

PRE-EMPLOYMENT INQUIRY GUIDE

PURPOSE OF GUIDE

There are a variety of federal laws and executive orders requiring equal employment opportunity and affirmative action. Under these laws certain practices relating to employment on the part of employers, labor union, employment agencies, and others are considered illegal if such practices discriminate against persons because of race, sex, age, religion, color, handicap (*disability*), ancestry, or arrest and court record. The scope of these laws has been expanded by recent court decisions.

These laws and court rulings make it necessary for employers and others who hire workers to take precautions concerning the content of their employment application forms as well as questions sometimes asked of job applicants. This guide is provided to assist in undertaking and applying the law, and to help avoid asking questions in the pre-employment process that would give potentially prejudicial information.

It should be understood that this guide is not a complete definition of what can and cannot be asked of applicants. It is illustrative and attempts to answer the questions most frequently asked concerning the law. It is hoped that in most cases the given rules, either directly or by analogy, will guide all personnel involved in the pre-employment process of recruiting, interviewing, and selection. This guide pertains only to inquiries, advertisements, etc., directed to all applicants prior to employment.

Information required for records such as race, sex, and number of dependents may be requested after the applicant is on the payroll, provided such information is not used for any subsequent discrimination (e.g., upgrade, layoff).

Federal laws are not intended to prohibit employers from obtaining sufficient job-related information about applicants, as long as the questions do not elicit information that could be used for discriminatory purposes. Applicants should not be encouraged to volunteer information forbidden by law. These laws do not restrict the right of employers to define qualifications necessary for satisfactory job performance, but require that standards of qualifications for hiring be applied equally to all persons considered for employment.

It is recognized that the mere routine adherence to law will not accomplish the results intended by the courts and Congress. Employment discrimination can be eliminated only if the laws and regulations are followed in which they were conceived. This guide can assist efforts to ensure equal employment opportunity at any college.

*Editor's Note: This guide has been reprinted from "Human Resource Practices for Small Colleges," (1992) by permission of the National Association of Colleges and University Business Officers (NACUBO). Their web address is: www.nacubo.org. Items in this Pre-employment Guide which are indicated by **bold italic** are modifications of the USC Office of Equal Opportunity Programs or USC Upstate Office of Employee Relations and Equal Opportunity.*

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SUBJECT	PERMISSIBLE INQUIRIES	INQUIRIES THAT MUST BE AVOIDED
1. Name	“Have you worked for this company under a different name?” “Is any additional information relative to change of name, use of an assumed name or nickname necessary to enable a check on your work and educational record? If yes, explain.”	Inquiries about the name that would indicate applicant’s lineage, ancestry, national origin, or descent. Inquiry into previous name of applicant where it has been changed by court order or otherwise. Indicate: Miss, Mrs., Ms.
2. Marital and Family Status	Whether applicant can meet specified work schedules or has activities, commitments, or responsibilities that may hinder the meeting of work attendance requirements. Inquiries, made to males and females alike, as to the duration of stay on job or anticipated absences.	Any inquiry indicating whether an applicant is married, single, engaged, etc.; number and age of children; information on child care arrangements; any questions concerning pregnancy; any similar question that directly or indirectly results in limitation of job opportunity in any way.
3. Age	If a minor, require proof of age in the form of a work permit or a certificate of age. Require proof of age by birth certificate after being hired. Inquiry as to whether the applicant meets the minimum age requirements as set by law and indication that, on hiring, proof of age must be submitted in the form of a birth certificate or other forms of proof of age. If age is a legal requirement: “If hired, can you furnish proof of age?” Or statement that hire is subject to verification of age. Inquiry as to whether an applicant is younger than the employer’s regular retirement age.	Requirement that applicant state age or date of birth. Requirement that applicant produce proof of age in the form of a birth certificate or baptismal record. (The Age Discrimination in Employment Act of 1967 forbids discrimination against persons over the age of 40.)

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4. Handicaps <i>Disability</i> (Also see Section IV.F <i>The Americans With Disabilities Act.</i>)	For employers subject to the provisions of the Rehabilitation Act of 1973, applicants may be “invited” to indicate how and to what extent they are handicapped/ <i>disabled</i> . The employer must indicate to applicants that: 1) compliance with the invitation is voluntary; 2) the information is being sought only to remedy discrimination or provide opportunities for the handicapped/ <i>disabled</i> ; 3) the information will be kept confidential; and 4) refusing to provide the information will not result in adverse treatment. All applicants can be asked if they are able to carry out all necessary job assignments and perform them in a safe manner.	The Rehabilitation Act of 1973 forbids employers from asking job applicants general questions about whether they are handicapped or asking them about the nature and severity of their handicaps. An employer must be prepared to prove that any physical and mental requirements for a job are due to “business necessity” and the safe performance of the job. Except in cases where undue hardship can be proven, employers must make “reasonable accommodations” for the physical and mental limitations of an employee or applicant. “Reasonable accommodation” includes alteration of duties, alteration of physical setting, and provision of aids.
5. Sex	Inquiry as to sex or restriction of employment to one sex is permissible only where a bona fide occupational qualification exists. (This BFOQ exception is interpreted very narrowly by the courts and EEOC.) The burden of proof rests on the employer to prove that the BFOQ does exist and that all members of the affected class are incapable of performing the job.	Sex of applicant. Any other inquiry that would indicate sex. Sex is not a BFOQ because a job involves physical labor (such as heavy lifting) beyond the capacity of some women, nor can employment be restricted just because the job is traditionally labeled “men’s work” or “women’s work” Sex cannot be used as a factor for determining whether or not an applicant will be satisfied in a particular job. Avoid questions concerning applicant’s height or weight unless you can prove they are necessary requirements for the job to be performed.
6. Race or Color	General distinguishing physical characteristics, such as scars.	Applicant’s race. Color of applicant’s skin, eyes, hair or other questions directly or indirectly indicating race or color.
7. Address or Duration of Residence	Applicant’s address. Inquiry into place and length of current and previous addresses. e.g., “How long a resident of this state or city?”	Specific inquiry into foreign addresses that would indicate national origin. Names or relationships of persons with whom applicant resides. Whether applicant owns or rents home.

