

What You May & May Not Ask During an Interview

The New York State Human Rights Law prohibits discrimination in employment because of age, race, creed, color, national origin, sex, disability, marital status or criminal record. State agencies are prohibited by Executive Order from discriminating on the basis of sexual orientation. Courts have viewed as discriminatory questions attempting to garner information on these topics which do not directly pertain to bona fide occupational qualifications (BFOQs). The courts have interpreted BFOQs very narrowly.

It is unlawful to ask questions whose answers will indirectly reveal information as to race, creed, color, national origin, sex, marital status, disability, age, or arrest record in cases where such information may not be asked directly.

PERSONAL INFORMATION

1. NAME

Not Permissible: to ask questions about a person's name or preferred title which indirectly reveals information that is unlawful for you to request directly (e.g., national origin, marital status). It is unlawful to ask the maiden name of a married woman or to ask the prior name of a candidate whose name has been changed by court order or otherwise.

Permissible: to ask, "Is any additional information relative to change of name, use of an assumed name or nickname necessary to enable a check on your work record? If yes, state name and dates."

2. ADDRESS

Not Permissible: to ask questions about a foreign address which would indicate national origin. You **may not** request the names and relationships of persons with whom the candidate resides, nor if the candidate owns or rents a home.

Permissible: to ask, "Do you have a legal right to be employed in the United States? You **may** also ask about the location and length of time of the candidate has resided at his or her current residence.

3. AGE

Not Permissible: to ask questions or make statements regarding the candidate's age. You **may not** ask for information that would either directly or indirectly reveal age. For example, you **may not** require that a candidate, other than a minor, state or produce proof of age or date of birth. If an individual is at least 18, age cannot be a consideration in whether or not to hire.

Permissible: to require proof of age of a minor in the form of a work permit or a certificate of age.

4. RELATIVES

Not Permissible: to request names and addresses of parents, spouses, children or other relatives (except a parent or a guardian in the case of a minor).

5. MARITAL STATUS

There is no basis for asking the candidate's marital status in the pre-employment interview because it has no relevance in predicting satisfactory work performance. *[Such a question may be asked after appointment for the purpose of fringe benefit program applications.]*

Not Permissible: to ask questions about marital status (e.g., whether the candidate is single, married, divorced, separated, engaged, or widowed), pregnancy, plans for a family, number and age of children, how long the candidate plans to stay on the job or anticipated absences (i.e., for maternity leave) or child care issues.

Permissible: to ask if the applicant has any commitments that would preclude him or her from satisfying job schedules. If this question is asked, it must be asked of both sexes.

6. BIRTH CONTROL

Not Permissible: to ask questions about capacity to reproduce, advocacy of any form of birth control or family planning.

7. SEXUAL ORIENTATION

Not Permissible: to make inquiries concerning the candidate's sexual orientation.

PERSONAL BELIEFS AND PRACTICES

1. RELIGION

Not Permissible: to inquire into a candidate's religious denomination, religious affiliations, place of worship, parish or religious holidays observed, or ask questions which may elicit such information. You may not tell candidates that members of particular religious groups are required to work on their religious holidays.

Permissible: to advise a candidate concerning normal hours and days of work required by the job to avoid possible conflict with religious or other personal convictions. Employers and unions must make "reasonable accommodation" for religious practices of an employee or prospective employee.

2. POLITICAL BELIEFS

The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, as well as Section 107 of the Civil Service Law prohibit consideration of political beliefs in making a hiring decision.

3. ORGANIZATIONS

Not Permissible: to require the candidate to list all clubs, societies and lodges to which he or she belongs. You may not ask the names of organizations to which the candidate belongs if such information would indicate, through character or name, the race, religion, color, political beliefs or ancestry of the membership.

Permissible: to inquire into the candidate's membership in organizations which the candidate considers relevant to his or her ability to perform the job.

HEALTH

1. HEALTH PROBLEMS

Not Permissible: to ask questions concerning health problems a candidate may have. Speculation about potential use of sick leave or health insurance benefits is **Impermissible** and may not influence the employment decision.

2. INSTITUTIONAL CONFINEMENT

Not Permissible: to ask whether an individual was confined to a rehabilitative institution or whether the individual is or was under the care of a doctor for physical or psychological therapy.

3. DISABILITY

An employer must be prepared to provide proof that any physical and mental requirements for a job are bona fide occupational qualifications. A person with a disability may not be discriminated against because of job or work environments that can be reasonably altered. (For example, a ramp can be constructed or files repositioned so they are accessible to an individual in a wheelchair.)

Not Permissible: to ask, "Do you have a disability?" or "Do you have any physical or mental impairments which would interfere with your ability to perform the job for which you have applied?"

Permissible: to ask if candidates are able to carry out all necessary job-related assignments, as long as the questions are not phrased in terms of the disability. You may also ask an applicant to describe or to demonstrate how, with or without reasonable accommodations, the applicant will perform job-related functions.

