

Lawful vs Unlawful Inquiries When Interviewing Job Candidates

The interview process is your opportunity to ask the candidate questions to assist you in determining if he/she is the “best fit” for your job. You may wish to conduct a very structured interview with a “standard” set of questions that will be asked of each candidate. Or, the interview may be a “conversation” between you and the candidate.

Whichever interview format you select, it is important to limit inquiries to areas related to the job. Inquiries must be job-related in order to ensure a non-discriminatory selection process. During the interview, you should talk about the job, its duties and responsibilities; the organization, its programs and opportunities for growth, development, and advancement; and the individual’s qualifications, abilities, experience, education and interests.

It is also important to remember that under the American with Disabilities Act (ADA), it is illegal to refuse to hire a qualified individual on the basis of disability if, with or without reasonable accommodation, the person can perform the essential functions of the job. If the applicant is a person with a disability who requests a reasonable accommodation, you may wish to contact the University of Colorado at Boulder ADA coordinator, through the office of Labor Relations in Human Resources, concerning the provision of the accommodation.

The following may be used as a guide (provided by the Colorado Civil Rights Division) of what inquiries are lawful and unlawful in an interview. Remember to ask yourself, “How does the question I’m asking relate to the job?” before you ask it during an interview.

BFOQ = Bona fide occupational qualification

MAJOR AREAS OF PRE-EMPLOYMENT INQUIRIES	IT IS NOT DISCRIMINATORY TO ASK...	IT MAY BE DISCRIMINATORY TO ASK...
ADDRESS	For applicant's current and previous address and length of residence.	For foreign addresses which would indicate national origin.
		Whether applicant owns or rents home.
		Relationship of persons with whom applicant lives.
AGE	"If hired, can you submit proof of age?"	For birth or baptismal certificate as proof of age prior to selection.
	May state that selection is subject to proof of age if age is a legal requirement.	
	If applicant is a minor, proof of age in form of work permit, certificate of age or birth certificate can be required.	
ANCESTRY OR NATIONAL ORIGIN	NONE: Any questions in this area may lead to a discriminatory inference.	About ancestry or national origin of applicant's parents, spouse or associates, or any membership in associations which may indicate ancestry or national origin.
		Language commonly used by an applicant or how an applicant acquired a proficiency in a foreign language.
ARRESTS	NONE: Any questions in this area may lead to a discriminatory inference.	About arrests.
BIRTHPLACE	NONE: Any questions in this area may lead to a discriminatory inference.	About birthplace.
CITIZENSHIP	"Are you legally entitled to work in the US?"	"Of what country are you a citizen?" or "Are you or your parents naturalized or native born?"
	May inform applicants that they will be required to complete an I-9 form verifying either their citizenship or their legal right to work in the U.S.	For U.S. citizenship for a particular job only if it is required by federal, state or local law, or by government contract.
CONVICTIONS/ COURT RECORDS	About actual convictions which are substantially related to applicant's ability to perform a specific job, if this question is addressed to every applicant.	About a conviction or court record which is not substantially related to applicant's ability to perform job duties.

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CREDIT RATING	NONE: Any questions in this area may lead to a discriminatory inference.	About applicant's economic status or other source of income. Whether applicant owns or rents home. Method of transportation if not related to job requirement.
DEPENDENTS	NONE: Any questions in this area may lead to a discriminatory inference.	About children, number of, names, ages, child care arrangements, marital status.
EDUCATION	For schools attended. Academic, vocational or professional education.	The nationality or religious affiliations of schools attended. How language skills were acquired.
	Language, office or other skills if substantially related to ability to perform job duties.	
EMERGENCY CONTACT	For name of person to contact in emergency.	For the name of a relative to be contacted in an emergency.
EXPERIENCE	For applicant's work experience. Other countries visited.	
DISABILITIES	"Can you perform the essential job functions of this position?"	"Do you have any disabilities?" or "List all serious illnesses for the past 5 years."
	May ask applicant for a demonstration or verbal description of how he/she would perform essential job functions, if required of all applicants.	General questions about disabilities or physical conditions which do not relate to applicant's fitness to perform job. Questions concerning receipt of Worker's Compensation before offering applicant the job.
		Physical examination, if required only of some applicants , whether prior to or after selection.
LANGUAGE SKILLS	For a level of language proficiency required to perform the duties of job.	For a level of language proficiency or the use of a particular language at all times, if not a business necessity. "Mother tongue" or language commonly used by applicant. How applicant acquired proficiency in a foreign language.
MILITARY RECORD	About military experience and education in the armed forces of the United States which relate to specific job duties.	Type or date of discharge. Applicant's general military service which is not substantially related to ability to perform specific job duties.
MARITAL STATUS	Whether MRS., MISS, MS., when made in good faith and not for the purpose of discrimination. Whether applicant can meet specific work schedules. Any other commitments which might hinder attendance. Anticipated duration on job or anticipated absences, if asked of both	"Are you single, married, divorced, separated, widowed?"
		Questions concerning pregnancy, birth control, children, or future child-bearing plans.
		Spouse's name, age, place of employment, or income.
		Married to or engaged to marry a current employee of the employer (for employers of 26 or more employees).
MISCELLANEOUS	Warn that misstatements, omissions, and false information on application may result in discharge.	Any non-job-related question which is unnecessary to determine an applicant's eligibility for employment.
NAME	"Have you ever worked for this organization under another name?"	About former names which have been changed by court order or otherwise, if not required to check necessary records.
	"To check work or educational records, is there additional information concerning name changes?"	
	About memberships and offices held in	"List all organizations, clubs or societies to which you belong."

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ORGANIZATIONS	organizations which relate to applicant's ability to perform a particular job.	About membership in organizations which would indicate race, color, national origin, ancestry, sex, disability, and creed or religion.
PHOTOGRAPH	For photograph after hiring.	For photograph prior to hiring unless based on a BFOQ.
PHYSICAL CHARACTERISTICS SUCH AS HEIGHT AND WEIGHT	Only if necessary to perform substantial duties of the job.	About applicant's height and weight, if unrelated to abilities necessary to perform substantial job duties.
RACE	NONE: Any questions in this area may lead to a discriminatory inference.	Direct or indirect questions which would indicate an applicant's race or color.
		Color of skin, eyes or hair. Race or color is never a BFOQ.
REFERENCES	Names of professional and character references.	For a religious reference.
RELATIVES	For names and addresses of parents/guardians of minor. Names of relatives already employed with the organization if this affects company policy.	For name and address of a relative of an adult applicant.
RELIGION	NONE: Any questions in this area may lead to a discriminatory inference.	Any questions that, if answered, would reveal religious affiliation, denomination, customs, holidays observed, or name of minister.
SEX	Whether MR., MRS., MS., MALE OR FEMALE when made in good faith and not for the purpose of discrimination. A voluntary request only and stated as such. Job advertisement or classification on the basis of sex and an inquiry concerning the sex of the applicant are permissible only if a BFOQ exists.	Applicant's sex or any questions which, if answered, would reveal applicant's sex, unless sex is a BFOQ for the position.
		NOTE: Gender is rarely considered a lawful qualification for any job other than, for instance, attendant in a single-sex bath house. Sex is not a BFOQ just because a job requires physical labor, unusual work hours, or travel, or because customers or employees prefer members of one sex over the other or hold stereotypes concerning abilities or attitudes of members of one sex.
WORK SCHEDULES	Whether applicant can meet a specific work schedule.	REASONABLE ACCOMMODATION is required for an applicant on the basis of religion or creed. Inquiry made prior to selection should be justified by BUSINESS NECESSITY.