

FAIR HIRING PROCEDURE ACT

Act No. 12326, Jan. 21, 2014

Amended by Act No. 16321, Apr. 16, 2019

Act No. 17326, May 26, 2020

Article 1 (Purpose)

The purpose of this Act is to reduce the burden of job applicants and protect their rights and interests by prescribing the matters to ensure minimum fairness in hiring procedures such as returning hiring documents submitted by job applicants in a hiring process.

Article 2 (Definitions)

The terms used in this Act are defined as follows: *<Amended on May 26, 2020>*

1. The term “job offerer” means a person who intends to hire a job applicant;
2. The term “job applicant” means a person who applies for a hiring advertisement by a job offerer to seek a job;
3. The term “basic examination materials” means an application form, resume, and cover letter;
4. The term “evidentiary materials” means all materials that prove the matters stated in basic examination materials, such as a certificate of degree, certificate of career, and certificate of qualification;
5. The term “in-depth examination materials” means all objects and materials that demonstrate the ability of a job applicant, such as a collection of work and research records;
6. The term “hiring document” means any basic examination material, evidentiary material, and in-depth examination material.

Article 3 (Applicability)

This Act shall apply to the hiring procedures of business or a place of business which employs a regular workforce of at least 30 employees: Provided, That this shall not apply where the State or a local government hires a public official.

Article 4 (Prohibition of False Hiring Advertisement)

- (1) No job offerer shall place a false hiring advertisement for such purposes as collecting ideas or promoting a place of business by pretending to conduct hiring.
- (2) No job offerer shall change the contents of a hiring advertisement unfavorably for job applicants without any justifiable grounds.
- (3) After hiring a job applicant, no job offerer shall change the working conditions specified in the hiring advertisement in a way that disadvantages such job applicant without good cause.
- (4) No job offerer shall force a job applicant to vest possession of his or her hiring documents or intellectual property rights relevant thereto such as copyrights in the job offerer.

Article 4-2 (Prohibition of Coerced Hiring)

No one shall conduct any of the following acts which impede the fairness of the hiring process:

1. Doing improper solicitations, putting pressure, coercing, etc. with regard to hiring, in violation of statutes or regulations;
2. Providing or receiving money, goods, entertainment, or property interest in connection with hiring.

Article 4-3 (Prohibition of Demand of Personal Information including Place of Birth)

No job offerer shall demand that a job applicant include the following information, which is not necessary in the performance of the job duties, in the basic examination materials or collect it as evidentiary materials:

1. Physical conditions of a job applicant, such as appearance, height, and weight;
2. The place of birth, marital status, and property of a job applicant;
3. Academic background, occupation, and property of a job applicant's lineal ascendant or descendant and sibling.

Article 5 (Recommendation for Using Standard Form of Basic Examination Materials)

The Minister of Employment and Labor may determine standard forms of basic examination materials and recommend job offerers to use them.

Article 6 (Prohibition of False Preparation of Hiring Documents)

No job applicant shall falsify hiring documents submitted to a job offerer.

Article 7 (Receipt of Hiring Documents through E-Mail)

- (1) A job offerer shall endeavor to receive hiring documents of a job applicant via the website of the place of business or of a person entrusted by the job offerer to engage in the hiring affairs, or via e-mail.
- (2) Where a job offerer receives hiring documents via e-mail, etc., he or she shall notify the job applicant of such receipt without delay, by posting such fact on the website under paragraph (1), or by mobile text messaging, e-mail, fax, telephone, etc.

Article 8 (Notification of Hiring Schedule and Hiring Process)

A job offerer shall notify job applicants of the hiring process such as the hiring schedule, any delay of hiring examination, and changes in the hiring process. In such cases, Article 7 (2) shall apply mutatis mutandis to notification methods. <Amended on Apr. 16, 2019>

Article 9 (Prohibition on Bearing Expenses for Hiring Examination)

No job offerer shall require a job applicant to bear any expenses other than the expenses for submitting hiring documents for the purpose of a hiring examination (hereinafter referred to as “hiring examination expenses”): Provided, That where any unavoidable circumstance exists due to the special characteristics of a place of business or type of job, a job offerer may require a job applicant to bear part of the hiring examination expenses after obtaining approval from the Minister of Employment and Labor. <Amended on May 26, 2020>

Article 10 (Notification of Hiring)

Where a job offerer determines the job applicants to hire, he or she shall without delay notify the job applicants of whether they are hired or not. In such cases, Article 7 (2) shall apply mutatis mutandis to notification methods.

Article 11 (Return of Hiring Documents)

(1) Where a job applicant (excluding those determined to be hired) files a request for the return of his or her hiring documents after being notified of whether his or her hiring is determined, the job offerer shall return them after identifying the job applicant, as prescribed by Presidential Decree: Provided, That this shall not apply where the hiring documents were submitted via the website or e-mail pursuant to Article 7 (1) or where the job applicant submitted the hiring documents voluntarily without a request of the job offerer.

(2) A request for the return of hiring documents under paragraph (1) shall be filed, as prescribed by Ordinance of the Ministry of Employment and Labor, such as in writing or by electronic means.

(3) In preparation for a job applicant’s request for the return of hiring documents under paragraph (1), a job offerer shall retain the hiring documents for the period prescribed by Presidential Decree: Provided, That where the hiring documents were destroyed due to a natural disaster or any other reason not attributable to the job offerer, the job offerer shall be deemed to have fulfilled the duty of returning the hiring documents pursuant to paragraph (1).

