

Can I.....

Ask a job applicant how old they are?

No. Federal Equal Employment Opportunity laws generally don't allow employers to ask a job applicant how old they are unless there is a specific job-related reason to do so. If you ask that question, you face the prospect of an age discrimination complaint. If there is a legal requirement for a worker to be a certain age, you may ask whether the applicant meets the requirement. For example: in general, an employee must be at least 14 years of age to be employed in a business, so you may ask an applicant if they are at least 14 years of age. Another example: To bartend, South Dakota state law requires a person to be at least 21 years of age, so an alcohol licensee may ask an applicant if they are at least 21 years old.



Ask job applicants for their photo?

No. State and federal law generally prohibit employers from discriminating on the basis of factors such as age, gender, race, religion, etc. If you request a photo, the potential exists for a discrimination claim, as an applicant may say that you chose not to hire them based on information gleaned from the photo (such as age or race).



Deduct money from an employee's paycheck for shortages?

Yes, in some circumstances. HOWEVER there are some restrictions. *First*, employees must generally be aware upfront that money will be deducted from their wages for shortages. An employer generally can't discover a shortage, and just decide they're going to take it out of an employee's next paycheck; the employee should be aware of that policy prior to the incident. *Second*, the employer must be certain that a specific employee is responsible. If you have multiple employees using the same till and aren't certain which one was responsible for the shortage, you can't deduct money from all of their wages; you must know for certain which employee was responsible. *Third*, you should not take an employee below minimum wage. So if an employee is making minimum wage (\$7.25 per hour), in most circumstances you would not be able to make any deductions. If they are making \$8.25 per hour, you could deduct up to \$1.00 per hour from their wages. *Fourth*, you must apply this policy consistently. If you deduct shortages from one employee's wages, you must apply this policy to other employees. Both for legal reasons and employee morale, be cautious about adopting this policy.



Reduce a non-exempt employee's hourly wage rate?

Yes. If for example, you are paying an employee \$12 an hour, and decide to reduce their hourly rate to \$7.25 an hour, you may do so. Keep in mind, however, that if the individual decides to quit the job, they may be eligible for Unemployment Insurance Benefits. Usually when an employee quits a job they're not eligible for UI benefits. However, there is a provision in South Dakota law which says an employee is eligible for UI benefits if they have good cause for leaving their employment. "Good cause" includes cases in which the employer has substantially altered the conditions of employment. A significant change in wages could fall into that category.



Prohibit employees from texting or making calls on cell phones?

Yes. In most instances, you may have a policy which prohibits employees from carrying or using cell phones for personal use on the work premises during work hours. You must be consistent in your application of the policy. If you discipline one employee for excessive texting or phone calls, you must treat other employees similarly, or you may be accused of disparate or discriminatory treatment of certain workers. Keep in mind there may be cases where an employee legitimately needs to be accessible during work hours, such as family emergencies.

