

Hiring Requirements: Utah

by Christina M. Jepson, Parsons Behle & Latimer, with Practical Law Labor & Employment

Status: Law stated as of 30 Oct 2022 | Jurisdiction: United States, Utah

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/6-518-1766

Request a free trial and demonstration at: us.practicallaw.tr.com/practical-law

A Q&A guide to state law on hiring requirements for private employers in Utah. This Q&A addresses disclosures that employers must make to new hires, the type of information to include in the notice, when and how notice should be sent, language to include in employment applications, and information that cannot be requested on employment applications. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Hiring Requirements: State Q&A Tool).

Disclosures to New Hires

1. Please list each state statute or regulation (if any) that requires employers to provide newly hired employees with specific information about the terms and conditions of employment (for example, paydays, paid family leave, and workers' compensation information). For each, please:

- Provide a brief description of the statute or regulation.
- Identify which employers are covered by the law.
- Identify which employees are covered by the law.
- State whether it provides for a private right of action.
- Identify the state agency or entity that administers the law.

- Post a notice specifying the regular paydays and the time and place of payment in a conspicuous location at or near the place of work where it can be seen by each employee.

(Utah Code § 34-28-4.)

Covered Employers

This law applies to all Utah employers (Utah Code § 34-28-2(1)(c)).

Covered Employees

This law applies to all Utah employees.

Private Right of Action

The law does not provide for a private right of action. Failure to provide notice is a class B misdemeanor. (Utah Code § 34-28-4.)

State Agency

This law is administered by the [Antidiscrimination and Labor Division of the Utah Labor Commission](#) (Utah Code § 34-28-2(1)).

For additional information that Utah employers must post for employees, see Question 6: Mandatory Workplace Notices.

Utah Payment of Wages Act: Utah Code §§ 34-28-1 to 34-28-19

Description

All Utah employers must either:

- Notify employees at the time of hiring of the day and place of payment, the rate of pay, and any related changes before the change occurs.

2. For each statute or regulation identified in Question 1, please describe the employer's legal obligation, including:

- What kind of information must be included in the disclosure of information about the terms and conditions of employment to the new hire.
- When and how the notice must be provided.
- Whether the employer must obtain acknowledgment of receipt of the information described above from the new hire.
- In what form any acknowledgment must be obtained (written or otherwise).
- Any links to additional information about the requirement or forms that can be used to fulfill it.

Utah Payment of Wages Act: Utah Code §§ 34-28-1 to 34-28-19

Kind of Notice Required

All Utah employers must notify employees of:

- The day and place of payment.
- The rate of pay.
- Any changes to the above information.

(Utah Code § 34-28-4.)

When and How Notice Required

Employers must either:

- Notify employees at the time of hiring of the day and place of payment, the rate of pay, and any related changes before the change occurs.
- Post a notice specifying the regular paydays and the time and place of payment in a conspicuous location at or near the place of work where it can be seen by each employee.

(Utah Code § 34-28-4.)

Whether Acknowledgment Is Required

The law does not require acknowledgment.

Form of Acknowledgment

The law does not require a particular form of acknowledgment.

Relevant Links

For more information about the Utah Payment of Wages Act, see the Utah Antidiscrimination and Labor Division of the Utah Labor Commission's [website](#).

Employment Applications

3. Please describe any elements of employment applications that are required by state law and provide:

- Specific language compliant with that requirement to be included in an employment application.
- The source of that requirement (that is, statute, regulation, case law, or other source of law).

There are no Utah statutes or regulations that require any particular elements in employment applications.

4. Please describe any elements of employment applications that are prohibited from being asked on an employment application under state law. Please also provide the source of that requirement (that is, statute, regulation, case law, or other source of law).

Discrimination

Prohibited Elements

Employment applications cannot express any limitation, specification, or discrimination concerning:

- Race.
- Color.
- Sex.
- Pregnancy.
- Childbirth.
- Pregnancy-related conditions.
- Age (40 and over).
- Religion.
- National origin.
- Disability.

- Sexual orientation.
- Gender identity.

(Utah Code § 34A-5-106(1)(a)(i), (d).)

However, a notice or advertisement may indicate a limitation, specification, or discrimination based on religion, sex, pregnancy, childbirth or pregnancy-related conditions, age, national origin, disability, sexual orientation, or gender identity when one of those categories is a bona fide occupational qualification for employment (Utah Code § 34A-5-106(1)(d), (3)(a)).

