

Permitted and Prohibited Applicant/Candidate Inquiries

A. Name

The Conference is entitled to obtain the applicant's or candidate's name. However, even with respect to this basic information care should be taken:

1. The Conference may ask:
 - Have you ever used another name? If yes, what is it.
 - Is there any additional information relative to a change of name or use of another name necessary for us to check your work and education record? If yes, please explain.
2. The Conference should not ask:
 - Questions regarding any title which would indicate a protected class.
 - Question regarding maiden name.

B. Race/Color

1. Questions concerning an individual's race or color are presumptively prohibited because they generally have no legitimate purpose in the hiring process.
2. An employer is entitled to collect statistical information regarding applicants and its work force to comply with federal regulations which require the reporting of such information (such as the EEO-1 report). However, such information cannot be considered as part of the applicant's qualifications and must be maintained separate from the application. The information should not be requested by managers in the pre-hire process.

C. Age

Questions concerning an individual's age are presumptively prohibited because they generally have no legitimate purpose in the hiring process. There is no reason to ask such questions and therefore they should not be included in telephonic or personal interviews.

1. The Conference may ask:
 - Are you at least _____ years of age? (If you are applying for a job with a minimum age requirement you may be required to submit proof of age.)
 - Statement that a photograph may be required after the applicant is hired.
2. The Conference should not ask:
 - Question concerning age, generally. Federal law prohibits discrimination against individuals age 40 and above.
 - Question as to birth date.
 - Question regarding dates of attendance and/or completion of a particular school.
 - Any other question which might indicate that the applicant is at least 40 years of age.
 - Request submission of a photograph before hire.

D. Own Home/Rent/Board or Other Questions Concerning Financial Status

These are generally prohibited inquiries. Inquiries into an applicant's financial status, such as bankruptcy, car ownership, rental or ownership of a house, length of residence at that address, or past garnishment of wages, if utilized to make employment decisions, may violate federal law.

1. The Conference may ask:
 - Question regarding place of residence and previous residences.
2. The Conference may not ask:
 - Question regarding whether applicant owns or rents home.
 - Question regarding length of residence at current or previous addresses.

- Question concerning applicant's bankruptcy or garnishment.

E. Height/Weight

The EEOC and many courts have ruled that minimum height and weight requirements are illegal if they screen out a disproportionate number of minority group individuals (e.g., Hispanic surnamed or Asian-Americans) or women and the Conference cannot show that height/weight standards are essential to the safe performance of the job in question.

F. Marital Status/Number of Children/Number of Dependents/Family

Questions about marital status, pregnancy, future child-bearing plans, and number and ages of children may be used to discriminate against women and may violate Title VII or state laws if used to deny or limit employment opportunities for female applicants. If such information is needed for tax, insurance or social security purposes, it should be obtained by the Conference after commencement of employment.

1. The Conference may make:

Statement regarding any nepotism policy concerning work assignment of employees who are related by blood or marriage.

2. The Conference should not ask:

- Question which concerns marital status.
- Question concerning number and age of children or dependents.
- Questions regarding pregnancy, childbearing or birth control.
- Question regarding arrangements for child care.
- Question regarding names and addresses of spouse or children of adult applicant.
- Question regarding with whom applicant lives.
- Questions directed to one sex, but not the other.

G. Citizenship/National Origin

It can be illegal under federal law to refuse to hire an applicant because he or she is not a citizen of the United States. However, under the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1101, et seq. (“IRCA”), it is illegal to knowingly hire (i) aliens who do not have any authorization to work in the United States, or (ii) any individual without complying with specific verification procedures.

Under IRCA, an Immigration and Naturalization Service I-9 form must be completed by both the employee and the employer within 72 hours after hire. Employers must also examine documentation for all individuals, whether the individual is a United States citizen or an alien, to verify that the individual is authorized to work in the United States. In addition, both the applicant and the employer must attest under penalty of perjury that the required documents were examined. The I-9 form must be maintained by the employer for a minimum of three years after the hire date or one year after termination, whichever is later.

