

PRE-EMPLOYMENT INQUIRY GUIDELINES

Please review the following information and questions to help you to develop the appropriate interview questions.

ADDRESS

Lawful

- Applicant's address and length of residence in this city/state.

Unlawful

- Questions regarding foreign addresses which would intentionally or unintentionally indicate national origin.
- Whether applicant owns or rents home or lives in an apartment.
- Names and relationships of persons with whom applicant resides.

AGE/DATE OF BIRTH

The Age Discrimination in Employment Act (29 U.S.C. 621-34) prohibits discrimination on the basis of age against individuals who are over the age of 40. A majority of states also have laws prohibiting age discrimination.

Lawful

- Questions as to whether or not applicant meets minimum/maximum age requirements.

Unlawful

- "How old are you?"
- Birth date

ARRESTS

Consideration of arrest records is almost certainly unlawful. An arrest is no indication whatsoever of guilt, and historically minorities have suffered proportionately more arrests than others. The U.S. Department of Labor has also recognized the potential for discrimination in the consideration of arrest records.

Unlawful

- "Have you ever been arrested?" (An arrest is merely the detaining of a person to answer a crime and has no affect on fitness to perform a particular job.)

CITIZENSHIP

The Equal Employment Opportunity Commission has adopted Guidelines on Discrimination Because of National Origin which contain the following statement: "Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship; except pursuant to national security requirements by a federal

statute or executive order." At least one federal court has expressly agreed with this analysis (Guzman v. Polich & Benedict Construction Co., 2(CCH) EPD par. 10, 156 (C.D.Calif. 1970), and one has disagreed (Espinoza v. Farah Mfg. Co., (CCH) EPD par. 7835 (5th Cir. 1972).

State and federal courts have recently declared invalid laws in several states which exclude non-citizens from public employment.

Lawful

- Statement that, if hired, applicant must furnish proof of citizenship or appropriate visa OR can you, after employment or offer submit verification of your legal right to work in the United States.

Unlawful

- Whether other members of applicant's family are U.S. citizens.

- "Of what country are you a citizen?"
- Require proof of citizenship prior to employment.

CONVICTIONS (OTHER THAN FOR TRAFFIC VIOLATIONS)

To the extent that this question implies an absolute bar to the employment of an applicant who has a conviction record, it is probably unlawful. See Carter v. Gallagher, 451 F. 2nd 315 (8th Cir. 1971). On the other hand, an employer probably has the right to exclude persons who have been convicted of job related offenses from consideration.

Lawful

- "Have you ever been convicted of a crime?" (Information obtained must be used only if it relates to applicant's fitness to perform a particular job. Example: Person convicted for embezzlement would be a high risk for a position as cashier in a store.)

EDUCATION

Lawful

- Schools attended.
- Degrees acquired.
- Transcripts, if required of all applicants for similar work.

Unlawful

- Questions regarding national, racial, or religious affiliation of schools attended.

EXPERIENCE

Lawful

- Inquiries regarding previous work experience.
- Foreign countries visited.

FRIENDS OR RELATIVES

This question may reflect preference for friends or relatives of present employees. Such a preference would be unlawful if it has the effect of reducing employment opportunities for women or minorities. It would have this unlawful effect if the present work force differs significantly in its proportion of women or minorities from the population of the area from which workers are recruited. This question may also reflect a rule that only one partner in a marriage can work for the employer. There is a growing recognition that such a rule hurts women far more often than men and that the rule serves no necessary business purpose.

Lawful

- Names and addresses of persons willing to provide character or professional references for applicant.
- Explain conflict of interest rules and ask if these affect applicant.

Unlawful

- Names and addresses of applicant's relatives.

HANDICAP/DISABILITY

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination in employment on the basis of handicap except that a handicapped person must be "qualified" – viz., a qualified handicapped person in the employment context is "a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question." The employer need not hire any individual who, after reasonable accommodation, is not able to perform the essential functions of a job effectively and safely. On July 26, 1990, President Bush signed the Americans with Disabilities Act (ADA) into law. The ADA prohibits discrimination against individuals with disabilities. All employers with 25 or more employees were covered as of July 26, 1992.

Lawful

- If an applicant has an obvious disability, you may ask the applicant to explain how he or she would perform the tasks with or without reasonable accommodations.

Unlawful

- “Do you have any disabilities, physical defects, or on-the-job injuries?”