Source of Prohibition

This prohibition is set out in Utah Code § 34A-5-106(1)(d). This law is administered by the [Antidiscrimination and Labor Division of the Utah Labor Commission](#). The statute applies to employers with 15 or more employees within Utah for each working day in each of at least 20 calendar weeks in the current or preceding calendar year. Although beyond the scope of this Q&A, the statute also applies to labor organizations and employment agencies. (Utah Code §§ 34A-5-102(1)(i)(i)(D) and 34A-5-106(1)(b), (c).)

Genetic Information

Prohibited Elements

Regarding hiring, an employer cannot:

- Access or otherwise consider private genetic information about an individual.
- Request or require an individual to consent to a release for accessing private genetic information about the individual.
- Request or require an individual or the individual's blood relative to submit to a genetic test or genetic procedure.
- Inquire into or otherwise consider the fact that an individual or the individual's blood relative has taken or refused to take a genetic test or undergone or refused to undergo a genetic procedure.

(Utah Code § 26-45-103(1).)

Private genetic information means any information obtained from a genetic test of an individual's DNA or the DNA of a blood relative or from a genetic procedure that is derived from:

- The presence, absence, alteration, or mutation of an inherited gene.
- The absence or presence of a specific DNA marker.

(Utah Code § 26-45-102(8)(a).)

Private genetic information does not include information that is derived from:

- Routine physical examinations.
- Routine chemical, blood, or urine analysis.
- Tests to identify the presence of drugs or HIV infection.
- Tests performed due to the presence of signs, symptoms, or other manifestations of a disease, illness, impairment, or other disorder.

(Utah Code § 26-45-102(8)(b).)

Source of Prohibition

The prohibition is set out in Utah Code § 26-45-103. The law is enforced by the [Utah Department of Health and Human Services](#). All employers with one or more employees are covered by the law. (Utah Code §§ 26-45-103(1) and 34A-2-103(2)(a).)

Employment Selection Procedures Act

Prohibited Elements

Before an applicant is offered a job, an employer generally cannot request an applicant's:

- Social Security number.
- Date of birth.
- Driver license number.

(Utah Code § 34-46-201(1).)

However, an employer can request this information when the request for information:

- Is applicable to all individuals applying for a particular position.
- Occurs when the employer obtains:
 - a criminal background check;
 - a credit history of an applicant for employment, subject to the requirements of the Fair Credit Reporting Act; or
 - a driving record of a driver from the Driver License Division under Utah law.
- Relates to a review of internal records to determine whether an applicant:
 - was previously employed by the employer; or
 - previously applied for employment with the employer.
- Is made to determine eligibility for or participation in a government service, benefit, or program that requires

Hiring Requirements: Utah

that the information be collected on or before the day employment is offered.

- Is made with the applicant's consent.

(Utah Code § 34-46-201(2).)

An employer cannot:

- Use information about an applicant obtained in a hiring process for any purpose (including marketing, profiling, reselling, or a similar use) other than to determine whether the applicant will be hired as an employee, except that it can be used to determine eligibility for a government service, benefit, or program.
- Provide information about an applicant obtained through an initial selection process to a person other than the employer.

(Utah Code § 34-46-202(1).)

Source of Prohibition

This prohibition is set out in Utah Code § 34-46-201. The statute applies to employers with 15 or more employees within Utah for each working day in each of at least 20 calendar weeks in the current or preceding calendar year (Utah Code § 34-46-102(3)).

Internet Employment Privacy Act

Prohibited Elements

Under the Internet Employment Privacy Act (Utah Code §§ 34-48-101 to 34-48-301), employers cannot:

- Request in an employment application or otherwise that an applicant disclose a username and password or a password that allows access to the applicant's personal internet account (Utah Code § 34-48-201(1)). A personal internet account is an online account the applicant uses exclusively for personal communications unrelated to any of the employer's business purposes (Utah Code § 34-48-102(4)).
- Take adverse action, fail to hire, or otherwise penalize an employee or applicant for failure to disclose the above information (Utah Code § 34-48-201(2)).

However, the Internet Employment Privacy Act does not prohibit employers from:

- Complying with a duty to screen an applicant required by:
 - federal law; or
 - a self-regulatory organization under the Securities and Exchange Act of 1934 (15 U.S.C. § 78c(a)(26)).

