

## Pre-Employment Inquiries

### A Guide to What You Can and Cannot Ask

| Name   |
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| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>◇ Have you ever worked for this company under a different name?</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>◇ Inquiries about preferred title: Miss, Mrs., Ms.</li> <li>◇ Inquiries about name which would indicate applicant's lineage, ancestry, national origin or descent.</li> </ul> </li> </ul>   |
| Marital and Family Status  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>◇ Whether applicant can meet specified work schedules or has activities, commitments or responsibilities that may hinder meeting attendance requirements.</li> <li>◇ Inquiries concerning duration of stay on job or anticipated absences which are made to both males and females alike.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>◇ Any inquiry indicating whether an applicant is married, single, divorced, engaged, etc.</li> <li>◇ Information on child care arrangements.</li> <li>◇ Any questions which directly or indirectly result in limitation of job opportunities.</li> </ul> </li> </ul>  |
| Age  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>◇ Requiring proof of age in the form of a work permit or a certificate of age--if a minor.</li> <li>◇ Requiring proof of age by birth certificate after being hired.</li> <li>◇ Inquiry as to whether or not the applicant meets the minimum age requirements as set by law and requirement that upon hire proof of age must be submitted in the form of a birth certificate or other form of proof of age.</li> <li>◇ If age is a legal requirement: "If hired, can you furnish proof of age?" or a statement that hire is subject to verification of age.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>◇ Requirement that applicant state age or date of birth.</li> <li>◇ Requirement that applicant produce proof of age.</li> <li>◇ The Age Discrimination in Employment Act of 1967 forbids discrimination against persons who are age 40 or older. Avoid any advertising or implied age-based that contains expressed limitations.</li> </ul> </li> </ul>   |
| Sex  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>◇ Sex of the applicant may be requested (preferably not on the employment application) for affirmative action purposes but may not be used as an employment selection criterion.</li> <li>◇ Inquiry or restriction of employment is permissible only where a bona fide occupational qualification (BFOQ) exists. The burden of proof rests on the employer to prove that the BFOQ does exist and that all members of the affected class (e.g. females) are incapable of performing the job.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>◇ Sex of the applicant</li> <li>◇ Any other inquiry which would indicate sex of the applicant. For example, a statement which says "indicate Miss, Mrs. or Mr."</li> <li>◇ Sex is not a BFOQ because a job involves physical labor (such as heavy lifting) beyond the capacity of some women nor can employment be restricted just because the job is traditionally labeled "men's work" or "women's work."</li> <li>◇ Applicant's sex cannot be used as a factor for determining whether or not an applicant will be satisfied in a particular job.</li> <li>◇ Employers may not request information from female applicants that is not requested from males (such as marital or family status)</li> </ul> </li> </ul> |

## Disability

- **Permissible Inquiries:**
  - ◇ The Rehabilitation Act of 1973 permits employers to “invite” applicants to indicate how and to what extent they are disabled. Applicants must be informed of the following:
    - 1) compliance with the invitation is voluntary,
    - 2) the information is being sought only to remedy discrimination or provide opportunities for people with disabilities,
    - 3) the information will be kept confidential, and
    - 4) refusing to provide the information will not result in adverse treatment.
  - ◇ The Rehabilitation Act and ADA permit all applicants to be asked about their ability to perform job-related functions and whether they can be performed in a safe manner.
- **Inquiries to Avoid:**
  - ◇ An employer must be prepared to prove that any physical and mental requirements for a job are due to “business necessity” and the safe performance of the job.
  - ◇ Except in cases where undue hardship can be proven, employers must make “reasonable accommodations” for the physical and mental limitations of an employee or applicant, which includes alteration of duties, alteration of work schedule, transfer to a vacant position, alteration of a physical setting and provision of job aids.
  - ◇ The Rehabilitation Act and ADA generally forbid employers from asking job applicants general questions about whether they are disabled or asking them about the nature of severity of their disability. Such inquiries, however, are allowed where they can be shown to be job-related and consistent with business necessity.

## Race & Color

- **Permissible Inquiries:**
  - ◇ General distinguishing physical (such as scars, etc.) to be used for identification purposes.
  - ◇ Race may be requested (preferably not on the employment application) for affirmative action purposes but may not be used as an employment criterion.
- **Inquiries to Avoid:**
  - ◇ Applicant’s race.
  - ◇ Color of applicant’s skin, eyes, hair, etc., or other questions, directly or indirectly, indicating race or color.

## Address or Duration of Residence

- **Permissible Inquiries:**
  - ◇ Applicant’s address.
  - ◇ Inquiry into length of stay at current and previous addresses.
  - ◇ “How long have you been a resident of this state or city?”
- **Inquiries to Avoid:**
  - ◇ Specific inquiry into foreign address which would indicate national origin.
  - ◇ Names and relationship of people with whom the applicant resides.

## Place of Birth

- **Permissible Inquiries:**
  - ◇ “Can you, after employment, submit a birth certificate or other proof of U.S. citizenship?”
- **Inquiries to Avoid:**
  - ◇ Birthplace of applicant.
  - ◇ Birthplace of applicant’s parents, spouse or other relatives.
  - ◇ Requirement that applicant submit a birth certificate before employment.
  - ◇ Any other inquiry into national origin.

