

Human Rights & Federal Law: Legal and Illegal Interview Guidelines

Directly Revelatory Questions

The law expressly prohibits employers from asking certain questions either in an application form or in a personal interview before selecting an employee, where such inquiries express, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color or national origin, sexual orientation, sex, disability, genetic predisposition or carrier status, or marital status, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

The following are examples of different types of inquiries that are recommended or not recommended:

| SUBJECT | RECOMMENDED | NOT RECOMMENDED |
|----------------|---|--|
| Age | Are you 18 years of age or older? If not, state your age. | How old are you? What is your date of birth? What are the ages of your children, if any? |
| Arrest Record | Have you ever been convicted of a criminal offense? | Have you ever been arrested? |
| Disability | None | Do you have a disability? Have you ever been treated for any of the following diseases. . .? Do you have now, or have you ever had, a drug or alcohol problem? |
| Birth Control | None | Inquiry as to capacity to reproduce, advocacy of any form of birth control or family planning. |
| Marital Status | None | Do you wish to be addressed as Miss? Mrs.? Ms.? Are you married? Single? Divorced? Separated? Name or other information about spouse. |

| SUBJECT | RECOMMENDED | NOT RECOMMENDED |
|--|-------------|--|
| Race or Color | None | Complexion or color of applicant's skin, eyes, hair, and so forth. |
| Religion or Creed | None | Inquiry into applicant's religious denomination, religious affiliations, parish or church, religious holidays observed. |
| Sex | None | Inquiry as to gender. |
| Genetic Predisposition or Carrier Status | None | Do you have any genetic predisposition to disease? Do any diseases run in your family? Inquiries as to the health status of parents or other family members. |
| National Origin | None | Inquiry into applicant's lineage, ancestry, national origin, descent, parentage or nationality. Nationality of applicant's parents or spouse. |
| Sexual Orientation | None | Questions concerning the applicant's heterosexuality, homosexuality, bisexuality, or asexuality, whether actual or perceived |

INDIRECTLY REVELATORY INQUIRIES

It is unlawful to ask questions the answers to which will indirectly reveal information as to race, creed, color, national origin, sexual orientation, sex, marital status, disability, genetic predisposition or carrier status, age or arrest record in cases where such inquiry expresses, directly or indirectly, any limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

The following are recommendations on inquiries which may be considered indirectly revelatory of race, creed, color, national origin, sexual orientation, sex, marital status, disability, or age:

| SUBJECT | RECOMMENDED | NOT RECOMMENDED |
|----------------------------------|---|--|
| Address or Duration of Residence | <p>Applicant's place of residence</p> <p>How long a resident of this state or city?</p> | <p>How long have you lived in this country? In what country did you live before?</p> |
| Birthday | None | <p>Requirements that applicant submit birth certificate, naturalization or other record showing age. Requirement that applicant produce proof of age in form of birth certificate or other record.</p> |
| Birthplace | None | <p>Birthplace of applicant.</p> <p>Birthplace of applicant's parents, spouse or other close relatives.</p> |
| Citizenship | <p>Are you a citizen of the United States?</p> <p>If not a citizen of the United States, do you intend to become a citizen of the United States? If you are not a United States citizen, have you the legal right to remain permanently in the United States? Do you intend to remain permanently in the United States?</p> | <p>Of what country are you a citizen?</p> <p>Inquiries as to whether an applicant or an applicant's parents or spouse are naturalized or native-born citizens;</p> <p>Requirements that applicant produce naturalization papers.</p> |
| Driver's License | <p>Do you possess a valid NYS driver's license (if a driver's license is necessary for the position the applicant is seeking)?</p> | <p>Requirement that applicant produce license prior to offer of employment.</p> |

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| Education | Inquiry into applicant's academic, vocational or professional education and the public and private schools attended. | Year(s) of attendance; Date(s) of graduation. |
| Language | If the duties of the position applicant is seeking require fluency in a particular language, inquiry may be made into whether applicant speaks or writes that language fluently. | What is your native language? Inquiry into how applicant acquired ability to read, write or speak a foreign language. |
| Military Experience | Inquiry into applicant's military experience in the Armed Forces of the United States or State Militia. Inquiry into applicant's service in a particular branch of the United States Army, Navy, etc. | Inquiry into applicant's military experience other than in the Armed Forces of the United States or in a State Militia. |
| Name | Have you ever worked for this company under a different name? Is additional information relative to change of name, use of an assumed name or nickname necessary to enable check on your work records? If yes, explain. | Inquiries as to original names of an applicant whose name has been changed by court order or otherwise. Inquiries as to the birth name of a married woman. If you have ever worked under another name, state name and dates. |
| Notice in Case Of Emergency | None | Requirements that applicant provide name and address of relative to be notified in case of an accident or emergency. |
| Organizations | Inquiry into applicant's membership in organizations which the applicant considers relevant to his or her ability to perform the job. | Requirement that applicant list all clubs, societies, and lodges to which applicant belongs. |

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| Photograph | None | Requirement or option that applicant affix a photograph to employment form at any time before hiring. |
| Relatives | Inquire as to names of applicant's relatives already employed by the company. | Inquire as to names, addresses and ages of applicant's spouse, children or relatives not employed by the company. |

Pay Equity for All Act of 2016

This bill amends the Fair Labor Standards Act of 1938 to make it an unlawful practice for an employer (including hiring managers and search committees) to:

- Screen prospective employees based on their previous wages or salary histories
- Seek the previous wages or salary history of any prospective employee from any current or former employer of such employee
- Discharge or in any other manner retaliate against any current or prospective employee because the employee opposed any act or practice made unlawful by the Act, or made or is about to make a complaint relating to any such act or practice, or testified or is about to testify, assist, or participate in any manner in an investigation or proceeding relating to any such act or practice