- Viewing, accessing, or using information about an applicant that is available:

- without any required access information; or
- in the public domain.

(Utah Code § 34-48-202(3), (4).)

For regulations on employer access to social media accounts across many jurisdictions, see [Employer Access to Social Media Accounts State Laws Chart: Overview](#).

Source of Prohibition

The prohibition is set out in Utah Code § 34-48-201.

Additional Resources

5. If the state agency (or agencies) charged with oversight of any hiring requirements or prohibitions identified in Questions 1, 3, or 4 has any additional useful online guidance or forms not otherwise identified, please provide the link for those resources and a brief description of them.

The Antidiscrimination & Labor Division of the Utah Labor Commission provides a [summary](#) page on employment discrimination.

6. Please describe any other significant hiring laws, cases, or requirements specific to your state not otherwise addressed in this survey.

COVID-19 Vaccination Status

Effective May 4, 2022, an employer who requires an employee or prospective employee to receive or show proof that they have received a COVID-19 vaccine must exempt the employee or prospective employee from the requirement if either:

- The prospective employee submits a statement to the employer that the vaccine would:
 - injure their health or well-being;
 - conflict with their sincere religious beliefs, practices, or observances; or
 - conflict with their sincerely held personal beliefs.

Hiring Requirements: Utah

- The primary care provider of the employee or prospective employee submits a letter stating that the prospective employee was previously infected by COVID-19.

(Utah Code § 34-56-201(1)(a).) The exemptions are not applicable if both:

- Reassignment of an employee is not practical.
- The employer can show:
 - a nexus between the vaccine requirement and the prospective employee's assigned duties and responsibilities; or
 - an external requirement for vaccination that is related to the employee's duties and responsibilities.

(Utah Code § 34-56-201(1)(b).)

Utah prohibits employers from keeping records of an employee's proof of vaccination or COVID-19 test results, and from taking any adverse action against an employee because of their actions under this law (Utah Code § 34-56-201(2)-(3)).

Negligent Hiring

Utah recognizes a cause of action for negligent hiring. To state a claim, a party must show that:

- The employer knew or should have known that the employee posed a foreseeable risk of harm to third parties.
- The employee inflicted harm to a third party.
- The employer's negligent hiring proximately caused the injury.

(See *C.C. v. Roadrunner Trucking, Inc.*, 823 F. Supp. 913, 922 (D. Utah 1993); *J.H. by D.H. v. W. Valley City*, 840 P.2d 115, 123-25 (Utah 1992).)

Effective May 4, 2022, a party cannot bring a cause of action for negligent hiring based solely on evidence that the employee has a prior conviction, unless either:

- The hiring or continued employment:
 - violated state or federal law; or
 - constituted willful misconduct or gross negligence.
- The cause of action involves the misuse of funds or property of a person other than the employer and:
 - the prior conviction existed at the time of the employee's hiring;
 - the prior conviction was for an offense that included fraud or the misuse of funds as an element of the offense; and
 - it was foreseeable that the employee's duties would involve managing funds or property.

(Utah Code § 78B-4-518.)

Private Employer Verification Act: Utah Code §§ 13-47-201 to 13-47-204

Employers must register with and use a status verification system like E-Verify to verify the employment authorization of new employees if the employer is either:

- A private employer who employs 150 or more employees. Private employers are not required to verify the employment authorization of new employees holding H-2A or H-2B nonimmigrant visa statuses. (Utah Code § 13-47-201.)
- Any employer that is a contractor, subcontractor, contract employee, or staffing agency that enters into a contract for goods or services with any Utah public employer (Utah Code § 63G-12-302).

For more information on Utah employment eligibility verification laws, see [State E-Verify Employment Eligibility Verification Laws Chart: Overview](#).

Mandatory Workplace Notices

Utah law requires employers to post:

- A [workers' compensation poster](#) (Utah Code § 34A-2-204).
- An [occupational safety and health poster](#).
- An [unemployment insurance notice](#) (Utah Code § 35A-4-406(1)(b)).
- A [pregnancy and related conditions under the Utah Antidiscrimination Act poster](#).

For more information on the required notices, see the Utah Labor Commission's [website](#). For information on federal notice posting requirements, see [Federal Notice Posting Requirements Checklist](#).

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.