

# Guidelines for Pre-Employment Inquiries Technical Assistance Guide - Interviews and Applications for Employment - Office of Fair Practices

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 appropriate and nondiscriminatory questions to ask when conducting pre-employment interviews or to include on employment applications is not always an easy task, there are laws, guidelines and policies that 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 Employment Opportunity Commission's (EEOC) 1981 Pre-Employment Inquiries Guidelines, the Americans with Disabilities Act of 1990 and Article 49B of the Annotated Code of Maryland). It is consistent with the provisions of the Governor's Code of Fair Employment Practices and §2 of the State Personnel and Pensions Article.

## **General Points to Remember/Employers Should:**

- Standardize and Structure the Selection Process.
- Determine Essential Requirements of the job **before** recruiting and interviewing.
- Develop Written, Job Related Position Descriptions that detail these essential requirements.
- Prepare Written Questions.
- Ask only those Questions Necessary to Determine Qualifications and Suitability, and **ask all questions of all applicants/candidates.**
- Maintain Job Related Documentation.

## **General Questions Employers Should Ask Themselves:**

- 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 their disability before their actual ability to do the job is evaluated? (Americans with Disabilities Act (ADA) Title I 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 EEOC's Pre-employment Inquiries Guidelines, the Maryland Human Relations Commission's Guidelines on Employee Selection Procedures and the EEOC's Technical Assistance Guide on the Employment Provisions of Title I of the Americans with Disabilities Act.**

<i><b>SUBJECT</b></i>	<i><b>LAWFUL INQUIRIES/REQUIREMENTS</b></i>	<i><b>UNLAWFUL INQUIRIES/REQUIREMENTS</b></i>
<b>Age</b>	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 date of birth. That applicant produce proof of age (birth certificate, baptismal record). Specifications such as: "young", "college student", "recent college graduate", and "retired person."
<b>Arrests &amp; Convictions</b>	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.	Inquiries about a candidate's general arrest and conviction record.
<b>Citizenship, Birthplace</b>	After employment, verification of legal right to work (all new hires).	Whether applicant, parents or spouse are naturalized or native-born U.S citizens. Birthplace of applicant, parents or spouse. Requirement that applicant produce naturalization papers.
<b>Dependents</b>		Inquiries regarding: the number and ages of children; what child care arrangements have been made; family planning.

<b>Disability</b>	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 applicant take medical examination or provide information about workers' compensation claim(s) before a job offer. General inquiries into the applicant's state of health or the nature and severity of a disability.
<b>Driver's License</b>	Inquiry if driving is necessary to the job.	Inquiring if all applicants have a valid driver's license regardless of job.
<b>Marital Status</b>		Whether applicant is: single, married, divorced, widowed, etc.; Mr., Mrs., Miss, Ms. Inquiries regarding the names and ages of spouse or children.
<b>Military Service</b>	Job related inquiries into military experience in the U.S. Armed Forces or state militia (e.g. branch, occupational specialty).	Inquiries regarding foreign military experience. Whether honorably discharged.
<b>Name</b>	Whether the applicant has used another name (for the purpose of verifying past work record).	Inquiries or comments about the name that would reveal applicant's lineage, national origin, marital status, etc. (e.g. maiden name?) Mr., Mrs., Miss, Ms.?
<b>National Origin</b>	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.
<b>Photograph</b>	May be requested after hire (for identification).	Request before hire.
<b>Polygraph, Lie Detector</b>		Require test to be taken as a condition of employment.
<b>Professional Associations</b>	Inquiries regarding memberships in <b>job-related</b> clubs and organizations. Applicants may omit those that reveal the race, religion, age, sex, disability, etc. of applicant.	Requesting the names of <b>all</b> organizations, clubs, and associations to which the applicant belongs. Inquiries regarding how the applicant spends his/her spare time.
<b>Race, Color</b>		Inquiries regarding: applicant's race; color of applicant's skin, eyes, hair or other questions directly or indirectly indicating race or color;

		applicant's height (unless a Bona Fide Occupational Qualification).
<b>References</b>	Inquiring by whom was applicant referred. Requesting names of persons willing to provide professional or character references. Making job related inquiries of references.	Requiring the submission of religious references. Inquiries of references that would elicit information on applicant's race, color, national origin, age, marital status, disability or sexual orientation.
<b>Religion</b>	Inquiries regarding the normal hours of work. After hire, inquiries regarding religious accommodations.	Inquiries regarding applicant's religious denomination or affiliation or religious holidays observed. Any inquiry that would indicate or identify religious customs or holidays observed.
<b>Sex</b>	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 uses birth control.
<b>Sexual Orientation</b>		Any inquiry concerning an applicant's heterosexuality, homosexuality or bisexuality.

***THIS TECHNICAL ASSISTANCE GUIDE DOES NOT SUBSTITUTE FOR LEGAL ADVICE.***