4. PREGNANCY

According to federal guidelines, pregnancy or related conditions must be treated as any other medical disability.

5. PRE-EMPLOYMENT MEDICAL EXAMINATIONS

The Americans with Disabilities Act of 1990 provides that an applicant with a disability, or an applicant believed to have a disability, cannot be required to have a pre-employment medical examination. **After a job offer is made and prior to the commencement of employment duties, you may require that an applicant take a medical examination. You may condition the job offer on the results of the medical examination. However, if an individual is not hired because a medical examination reveals the existence of a disability, you must be able to show that the reasons for exclusion are job-related and necessary for conduct of your business. You also must be able to show that there was no reasonable accommodation that would have made it possible for the individual to perform the essential job functions.**

BACKGROUND

1. CITIZENSHIP

Not permissible: to ask, "Of what country are you a citizen?" or to inquire whether an applicant is naturalized or a native-born citizen or to ask the date when the applicant acquired citizenship. You may not require that the applicant produce naturalization papers or first papers. You may not ask whether the applicant's parents or spouse are naturalized or native-born citizens of the United States or ask the date when parents or spouse acquired U.S. citizenship.

Permissible: to ask, "Are you a citizen of the United States? If not a citizen of the United States, do you intend to become a citizen of the United States? If you are not a U.S. citizen, have you the legal right to remain permanently in the United States? Do you intend to remain permanently in the United States?"

2. ENGLISH FLUENCY/LANGUAGE

English fluency may not be a consideration unless it is proven necessary for the job.

Not Permissible: to ask, "What is your native language?" You **may not** inquire into how the candidate acquired the ability to read, write or speak a foreign language.

Permissible: to inquire into what languages the candidate speaks and writes fluently, if such skills are job-related.

3. CREDIT RECORD

The only time a person's credit or garnishment record may enter into the selection process is when bonding is a prerequisite to employment. Otherwise, you **may not** ask any questions concerning the applicant's credit rating, charge accounts, etc.

4. MILITARY RECORD

It is illegal to discriminate against candidates who have been discharged from the Armed Services on other than honorable basis unless it can be demonstrated that a strong relationship between projected successful performance and the nature of the discharge truly exists.

Not Permissible: to ask about military service in the armed forces of any country but the U.S. You **may not** ask, "Did you receive a dishonorable discharge?"

Permissible: to ask questions concerning service in the U.S. armed forces if such service is a qualification for the position being sought. You **may** inquire about the type of education and experience obtained in the service as it relates to a particular job.

5. CRIMINAL OFFENSES

The Human Rights Law (Executive Law, Section 296) prohibits asking about any arrest or criminal accusation which was terminated in the applicant's favor (i.e., an arrest but no conviction). However, the individual may be asked about pending indictments or arrests where there has been no decision. You may also inquire about prior convictions. (An arrest occurs when a person is accused of a crime. A conviction occurs when the person is found or pleads guilty to the charge.)

No application for employment may be denied on the basis of conviction for one or more criminal offenses **unless** there is a direct relationship between the criminal offense and the specific employment sought, or employing the individual would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. Examples of the above would be (1) A candidate who has been convicted of the sale of controlled substances applies for a position as a trainee in a State psychiatric center where such individual would have to dispense drugs in the performance of his/her duties; (2) A candidate who has been convicted of embezzlement applies for a position which requires the handling of money.

In assessing whether to disqualify a candidate, consideration should be given to the nature and seriousness of the crime(s) in relation to the job sought, the age of the individual at the time of the conviction(s), the extent of the individual's rehabilitation, the time that has elapsed since the conviction(s) and the circumstances under which the crime was committed.

6. EDUCATION

Not Permissible: to ask specifically the nationality, racial or religious affiliation of a school attended by a candidate.

Permissible: to inquire into the candidate's academic, vocational or professional education, including requesting the names and addresses of all schools attended.

ADDITIONAL CONCERNS

1. GENDER/RACE/ETHNICITY OF SUPERVISOR OR OTHER WORKERS

Not Permissible: to make any inquiry regarding how the candidate would feel working for or with men or women or with members of one or another particular racial/ethnic group.

2. REFERENCES

Not Permissible: to require a reference from a member of the clergy

Permissible: to require the names of persons willing to provide professional and/or character references for a candidate

3. MOBILITY, JOB LOCATION, TRAVEL

Questions about mobility, job location and travel may discriminate against women, older workers or disabled people. These questions may be asked only if those factors are essential to successful job performance. Thus, if the ability to drive is a legitimate job requirement, you may ask the candidate if he or she has a valid driver's license. However, if the actual job requirement involves travel, you should ask if the candidate can meet the travel requirements of the job, rather than if he or she has the ability to drive.

4. PERCEIVED "STIGMA"

You cannot refuse to hire someone on the ground that, in your judgment, he or she may not be accepted by customers, clients or co-workers because of a deformity, a disability, race, sex, sexual orientation or age.