



Pre-Employment Inquiries Guidelines

The following information is provided as a guideline to employers concerning lawful and unlawful pre-employment inquiries. Employers should know that any inquiry may be deemed unlawful if it has an adverse impact on a protected group and is not justified by a business necessity.

QUESTIONS WHICH ARE UNLAWFUL

The following questions are unlawful if asked on an employment application or in an interview. There are certain limited circumstances in which some of these questions may be asked. These limited circumstances are explained below.* Other than one of the situations explained below, the following questions are ILLEGAL:

1. What is your age? How old are you? Year of graduation from grammar school/high school?
2. What is your birth date?
3. What is your race?
4. Are you male or female?
5. What is your religion? Religious holidays observed? Please list church or other religious organizations of which you are a member.
6. What is your ancestral origin? What is your national origin? What is your parentage? What is your nationality?
7. What nationality were your parents?
8. What is your mother tongue?
9. Have you ever been charged with any crime?
10. Have you ever been arrested?
11. Are you disabled?
12. Have you ever been treated for mental illness?
13. Have you been hospitalized in past years? Are you under a doctor's care?

14. What is your sexual orientation?

*Exceptions

1. An employer may keep a record of race, ancestral origin, disability or sex for record-keeping in compliance with federal affirmative action purposes if: a) the identification is voluntary; b) the records are kept separately from employment applications and are not used as a basis for employment decisions; c) the information is sought for record-keeping in compliance with federal law; d) any form used clearly states the above; and e) self- identification is used only when a tally from visual observation or personal knowledge is not feasible.
2. An employer may ask a person's age, sex or lack of a particular disability if: a) the employer has received Certification of a Bona Fide Occupational Qualification (BFOQ) from the Rhode Island Commission for Human Rights or a state or federal court; and b) the employer clearly states that the Rhode Island Commission for Human Rights, or a state or federal court has certified the particular BFOQ.
3. An employer may conduct a physical examination of an applicant to determine whether the applicant can perform the duties of the position under the following circumstances: a) the examination is the last step in the employment process; b) all persons are given the examination prior to hire; c) the results of the examination are not used in a discriminatory manner; d) information on medical history or conditions is collected and maintained on separate forms which are maintained separately from personnel files and accorded confidentiality except when supervisors need to know how to accommodate a disability or when first aid personnel need to know of potential need for emergency treatment.
4. Applications for law enforcement positions or positions related to law enforcement agencies may inquire as to whether an applicant has ever been arrested or charged with a crime.

QUESTION WHICH CANNOT BE ASKED BEFORE THE FIRST INTERVIEW

1. Have you been convicted of a crime?*

**Effective 1/1/14 – some exceptions apply

QUESTIONS WHICH ARE UNLAWFUL UNDER CERTAIN CIRCUMSTANCES

The following questions have, in the past, been deemed to be unlawful inquiries because: a) they had an adverse impact on a protected class and were not justified by business necessity or b) the answers were used to evaluate a protected class differently from a majority class:

1. What is your height and weight?
2. List friends or relatives employed here. (This question is lawful if the employer is trying to

avoid nepotism and the use of the information does not have an adverse impact on a protected class which is not justified by business necessity.)

3. Marital Status? Miss or Mrs.?
4. Maiden name?
5. Number and age of children?
6. Child care arrangements?
7. Future childbearing plans?
8. Are you pregnant?
9. Have you ever declared bankruptcy? Has your pay ever been garnished?
10. Do you rent or own your home?
11. Do you own a car? What method of transportation do you use?
12. Type of military discharge? Were you ever disciplined while in the service?
13. Names and addresses of spouses or relatives?
14. Former address. How long did you live there?

QUESTIONS WHICH ARE LAWFUL UNLESS THE ANSWERS SCREEN OUT A PROTECTED CLASS AND ARE NOT JUSTIFIED BY BUSINESS NECESSITY

1. Job-related education?
2. Job-related work experience?
3. Special qualifications or skills?
4. Military service branch, if any? Special training or skills learned in military service?
5. Are you over the age of 18?
6. Can you perform the essential functions of the position you are seeking, with (or without) reasonable accommodations?