Title VII prohibits discrimination on the basis of national origin. Any questions regarding the applicant’s national or ethnic origin would be presumptively prohibited.

1. The Conference may ask:

You will be required to submit proof of identity and work authorization upon hiring in compliance with the Immigration Reform and Control Act.

- Question regarding languages the applicant reads, speaks, or writes.

2. The Conference should not ask:

- Question regarding whether the applicant, applicant’s parents, or spouse are native born or naturalized citizens.
- Questions regarding birthplace of the applicant, applicant’s spouse or parents.
- Questions regarding nationality of the applicant, applicant’s spouse or parents.

- Declaration that proof of citizenship or authorized alien status is required before selection for employment.
- Question regarding the submission of a photograph before hire.

H. Contact With Current Employer/Reference Checks

So long as the Conference treats all applicants consistently, it can check references or talk to previous employers and base a decision, in part, on the information received so long as it is job related and not tainted by discrimination.

However, it should be recognized that it is unlikely an applicant will receive a bad reference from previous employers. Many employers refuse to talk about prior employees because of fear of being sued for defamation and limit information to confirming employment, the job position and the dates of employment. The question, “Is the employee eligible for rehire?” will sometimes be answered, but many employers will not even respond to that question.

I. Education

There is no prohibition against asking an applicant information about his/her educational background. However, asking the applicant to provide the dates of attendance or completion of high school is an indirect but impermissible inquiry into the applicant’s age.

1. The Conference may ask:
 - Question regarding nature and scope of academic, professional and vocational training.
2. The Conference should not ask:
 - Question that would indicate nationality or religious affiliation of a school.
 - Question that would reveal an applicant’s age.

J. Driver’s License

A driver’s license is certainly a necessary requirement for any position that involves the operation of a motor vehicle, or where the position requires the employee to be “on call” with independent means of transportation. Thus, such a question would be legitimate for this purpose. However, a requirement that an

employee possess a valid driver's license would be difficult to sustain with respect to positions where a driver's license is not necessary for job performance and the applicant has other reliable means of transportation.

K. Arrest and/or Conviction of a Crime

1. Arrests

- Federal regulations and most courts state that because members of some minority groups are arrested statistically more often than whites in proportion to their numbers in the population, making hiring decisions on the basis of arrest records may have a disproportionate effect on these groups. State laws may also limit inquiries regarding an applicant's criminal history.

2. Convictions

- EEOC regulations and guidance to employers provide that a conviction for a felony or a misdemeanor may not by itself lawfully constitute an absolute bar to employment. However, an employer may give fair consideration to the relationship between a conviction and the applicant's fitness for a particular job.
- A conviction record should result in rejection if the number, nature and recentness of the convictions cause the applicant to be unsuitable for that position. Factors such as (i) the age of the offense, (ii) seriousness of the crime, (iii) nature of the violation, and (iv) rehabilitation should be taken into account.

L. Discharge from Military Service

The Conference should not, as a matter of policy, reject applicants with less than honorable discharges from military service. Minority service members have a higher proportion of general and undesirable discharges than non-minority members of similar aptitude and education. A requirement that to be eligible for employment, ex-members of the armed services must have been honorably discharged may have a disproportionate effect on minorities and may be a violation of Title VII.

1. The Conference may ask:
 - Information about military service.
 - Questions concerning training or relevant skills acquired in military service.
 - Questions regarding military service duties/responsibilities.
2. The Conference should not ask:
 - Question regarding type of discharge.
 - Question concerning service in the military of a foreign country.

M. Availability to Work on Weekends or Holidays

The Conference has an obligation to reasonably accommodate the exercise of employees' religious beliefs unless to do so would cause undue hardship. The religious exemption does not excuse the Conference from its obligation to reasonably accommodate the exercise of an employee's religious beliefs and religious practices.

1. The Conference may ask:
 - Statement of regular work days, hours or shifts.
 - Statement that shift, rotation and weekend work may be required.
 - Question concerning the applicant's availability to work required days, hours or shifts.
2. The Conference should not:
 - Refuse to consider an applicant who requests accommodation of religious practices or beliefs.