## Religion

- **Permissible Inquiries:**
  - ◇ Any applicant may be advised by job announcements and advertisements concerning normal hours and days of work required by the job to avoid possible conflict with religious or other personal convictions. However, except in cases where undue hardship can be proven, employers and unions must make “reasonable accommodation” for religious practices of an employee or prospective employee. Reasonable accommodation may include voluntary substitutes, flexible scheduling, lateral transfer, change of job assignments or the use of an alternative to payment of union dues.

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| <ul style="list-style-type: none"> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Applicant’s religious denomination or affiliation, church, parish, pastor, or religious holidays observed.</li> <li>✧ Any inquiry to indicate or identify religious denomination or customs.</li> <li>✧ Applicants may not be told that any particular religious groups are required to work on their religious holidays.</li> <li>✧ The use of such pre-selection inquiries as “What days and hours are you available to work?” that determine an applicant’s availability may be considered by the EEOC to be unlawful unless the employer can show that it: <ul style="list-style-type: none"> <li>1) did not have an exclusionary effect on the applicant; or</li> <li>2) was otherwise justified by business necessity.</li> </ul> </li> </ul> </li> </ul>  |
| <b>Military Record</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Type of education and experience in service as it relates to a particular job.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Type of discharge.</li> </ul> </li> </ul>   |
| <b>Photograph</b>   |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ May be required for identification after hire.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Requirement that applicant affix a photograph to his or her application.</li> <li>✧ Request that applicant, at his or her option, submit a photograph.</li> </ul> </li> </ul>   |
| <b>Height &amp; Weight</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ May be requested if necessary after person is hired.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Question about an applicant’s height or weight, unless demonstrably necessary as requirements for the job.</li> </ul> </li> </ul>   |
| <b>Citizenship</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ “Are you a citizen of the United States?” or “If you are not a U.S. citizen, are you authorized to work in the United States?”</li> <li>✧ The Immigration Reform and Control Act of 1986 (IRCA) prohibits employers from knowingly hiring aliens not authorized to work in the United States. After being hired, an employee must provide the employer with proof (a driver’s license and Social Security card) to establish identity and eligibility to work in the United States.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ It is unlawful under IRCA to discriminate on the basis of a person’s citizenship status. This protection extends only to U.S. citizens and “intending citizens”--those granted permanent resident status, refugees, residents granted asylum, and those who have begun the application process for temporary resident status. However, the law provides that if a U.S. citizen and a non-citizen are equally qualified, an employer may give preference in hiring to the citizen.</li> </ul> </li> </ul> |
| <b>Ancestry or National Origin</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Languages applicant reads, speaks or writes fluently (if another language is necessary to perform the job).</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Inquiries into applicant’s lineage, ancestry, national origin, descent, birthplace or native language.</li> <li>✧ National origin of applicant’s parents or spouse.</li> </ul> </li> </ul>   |
| <b>Education</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Applicant’s academic, vocational or professional education; schools attended.</li> <li>✧ Inquiry into language skills, such as reading, speaking and writing foreign languages.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Any inquiry asking specifically about the nationality, racial or religious affiliation of the school.</li> <li>✧ Inquiry as to how a foreign language ability was acquired.</li> </ul> </li> </ul>   |

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| <b>Experience</b>   |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Applicant's work experience, including names and addresses of previous employers, dates of employment, reasons for leaving and salary history.</li> <li>✧ Other countries visited.</li> </ul> </li> </ul>   |
| <b>Arrest Conviction &amp; Court Record</b>   |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Inquiry into actual convictions which reasonably relate to fitness to perform a particular job. (A conviction is a court ruling in which the party is found guilty as charged. An arrest merely is the apprehension or detention of the person to answer a criminal charge.)</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Any inquiry relating to an arrest.</li> <li>✧ Any inquiry into or request for a person's arrest, court or conviction record if not substantially related to functions and responsibilities of the particular job in question.</li> </ul> </li> </ul>  |
| <b>Relatives</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Names of applicant's relatives already employed by the company. This inquiry, however, may be ruled illegal if it results in a preference to friends or relatives of employees, and minority groups are under-represented in the employer's workforce.</li> <li>✧ Names and address of parents or guardian (if applicant is a minor).</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Name or address of any relative of an adult applicant.</li> </ul> </li> </ul>  |
| <b>Notice in Case of Emergency</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Names and address of people to be notified in case of accident or emergency.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Names and address of relatives to be notified in case of accident or emergency.</li> </ul> </li> </ul>  |
| <b>Organizations</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Inquiry into any organizations of which an applicant is a member if the name or character of the organization does not reveal the race, religion, color or ancestry of the membership.</li> <li>✧ "List all professional organizations to which you belong. What offices do you hold?"</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ "List all organizations, clubs, societies and lodges to which you belong?"</li> <li>✧ The names of organizations to which the applicant belongs if such information would indicate through character or name the race, religion, color or ancestry of the applicant.</li> </ul> </li> </ul> |
| <b>References</b>   |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ By whom were you referred for a position here?"</li> <li>✧ Names of people willing to provide professional and/or character references for applicant.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Requiring the submission of a religious reference.</li> </ul> </li> </ul>  |
| <b>Miscellaneous</b>  |
| <ul style="list-style-type: none"> <li>• <b>Permissible Inquiries:</b> <ul style="list-style-type: none"> <li>✧ Notice to applicants that any misstatements or omissions of material facts in the application may be cause for dismissal.</li> </ul> </li> <li>• <b>Inquiries to Avoid:</b> <ul style="list-style-type: none"> <li>✧ Inquiries concerning financial status (such as credit rating, charge accounts, or ownership of car or home.)</li> </ul> </li> </ul>  |