants. Adding an email address as a response option permits employers to use all four eligibility requirements outlined in the new regulations, which is more favorable to employers.

IMPLICATION:

Individuals must express interest to the employer in a particular position in order to be a true applicant. Therefore, resumes generated by going to an on-line data base such as Monster would not be counted until specific resumes are culled through a search using the basic requirements of the job and those candidates have indicated mutual interest.

2. “The contractor considers the individual for employment in a particular position.”

IMPLICATION:

This regulation is the same as the old regulation and specifies the employer use some sort of tool to screen candidates, whether manually reviewing qualifications or using electronic tools.

3. “The individual’s expression of interest indicates the individual possesses the basic qualifications for the position.”

IMPLICATION:

Employers must use care in determining “basic qualifications” for the job, ensuring these are job-related, objective, and non-comparative (for example, not the top five candidates). Basic qualifications are substantive credentials established for the job, such as experience, education, certifications, and other objective credentials. Employers are obliged to list the basic requirements in any recruitment advertising and pre-determine these qualifications prior to the selection process. The OFCCP will closely examine an employer’s basic qualifications for those positions where there is adverse impact greater than two standard deviations.

4. “The individual at no point in the contractor’s selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.”

IMPLICATION:

You don’t have to count individuals as applicants if they:

- reject an offer.
- fail to respond to inquiries.
- are unwilling to meet requirements of the job (e.g., shifts, overtime, travel).
- indicate higher salary requirements than are afforded by this position.

Some employers are examining “front-loading” key screening questions early in the selection process, that is, before other credentials are “considered” by the employer. For example, if candidates are to supply a cover letter or complete a form indicating their minimum salary requirements and openness to various work elements such as travel and overtime, then candidates who are not open to the specifications of the job can be eliminated from being counted as an applicant.

IMPLICATION:

Employers may establish their own procedures for selection and may differentiate procedures for different types of positions. However, employers must remain consistent in applying their own procedures within these job categories.

IMPLICATION:

You may limit the number of candidates you review on a non-comparative basis as a data management technique. For example, you may look at blocks of candidates (say, the first 20 who apply, or the last 20 who apply). While the regulations don’t speak to the record-keeping requirements, it is recommended that employers keep a record of the technique used.

Employers who are federal contractors should review these new regulations with their corporate counsel for clarification on their own internal policies and procedures for employee selection.