HEIGHT AND WEIGHT

Some employers have imposed minimum height and weight requirements for employees which are not related to the job to be performed and which have the effect of excluding above-average percentages of women and members of certain nationality groups. Unless height or weight is directly related to the job requirement, these questions should not be asked.

Unlawful

- Questions regarding height and weight are considered unlawful unless based on a bona fide occupational qualification (B.F.O.Q.), and such instances are rare.

IN CASE OF EMERGENCY

Lawful

- Names of persons to be notified in case of emergency.

Unlawful

- Names of relatives to be notified in case of emergency.

MAIDEN NAME

This is not relevant to a person's ability to perform a job and could be used for discriminatory purposes. For example, a woman's maiden name may be used as an indication of her religion or national origin. This item also constitutes an inquiry into marital status which is discussed separately.

Lawful

- First, middle, last name.
- Use of any other names or nicknames necessary for checking previous work experience or education.

Unlawful

- Requirements of prefix Mr., Miss, Ms., Mrs.
- Inquiries about names which would indicate national origin.
- Inquiries regarding names changed by marriage, divorce, court order, etc.

MARITAL STATUS

Some employers have refused to hire a married woman for certain jobs. Most airlines, for example, refused for many years to permit a married woman to be a flight attendant, though other employees could be married. This practice was held to violate Title VII of the Civil Rights Act of 1964 in Sprogis v. United Airlines, 444 F. 2nd 1194 (7th Cir. 1971), and par. 1604.4 (a) of the Commission's Guidelines on Discrimination Because of Sex.

Finally, an employer could not refuse to hire a married woman for any job or for particular jobs because of the employer's beliefs concerning morality or family responsibility.

Lawful

- Whether applicant can meet specified work schedules.
- Whether applicant has any additional responsibilities which would interfere with proper attendance.

Unlawful

- Whether applicant is married, single, divorced, separated, engaged, etc.
- Number and ages of dependent children.
- All questions related to pregnancy or methods of family planning.
- Questions regarding child care arrangements.

MILITARY HISTORY

Lawful

- Experience/education in military services which would relate to the job applicant is seeking.

Unlawful

- Type of discharge.
- Military disciplinary record.

ORGANIZATIONS

Lawful

- Names of professional organizations to which applicant belongs.
- Offices held in professional organizations.

Unlawful

- "List all clubs or organizations to which you belong."
- Requesting other information about membership in organizations if this information would indicate race, religion, or national origin of applicant.

RACE

Unlawful

- Questions regarding race.
- Inquiry into color of eyes, hair.
- Other questions which would indicate race.

REFERENCES

Lawful

- Names and addresses of persons willing to provide character or professional references for applicant.

Unlawful

- Require references from pastor, priest, rabbi, or other religious associates.

RELIGION/AVAILABLE FOR SATURDAY AND SUNDAY WORK

This question may serve to discourage applications from persons of certain religions which prohibit their adherents from working on Saturday or Sunday. On the other hand, it may be necessary to know whether an applicant can work on these days. Section 701 (j) of Title VII, as amended in 1972, prohibits discrimination on the basis of religion and defines religion to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrated that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." If this kind of question is asked, it would be desirable to indicate that a reasonable effort will be made to accommodate the religious needs of employees.

Lawful

- Questions regarding religious denomination or beliefs if based on B.F.O.Q. as in the case of ministers, teachers, or other employees of specific religious organizations.
- Questions regarding availability for work during specific time periods. (Reasonable accommodations must be made for employees whose religious practices interfere with work schedules.)

Unlawful

- Questions regarding religious beliefs if not based on B.F.O.Q.
- Questions such as "What religious holidays do you observe?," if asked prior to employment.

GENDER

Title VII prohibits discrimination in employment on the basis of gender except in the few instances in which sex may be a B.F.O.Q. reasonably necessary to the normal operation of the employer's business. There are virtually no jobs that can be performed by only one gender or the other.

Unlawful

- All questions regarding gender of the applicant unless based on B.F.O.Q., which could occur in cases such as men's locker room attendant, etc.
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Most of this information was reprinted from U.S. Equal Employment Opportunity Commission Guidelines for Title VII of the Civil Rights Act of 1964. Adapted with permission from Richard D. Howe, Director, Office of Equal Opportunity Programs, Appalachian State University, Boone, North Carolina.