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8. Birthplace	“After employment (if employed by this institution) can you submit a birth certificate or other proof of U.S. citizenship?”	Birthplace of applicant. Birthplace of applicant’s parents, spouse, or other relatives. Requirement that applicant submit a birth certificate or naturalization or baptismal record before employment. Any other inquiry into national origin.
9. Religion	An applicant may be advised concerning normal hours and days of work required by the job to avoid possible conflict with religious or other personal convictions.	Applicant’s religious denomination or affiliation, church, parish, pastor or religious holidays observed. Applicants may not be told that any particular religious groups are required to work on their religious holidays. Any inquiry to indicate or identify religious denomination or customs.
10. Military Record	Type of education and experience in service as it relates to a particular job.	Type of discharge.
11. Photograph	Indicate that this may be required after hiring for identification.	Requirement that applicant affix a photograph to his or her application. Request that applicant, at his or her option, submit photograph. Requirement of photograph after interview but before hiring.
12. Citizenship	“Are you a citizen of the United States?” “If you are not a U.S. citizen, have you the legal right to remain permanently in the U.S.” “Do you intend to remain permanently in the U.S.?” “If not a citizen, are you prevented from lawfully becoming employed because of visa or immigration status?” Statement that, if hired, applicant may be required to submit proof of citizenship or authorization to work.	“Of what country are you a citizen?” Whether applicant or his or her parents or spouse are naturalized or native born U.S. citizens. Date when applicant or parents or spouse acquired U.S. citizenship. Requirement that applicant produce his or her naturalization papers. Whether applicant’s parents or spouse are citizens of the U.S.
13. Ancestry or National Origin	Languages applicant reads, speaks, or writes fluently. (If another language is necessary to perform the job).	Inquiries into applicant’s lineage, ancestry, national origin, descent, birthplace, or mother tongue. Nat’l origin of applicant’s parents/spouse.

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14. Education	Applicant's academic, vocational or professional education; school attended. Inquiry into language skills such as reading, speaking and writing foreign languages.	Any inquiry asking specifically the national, racial, or religious affiliation of a school. Inquiry as to how foreign language ability was acquired.
15. Experience	Applicant's work experience, including names and addresses of previous employers, dates of employment, reasons for leaving, salary history. Other countries visited.	
16. Conviction, Arrest and Court Record	Inquiry into actual convictions that relate reasonably to fitness to perform a particular job. (A conviction is a court ruling where the party is found guilty as charged. An arrest is merely the apprehending or detaining of the person to answer the alleged crime.)	Any inquiry relating to arrests. Ask or check into a person's arrest, court or conviction record if not substantially related to functions and responsibilities of the particular job in question.
17. Relatives	Names of applicant's relatives already employed by this company. Name and addresses of parents or guardian of minor applicant.	Name or address of any relative of adult applicant, other than those employed by this company.
19. Experience (<i>Organizations</i>)	Inquiry into the organizations of which an applicant is a member providing the name or character of the organization does not reveal the race, religion, color, or ancestry of the membership. "List all professional organizations to which you belong. What offices held?"	"List all organizations, clubs, societies, and lodges to which you belong." The names of organizations to which the applicant belongs if such information would indicate through character or name the race, religion, color, or ancestry of the membership.

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20. References	By who were you referred for a position here? Names of persons willing to provide professional and/or character references for applicant.	Require the submission of a religious reference. Request reference from applicant's pastor.
21. Miscellaneous	Notice to applicants that any misstatements or omissions of material facts in the application may be cause for dismissal.	
<i>22. Sexual Orientation</i>	<i>None.</i>	<i>Any inquiry regarding sexual orientation, partner, or living arrangements must be avoided.</i>

NOTE: To comply with anti-discrimination laws, any inquiry should be avoided which, although not specifically listed among the above, is designed to elicit information as to race, color, national origin, age, sex, religion, or disability, unless based upon a bona fide occupational qualification.

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