# EARN
ADVANCING WORKFORCE DIVERSITY

Employer Assistance and Resource Network on Disability Inclusion   **AskEARN.org**

# PEAT
Building a future that works

## Checklist for Employers:

Facilitating the Hiring of People with Disabilities Through the Use of eRecruiting Screening Systems, Including AI

## INTRODUCTION

More and more companies recognize that a workforce representative of the population at large results in a more effective and innovative organization. Reflecting this, many are taking proactive steps to increase the recruitment, hiring, advancement, and retention of individuals with disabilities. At the same time, eRecruiting systems,[1] including artificial intelligence (AI),[2] in the workplace are becoming more commonly used to screen candidates, streamline the application process, provide training, disseminate information to employees, and increase productivity.

This confluence of events requires employers to consider whether the use of eRecruiting screening systems facilitates or impedes the hiring of qualified individuals with disabilities. To help employers assess the efficacy and appropriateness of these systems, the Employer Assistance and Resource Network on Disability Inclusion (EARN), in collaboration with the Partnership on Employment & Accessible Technology (PEAT), developed the following checklist.

This checklist highlights questions and issues that leadership, human resources personnel, equal employment opportunity managers, and procurement officers entering into contracts with vendors regarding the content of eRecruiting (including AI) screening tools should consider. However, it does not address issues relating to accessibility, i.e., technology products and environments that are usable by all people, to the greatest extent possible – regardless of disabilities or functional limitations. *Accessible technology* is either directly accessible, meaning it is usable without any additional devices, or it is accessible through and compatible with "assistive" technology (AT). Resources available on the PEAT website address accessibility issues related to eRecruiting. Appended to the checklist is a list of resources that employers and others may find helpful when reviewing policies and procedures related to eRecruiting screening systems.



## Questions for Leadership

✓ Does the use of an eRecruiting screening system facilitate or impede corporate goals related to diversity and inclusion, including employment of individuals with disabilities?

✓ Has the company assigned a team of experts (including human resources, equal employment opportunity, and procurement professionals) who understand the efficacy of the eRecruiting screening system for the company, its appropriateness for specific jobs, and whether it can be administered and scored consistent with the Americans with Disabilities Act (ADA) and corporate diversity and inclusion policy?

✓ Are personnel who procure, design, and use eRecruiting selection systems appropriately trained regarding ADA implications and corporate policy considerations?

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1 eRecruiting refers to the practice of using technology — in particular, web-based resources — for tasks involved with finding, attracting, assessing, interviewing, and hiring new personnel.

2 The term "artificial intelligence" encompasses techniques used to teach computers to learn, reason, perceive, infer, communicate, and make decisions similar to or better than humans, such as visual perception, speech recognition, decision-making, and translation between languages.

## Questions for Human Resources Personnel

✓ How does the eRecruiting screening system facilitate diversity and inclusion, including employment of individuals with disabilities?

✓ Does the eRecruiting screening system evaluate qualification standards such as personal and professional attributes, including the skills, experience, education, physical safety, and other requirements established by the company as requirements that an individual must meet in order to be eligible for the desired position?

✓ Does the eRecruiting screening system assess candidates on their individual merits, rather than make assumptions about the qualifications of candidates with disabilities?

✓ Does the eRecruiting screening system include universal design features, i.e., design features that recognize and take into consideration the greatest number of people with functional differences, including individuals with disabilities, and minimize the need for an alternative system as a form of reasonable accommodation?

✓ If the eRecruiting screening system screens out or tends to screen out an individual with a disability or a class of individuals with disabilities, are the criteria being applied job-related for the position in question and consistent with business necessity? Is there an equally effective alternative system that has less of an adverse impact (i.e., would another system predict job performance, but not disproportionately exclude people with disabilities)?

✓ Does the company's policy note that, if requested, a reasonable accommodation will be provided to enable an applicant with a disability to use the eRecruiting screening system effectively?

✓ Does the company's eRecruiting screening policy note that, if requested, a reasonable accommodation will be provided in the form of an alternative screening method that is as effective and meaningful as that provided for applicants using the standard eRecruiting screening system (i.e., comparable timeliness, validity, reliability, privacy, confidentiality, etc.)?

✓ Does the company's eRecruiting screening policy ensure that any medical- or disability-related information received from an applicant (for purposes of requesting a reasonable accommodation related to the eRecruiting screening system or an alternative screening system) is collected and maintained on separate forms and in separate medical files, and treated as a confidential medical record with limited disclosure?

✓ Are applicants provided sufficient notice on the company's website and other documents about the eRecruiting screening system to enable them to determine whether they should seek an accommodation, including an alternative screening system, and the process for requesting such an accommodation?

## Questions for Equal Employment Opportunity Managers

✓ What strategies have been adopted to determine if the eRecruiting screening system is selected and administered in the most effective manner to ensure that results accurately reflect the skills, aptitude, or other factors it purports to measure, rather than reflecting an applicant's physical or mental impairment?

✓ How does the company use the pre-offer eRecruiting selection system?

- Does it include permissible pre-offer inquiries to identify or measure characteristics or traits such as honesty, poor judgment, chronic lateness, quick temper, irritability, integrity, teamwork, or prejudice?

- Does it include impermissible inquiries? For example, is it used to prompt applicants to disclose their physical or mental impairments (i.e., disability-related questions or a question(s) likely to elicit information about a disability)?

- Is it designed to reveal characteristics such as "slow thinking" or "inability to concentrate" that might lead to identifying a mental health or developmental disorder or impairment (i.e., a medical examination)?

✓ What steps are being taken to collect data and conduct audits and testing to determine whether the eRecruiting screening system is screening out or tending to screen out individuals with disabilities or a class of individuals with disabilities?

✓ Are there procedures in place to ensure that if the company obtains information about an individual's disability from the eRecruiting screening system, it cannot use this information to determine whether the individual will proceed in the hiring process?

✓ Is there an internal auditing process to continuously monitor the use of the eRecruiting screening system to support its use, consistent with the ADA and corporate diversity and inclusion policy?

## Questions for Procurement Officers

✓ What provisions are included in requests for proposals (RFPs) for eRecruiting screening systems to address compliance with the nondiscrimination provisions in the ADA and Section 503 of the Rehabilitation Act, when applicable (and the latter's affirmative action requirements, when applicable)?

✓ What assurances are included in contracts? Do the assurances specifically include issues related to nondiscrimination/fairness for people with disabilities?

- What steps/techniques is the vendor using to test for and mitigate disability bias throughout the development of eRecruiting screening systems (in data, models, and outcomes)?

- Was the test designed and reviewed by people with disabilities to identify potential barriers?

- How is the vendor handling outliers?

✓ What steps is the company taking to independently verify documentation provided by the vendor from a disability perspective?

✓ Do contracts with vendors include indemnification clauses requiring vendors to document that they are not using proxies or models that violate the nondiscrimination provisions of the ADA and Section 503 of the Rehabilitation Act, when applicable (and the latter's affirmative action provisions, when applicable)?

## APPENDIX: RESOURCES

Equal Employment Opportunity Commission

Title I of the Americans with Disabilities Act
EEOC Regulations Implementing Title I of the ADA
Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act [July 27, 2000]
Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations [October 10, 1995]
Employment Tests and Selection Procedures [December 1, 2007]

Department of Justice

Settlement Agreement Between the United States of America and Florida State University, DJ 205-17-13 [May 29, 2014]
Settlement Agreement Between the United States of America and the City of the Isle of Palms, South Carolina, DJ 205-67-11 [February 3, 2015]
Settlement Agreement Between the United States of America and the City of Vero Beach, Florida, DJ 205-18-16 [February 3, 2015]

Other Resources

Use of Artificial Intelligence to Facilitate Employment Opportunities for People with Disabilities (EARN)
The Future of Work - Artificial Intelligence (PEAT)
How Algorithmic Bias Hurts People with Disabilities (Alexandra Reeve Givens, Slate, February 6, 2020)
Expanding Employment Success for People with Disabilities (Jim Fruchterman and Joan Mellea, Benetech, November 2018)
AI Fairness for People with Disabilities: Point of View (Shari Trewin, IBM Accessibility Research, 2018)
AI Fairness 360 Toolkit (Bellamy et al., October 2018)
Partnership on AI