

**Guidelines for pre-employment inquiries
(interviews and applications for employment)**

Pre-employment Inquiries Technical Assistance Guide

Note: This technical assistance guide does NOT substitute for legal advice.

Employers wanting to select qualified and capable individuals through effective, fair and lawful recruitment and selection processes are sometimes confused about the legality or appropriateness of some pre-employment inquiries. Although determining appropriateness and nondiscriminatory questions to ask when conducting pre-employment interviews or to include on employment applications is not always an easy task, there are law, guidelines and policies which provide guidance in this area.

This chart will provide summaries of some related points made in relevant state and federal equal employment opportunity laws and guidelines (primarily Title VII of the Civil Rights Act of 1964, as amended; the Equal Opportunity Commission's 1981 Pre-employment Inquiries Guidelines; the Americans with Disabilities Act of 1990; and the WV Human Rights Act.)

General points to remember - Employers should:	General questions employers should ask themselves:
<ul style="list-style-type: none"> • Standardize and structure the process; • Determine essential requirements of the job <i>before</i> recruiting and interviewing; • Develop written, job-related position descriptions which detail these essential requirements; • Prepare written questions; • Ask only those questions necessary to determine qualifications and suitability, and <i>ask all questions of all applicants/candidates</i>; • Maintain job-related documentation; and • Maintain EO tracking information (i.e., applicant race, sex, age) on separate page of application form or detachable section of application, separate from remainder of application, so it is not used as part of the interview hiring process. 	<ul style="list-style-type: none"> • Will the answers to this question, if used in making a selection, have a disparate effect in screening out minorities or members of one sex? • Will the response to this question screen out qualified candidates because of disability before their actual ability to do the job is evaluated? (ADA Title 1 Technical Assistance Guide) • Is this information really necessary to judge an applicant's competence or qualifications for the job in question? (EEOC's Pre-employment Inquiries Guidelines) • Is this question permitted on the basis of a bona fide occupational qualification? • Is the employer a federal contractor or program subject to special employment/selection guidelines? • Is the job part of a special affirmative action hiring program or consent decree and therefore subject to special employment/selection considerations?

For further guidance in this area, refer to: the [Equal Employment Opportunity Commission's](#) Pre-employment Inquiries Guidelines, the [WV Human Rights Commission](#), and the EEOC's Technical Assistance Guide on Employment Provisions of Title I of the Americans with Disabilities Act.

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The prime consideration for any job is the ability to perform it.
Pre-employment inquiries (interviews and applications for employment)

Subject	Lawful inquiries/requirements	Unlawful inquires/requirements
age	Are you 18 or over? Whether the applicant meets the minimum age requirement set by law; if required as a bona fide occupational qualification (BFOQ); or after hire, if inquiry serves a legitimate record-keeping purpose	That applicant state age or data of birth. That applicant produce proof of age (birth certificate, baptismal record). Specifications such as "young," "college student," "recent college graduate," "retired person."
arrests & convictions	Inquiries about convictions that bear a direct relationship to the job and have not been expunged or sealed by the courts. Consideration should be given to the nature, recentness and rehabilitation. This inquiry should be accompanied by a disclaimer which states that <u>a conviction record will not necessarily be a bar to employment.</u>	
Citizenship, birthplace	After employment, verification of legal right to work (all new hires).	Whether applicant, parents or spouse are naturalized or native-born US citizens. Birthplace of applicant, parents or spouse. Requirement that applicant produce naturalization papers.

Credit and financial records	The employer is bound by federal law (PL 91-0508) to inform the applicant, in writing, that if financial or credit investigations are made. The applicant may make written requests as to the nature and scope of such investigations.	
dependents		Inquiries regarding the number and ages of children; what child care arrangements have been made; family planning.
disability	Whether applicant is able to perform the essential functions of the job with or without reasonable accommodation. That applicant demonstrate how she/he would perform the job and with what accommodation(s). After a job offer, but before hire, require medical examination for all similarly situated entering employees.	Requirement that the applicant take medical examination or provide information about workers' compensation claim(s) before a job offer. General inquires into the applicant's state of health or the nature and severity of a disability.
drivers' license	Inquiry, if driving is necessary to the job.	Inquiring if all applicants have a valid driver's license regardless of job.
education	What academic, professional or vocational schools attended; course of study, degree or certificate earned.	Dates of elementary/high school attendance. Nationality, racial or religious affiliation of any school attended by the applicant.
federal W-4 form		This is not to be completed by an applicant until after the hire because it requests information that is unlawful during the pre-employment process.
marital status		Whether applicant is single, married, divorced, widowed, etc.; Mr., Mrs., Miss, Ms.; inquiries regarding the names and ages of spouses or children.
military status	Job-related inquires into military experience in the US Armed Forces or state militia (e.g., branch, occupational specialty)	Inquiries regarding foreign military experience. Type of military discharge. Request for copy of military discharge or military discharge number.
name	Whether the applicant has used another name (for the purpose of verifying past work record).	Inquiries or comments about the name which would reveal applicant's lineage, national origin, marital status, etc. (e.g., maiden name?) Mr., Mrs., Miss, Ms.?
national origin	What languages applicant reads, speaks or writes fluently if relevant to the job or if required as a bona fide occupational qualification.	Inquiries regarding: applicant's nationality, ancestry, lineage or parentage; nationality of applicant's parents or spouse; maiden name of applicant,, wife or mother.
photograph	May be requested after hire (for identification).	Request before hire.
polygraph, lie detector		Require test to be taken as condition of employment.
pre-employment survey	If this section is completed by the applicant, this page is to be kept separate from the application and is to be detached before the application is handled by the person conducting the interview or the person making the employment decision.	
professional associations	Inquiries regarding memberships in job-related clubs and organizations. Applicants may omit those which reveal the race, religion, age, sex, disability, etc. of applicant.	Requesting the name of all organizations, clubs, associations to which the applicant belongs. Inquiries regarding how the applicant spends his/her spare time.
race, color, height, weight		Inquiries regarding: applicants' race; color of applicant's skin, eyes, hair or other questions directly or indirectly indicating race or color; applicant's height or weight (unless based on legitimate job need).
references	Inquiring by whom was applicant referred. Requesting names of person willing to provide professional or character references. Making job-related inquiries of references.	Requiring the submission of religious references. Inquiries of references which would elicit information on applicant's race, color, national origin, age, marital status, disability or sexual orientation.
relatives		Name, address, relationship of person to be notified in case of emergency. This information may be requested only after hire.
religion	Inquiries regarding the normal hours of work. After hire, inquires regarding religious accommodations.	Inquires regarding applicant's religious denomination or affiliation or religious holidays observed. Any inquiry which would indicate or identify religious customs or holidays observed.
sex	Inquiry only if required as a bona fide occupational qualification.	Inquiries regarding: applicant's sex; Mr., Mrs. Miss, Ms.; if applicant is expecting, planning a family or used birth control.
sexual orientation		Any inquiry concerning an applicant's heterosexuality, homosexuality or bisexuality.

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