

GUIDE TO LEGAL AND ILLEGAL PRE-EMPLOYMENT INQUIRIES

Introduction

The job interview is an essential component of the hiring process. While the job interview provides the College with an opportunity to assess whether an applicant will be a good fit, asking the wrong question could result in legal liability. Conducting a proper interview is thus imperative to finding the right candidate while avoiding legal liability. This guide is intended to help interviewers avoid discriminatory inquiries during job interviews.

Preparing to interview:

Any interviewer represents the College, and job candidates will perceive any interview encounter as “acceptable college practice”. Therefore, as you prepare your interview questions, ask yourself:

- Is the question legal?
- If it is legal, is it appropriate?
- When in doubt, don’t ask. Focus on the job-related information.

Please note: Every interaction with the candidate constitutes part of the interview: phone conversations, transport to and from a hotel, meals, walking across campus, etc. Everyone who will have contact with candidates should therefore be made aware of areas of inquiry that are not appropriate or illegal questions that should not be asked.

If a person volunteers information that is not job related, direct the conversation back to job-related topics. Information volunteered by an applicant that is not job-related – especially information about a job applicant’s protected status (see below) – should not affect your decision about the applicant’s ability to do the job. Refer difficult questions and issues to Human Resources.

Pre-employment Inquiries:

Throughout the interviewing process, it is important for the person(s) conducting the interview to be aware of the anti-discrimination laws with regard to pre-employment inquiries. These laws apply not only to recruitment and hiring, but also to transfers and promotion of employees.

In general, one should avoid any questions that, either directly or indirectly, are likely to elicit information about an applicant’s membership in a protected class, including the applicant’s race, religion, color, national origin, sex, age, disability, marital status, military status, sexual orientation, genetic predisposition, domestic violence victim status or any other status protected by applicable law. Make sure to ask only questions that are bona fide occupational qualifications—BFOQs—questions directly related to a candidate’s ability to do the job.

The table of “Lawful and Unlawful Pre-Employment Inquiries” consists of questions compiled by the New York State Division of Human Rights and from *The Complete Academic Search Manual* (Vicker and Royer, 2006).

Note: This list is applicable to any job candidate. Subjects marked by an asterisk () refer to inquiries that are particularly relevant for searches for faculty and administrative professional positions.**

After hiring, Human Resources can legally obtain the following:

- A birth certificate copy
- Marital status (married or single only)
- Proof of eligibility to work in the United States (as regulated by Federal Law)
- Photographs
- Physical examination and drug testing, if appropriate, or required by position, can be initiated once an offer is made with continuation of employment contingent upon a satisfactory result
- Social Security card
- Background check, if appropriate, or required by position, can be initiated once an offer is made with continuation of employment contingent upon a satisfactory result

Subject	Lawful Inquiries	Unlawful Inquires
Name	<ul style="list-style-type: none"> • Whether the applicant has worked under another name. • Have you ever worked for this college under a different name? Is any additional information relative to change of name or use of an assumed name or nickname necessary to enable a check on your work record? If yes, explain. • What name(s) are your work records listed under? 	<ul style="list-style-type: none"> • Inquiries about the name that would seek to elicit information about the candidate's ancestry or descent (e.g., what nationality is your last name?). • Inquiries about name change due to a court order, marriage, or otherwise. • Maiden name of married women.
Birthplace	<ul style="list-style-type: none"> • See citizenship below. 	<ul style="list-style-type: none"> • Birthplace of applicant, spouse, parents, or other relatives.
Citizenship	<ul style="list-style-type: none"> • Statement that employees must be eligible to work in the United States. • Do you have a legal right to work in the United States? • Whether the applicant is prevented from lawfully becoming employed in the US because of a visa or immigration status. 	<ul style="list-style-type: none"> • Any inquiries about citizenship or whether the applicant is or intends to become a U.S. citizen. • Birthplace of applicant. Birthplace of applicant's parents, spouse or other close relatives. • Of what country are you a citizen? Whether an applicant is naturalized or a native-born citizen, the date when the applicant acquired citizenship. Requirement that applicant produce naturalization papers or first papers. Whether applicant's parents or spouse are naturalized or native-born citizens of the U.S., the date when such parent or spouse acquired citizenship.
Residence, Nationality	<ul style="list-style-type: none"> • Place of residence. • Length of residence in this city. • About foreign language skills (reading, speaking, and/or writing) if relevant to the job. 	<ul style="list-style-type: none"> • Specific inquiries into foreign addresses that would indicate national origin or nationality of applicant. • Whether applicant owns or rents home. • Inquiry into applicant's lineage, ancestry, national origin, descent, parentage, or nationality. • Nationality of applicant's spouse or parents. • What is your native tongue?
Age**	<ul style="list-style-type: none"> • