

# STANDARD EMPLOYMENT FORMS FOR 2012

FREE TO OMA MEMBERS

**As an OMA member**, you're entitled to receive these standard up-to-date reproducible forms to assist your human resource department, managers and supervisors. These forms comply with federal and Ohio laws and have been reviewed by counsel for compliance as recently as December 2011. Best of all, they are **free of charge** to you as an OMA member.

The reproducible forms we offer are:

- 1. Application for Employment\***
- 2. Health Questionnaire/Physical Condition\***
- 3. Absentee Calendar/Bi-monthly Absence Review**
- 4. Vacation Schedule -** (The Vacation Schedule is a legal size form. Please note that you may need to select 'legal size' paper from your Print properties function, and be sure to load legal size paper in your printer.)

These **legally approved** standard employment forms are provided for you to reproduce to meet your company's needs. You may duplicate them – as many or as few as you need – in-house or take them to your printer. Because these forms have been prepared to comply with both federal and Ohio laws, any changes or alterations you make to them may cause them to no longer comply.

**\*Please see the special instructions below about the use of the Application for Employment and the Health Questionnaire in connection with federal law.**

## **Special Instructions About the Use of the Application for Employment in Connection with The Fair Credit Reporting Act**

The Application for Employment states that the applicant authorizes the employer to conduct certain investigations.

The Fair Credit Reporting Act (FCRA) requires that employers follow very specific procedures before they can obtain "consumer reports." The definition of a "consumer report" is expansive. For example, if an employer conducts a criminal background check on an applicant and the check is done by a third party for a fee, the report received by the employer is a "consumer report." In fact, a good rule of thumb is that any background check conducted by a third party (i.e. someone other than the employer) may be a "consumer report." Additionally, if an employer possesses consumer information, The Fair Accurate Credit Transaction Act (FACTA) governs how that information is disposed ("The Disposal Rule"). The Disposal Rule applies not only to paper records but also to consumer information found in electronic form. The Disposal Rule requires entities disposing of such information to take reasonable, specific measures to protect against unauthorized access to or use of the information in connection with disposal. Thus, employers using the Application who want to obtain "consumer reports" (i.e. criminal background checks, drug tests, medical exams, etc.), will need to comply with the FCRA and FACTA. Employers may wish to seek legal assistance before attempting to obtain such a report.

# Special Instructions About the Use of the Health Questionnaire in Connection with The Americans With Disabilities Act (ADA)

## Part One

The **OMA Health Questionnaire** may be used only after making an offer of employment to a candidate conditioned on the results of the health questionnaire/exam, and before the applicant starts work. It is during this period of the employment process when an employer has the most flexibility to make inquiries about disabilities, illness, disease, and medication as they relate to the employee's ability to do the job in question. The employer may make a job offer to such an individual, conditioned on the satisfactory outcome of a medical examination or inquiry, providing that the employer requires such examination or inquiry for all employees in a particular job category, not merely individuals with known disabilities, or those whom the employer believes may have a disability. Further, member companies are reminded that they must not withdraw the conditional offer of employment based on the medical examination or inquiry results unless the company can establish that the reason for the withdrawal is:

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- 1. Because the individual is unable to perform the essential functions of the position with or without reasonable accommodation; or*
  - 2. Because the person would pose a substantial risk to the safety of himself/herself or others and no reasonable accommodation is available.*

## Part Two

The second part of the questionnaire is to be completed by the reviewing doctor. Please note that a doctor who conducts medical examinations for an employer should not be responsible for making employment decisions or deciding whether or not it is possible to make a reasonable accommodation for an otherwise qualified person with a disability. That responsibility lies with the employer. Accordingly, OMA member companies should provide doctors who conduct such examinations with specific information about the particular job for which the individual is being considered. The employer should inform the doctor that any recommendations or conclusions related to hiring or placement of an individual should focus on only two concerns:

- 1. Whether this person currently is able to perform his/her specific job; and*
- 2. Whether this person can perform this job without posing any "direct threat" to the health and safety of himself/herself or others.*

The space provided for the physician's conclusions should be utilized for this information. Once the employer is presented with conclusions that the person is currently unable to perform the essential functions of the job or poses a "direct threat," the employer must then decide whether or not it is possible to make a reasonable accommodation for the person.

**NOTE:** Medical information on employees is confidential and must be kept in a separate file away from the employee's personnel file and treated as a confidential document.

## Special Instructions Regarding Application for Employment

You will notice that the top of the Application for Employment contains an Equal Opportunity Employer notice, which indicates that the member employer does not discriminate on the basis of various characteristics protected by Ohio and federal law (i.e., race, color, religion, etc.). Among the protected characteristics listed is "any other characteristic protected by applicable law." This is included, in part, because some members may also be subjected to local ordinance(s) that prohibit discrimination on the basis of additional characteristics such as, for example, sexual orientation and/or marital status. Although you are not required to specifically list any such characteristics on the employment application, it would be a prudent business practice to identify whether any of the cities, townships, municipalities, etc. in which you operate have such a local ordinance and, if so, familiarize yourself with any additional protected classes that may be covered thereby.