

Guidelines for Pre-Employment Inquires

Overview

Employers must be knowledgeable about lawful and unlawful interview and application questions to ensure that the organization's employment application form and interview questions requests information from applicants in a lawful manner. The guiding principle behind any question to an applicant—whether the question is asked by the interviewer or appears on the employment application—should be, "Can the employer demonstrate a job-related necessity for asking the question?" The intent behind the question, as well as how the information is used, is what the Equal Employment Opportunity Commission (EEOC) examines to determine if any discrimination has occurred.

Therefore, an applicant should be asked questions that are job-related only. Before asking the question, the interviewer should first determine whether this information is really necessary to judge the applicant's qualifications, level of skills and overall competence for the job in question.

Pre-Employment Inquires

As a general rule, state and federal equal opportunity laws prohibit the use of pre-employment inquiries that disproportionately screen out members based on protected status when the questions are not justified by some business purpose. The EEOC and state agencies take the position that the information obtained through pre-employment inquiries should be aimed solely at determining qualifications without regard to criteria based on irrelevant, non-job-related factors. Check your state laws for specific protections.

The EEOC offers the following guidance to employers that wish to avoid racial discrimination in hiring and promotions. "Race or color should not be a factor or consideration in making employment decisions except in appropriate circumstances as set forth at Section 15-VI-C of the Compliance Manual section on Race and Color Discrimination. Reasons for selection decisions should be well supported and based on a person's qualifications for the position." Accordingly, inquiries that reveal information bearing no relationship to the qualifications for the job sought (e.g., year of graduation from high school, childcare arrangements, country of origin) have been viewed as evidence of an employer's discriminatory intent.

Clearly, unless the information is for a legitimate purpose, pre-employment questions about disability, race, gender, religion, national origin or other protected classes can suggest that the information will be used as a basis for making selection decisions. If the information is used in the selection decision and members of particular groups are excluded from employment, the inquiries can constitute evidence of discrimination.

Acceptable and Unacceptable Inquiries for Interviews and Employment Applications

Topic	Acceptable	Unacceptable	If Unacceptable, What Is the Reason?
Marital Status	None	Do you wish to be addressed as Miss? Mrs.? Or Ms.? Are you Married? Single? Divorced? Separated? Do you have plans for marriage/children? You may not request the name or any other information about an applicant's spouse.	Could be viewed as discrimination.
Age	If age is a legal requirement, can ask "If hired, can you furnish proof of age?" or a statement that hire is subject to age verification.	What is your date of birth?	Could be viewed as age discrimination
Attendance/reliability	What hours and days can you work?	How many children do you have?	Could be viewed as discriminatory toward females
Attendance/reliability	Are there specific times that you cannot work?	What religion are you?	Could be viewed as religious discrimination
Attendance/reliability	Do you have responsibilities other than work that will interfere with specific job requirements such as traveling?	What are your child care arrangements?	Could be viewed as discriminatory toward females
Attendance/reliability	Do you have a reliable method of getting to work?	Do you own a car?	Could be considered racial discrimination
Citizenship/ national origin	Are you legally eligible for employment in the United States?	What is your national origin? Where are your parents from?	Could be considered national origin discrimination
Citizenship/ national origin	Have you ever worked under a different name?	What is your maiden name?	Could be considered national origin discrimination
National origin	None	What is your father's surname? What are the names of your relatives?	Not only are these irrelevant, but they could be considered national origin discrimination
Arrest and conviction	Have you ever been convicted of a felony?	Have you ever been arrested?	Could be considered racial discrimination

	*See note below for additional guidance		
Disabilities	Can you perform the duties of the job you are applying for?	Do you have any disabilities?	Could be considered discrimination against people with disabilities
Disabilities	None	Have you ever filed a workers' compensation claim?	Could be considered discrimination against people with disabilities
Disabilities	None	Have you ever been injured on the job?	Could be considered discrimination against people with disabilities
Emergency contact information	What is the name and address of the person to be notified in case of an emergency? (Request only after the individual has been employed.)	What is the name and address of a relative to be notified in case of an emergency?	Could be considered national origin discrimination and could possibly violate state anti-discrimination laws relative to sexual orientation
Credit record	None	Do you own your own home?	Irrelevant and could be considered racial discrimination
Credit record	Credit references may be used if in compliance with the Fair Credit Reporting Act of 1970 and the Consumer Credit Reporting Reform Act of 1996	Have your wages ever been garnished?	Irrelevant and could be considered racial discrimination
Credit record	None	Have you ever declared bankruptcy?	Irrelevant and could be considered racial discrimination
Military record	What type of education, training and work experience relevant to the job did you receive while in the military?	What type of discharge did you receive?	Irrelevant and could be considered racial discrimination
Language	What languages do you speak and write fluently? (if the job requires additional languages)	What is your native language? How did you learn to read, write or speak a foreign language?	Could be considered national origin discrimination
Organizations	Inquiry into an applicant's membership in organizations that the applicant considers relevant to his or her ability to perform the job	List all clubs, societies and lodges to which you belong.	Could be considered racial or national origin discrimination
Race or color	None	Complexion or color of skin	Could be considered racial or national origin discrimination
Weight, height, eye color	Only if there is a bona fide occupational qualification		Could be considered racial or national origin discrimination
Religion	Only if there is a bona fide occupational qualification	What is your religious denomination, religious affiliations, church, parish, pastor? What religious holidays do you observe?	Could be considered religious discrimination
Gender	Only if there is a bona fide occupational qualification	Do you wish to be addressed as Mr., Mrs., Miss or Ms.?	Could be considered gender discrimination

Previous and current addresses	What was your previous address? How long did you reside there? How long have you lived at your current address?	Do you own your own home?	Could be considered racial or national origin discrimination
Salary history	What are your salary expectations for this position? **See note below for additional guidance.	What is your current salary? What was your starting and ending salary in any prior position?	Could be viewed as gender discrimination and may violate state law
Education	Do you have a high school diploma or equivalent? Do you have a university or college degree? (if relevant to job performance)	What year did you graduate from high school or college?	Could be considered age discrimination

***Note on arrest records:** Using arrest or conviction records as an absolute bar to employment disproportionately excludes certain racial groups. Therefore, such records should not be used in this manner unless there is a business need for their use. Thus, an exclusion based on an arrest record is justified only if the conduct is job-related and relatively recent and also if the applicant or employee actually engaged in the conduct for which he or she was arrested. According to the EEOC, whether there is a business need to exclude persons with conviction records from particular jobs depends on the nature of the job, the nature and seriousness of the offense, and the length of time since the conviction or incarceration. In addition, some states bar the use of arrest records in employment decisions.