(4) Where the period for filing a request for the return of hiring documents prescribed by Presidential Decree has passed and a job offerer has not returned the hiring documents, the job offerer shall destroy the hiring documents, as prescribed by the Personal Information Protection Act.

(5) In principle, a job offerer shall bear the expenses incurred for returning hiring documents pursuant to paragraph (1): Provided, That a job offerer may require the relevant job applicant to bear the expenses incurred in returning the hiring documents, to the extent prescribed by Presidential Decree.

(6) A job offerer shall notify a job applicant of the provisions of paragraphs (1) through (5) before the job applicant's hiring is determined.

Article 12 (Corrective Order concerning Hiring Examination Expenses)

(1) The Minister of Employment and Labor may issue a corrective order to a job offerer who violates Article 9 or 11 (1), (4), or (5).

(2) Where a job offerer in receipt of the corrective order under paragraph (1) complies with the relevant order, he or she shall, without delay, report the result of compliance to the Minister of Employment and Labor.

Article 13 (Limitation on Submitting Evidentiary and In-depth Examination Materials)

Where a job offerer conducts a hiring examination by dividing it into document screening, written test, interview, etc., he or she shall endeavor to require only those job applicants who have passed the document screening to submit evidentiary and in-depth examination materials.

Article 14 (Reporting and Investigation)

(1) Where the Minister of Employment and Labor deems it necessary, he or she may require a job offerer to submit the materials necessary for the enforcement of this Act or report necessary matters.

(2) Where it is necessary for verification, etc. of the violation of this Act, the Minister of Employment and Labor may require public officials under his or her jurisdiction to access places of business or other facilities governed by this Act, inspect documents, ledgers, or other objects, and question the relevant persons.

(3) In order to conduct the investigation under paragraph (2), the Minister of Employment and Labor shall inform, in advance, the subject of the investigation of the investigation plans, such as the date and time, and reasons and details of the investigation: Provided, That this shall not apply where the investigation shall be conducted urgently or where it is deemed that the goal of the investigation cannot be achieved if it is informed in advance due to the likelihood of destruction of evidence.

(4) A public official who accesses a relevant place and conducts an investigation pursuant to paragraph (2) shall carry an identification indicating his or her authority and present it to relevant persons.

Article 15 (Delegation of Authority)

@Part of the authority of the Minister of Employment and Labor under this Act may be delegated to the head of a regional employment and labor agency, as prescribed by Presidential Decree.

Article 16 (Penalty Provisions)

A job offerer who places a false hiring advertisement in violation of Article 4 (1) shall be punished by imprisonment with labor for up to five years or by a fine not exceeding 20 million won.

Article 17 (Administrative Fines)

(1) Any person who coerces hiring, etc. in violation of Article 4-2 shall be subject to an administrative fine of not more than 30 million won: Provided, That where the person receives a criminal punishment pursuant to other statutes such as the Criminal Act, an administrative fine shall not be imposed on that person, and where the person receives a criminal punishment after an administrative fine has been imposed, the imposition of such administrative fine shall be cancelled. <Newly Inserted on Apr. 16, 2019>

(2) Any of the following persons shall be subject to an administrative fine of not more than five million won: <Amended on Apr. 16, 2019>

1. A job offerer who changes the contents of a hiring advertisement or working conditions, in violation of Article 4 (2) or (3);
2. A job offerer who forces a job applicant to vest his or her intellectual property rights in the job offerer, in violation of Article 4 (4);
3. A job offerer who demands that a job applicant include his or her personal information, which is not necessary in the performance of the job duties, in the basic examination materials, or collects it as evidentiary materials, in violation of Article 4-3.

(3) Any of the following persons shall be subject to an administrative fine of not more than three million won: <Amended on Apr. 16, 2019>

1. A job offerer who fails to fulfill the duty to retain hiring documents under Article 11 (3);
2. A job offerer who fails to fulfill the duty to notify job applicants, in violation of Article 11 (6);
3. A job offerer who fails to comply with a corrective order under Article 12 (1).

(4) The administrative fines under paragraphs (1) and (3) shall be imposed and collected by the Minister of Employment and Labor, as prescribed by Presidential Decree. <Amended on Apr. 16, 2019>

ADDENDA <Act No. 12326, Jan. 21, 2014>

Article 1 (Enforcement Date)

The enforcement date of this Act shall be as follows:

1. A business or a place of business that employs a regular workforce of at least 300 employees; public institutions under Article 4 of the Act on the Management of Public Institutions; local government-invested public corporations under Article 49 of the Local Public Enterprises Act and local public agencies under Article 76 of that Act; and the State and local governments: January 1, 2015;
2. A business or a place of business that employs a regular workforce of at least 100 but less than 300 employees: January 1, 2016;

3. A business or a place of business that employs a regular workforce of at least 30 but less than 100 employees: January 1, 2017.

Article 2 (Applicability)

This Act shall begin to apply to hiring procedures initiated on or after the date this Act enters into force.

ADDENDUM <Act No. 16321, Apr. 16, 2019>

This Act shall enter into force three months after the date of its promulgation.

ADDENDUM <Act No. 17326, May 26, 2020>

This Act shall enter into force on the date of its promulgation. (Proviso Omitted.)

Last updated : 2022-01-12

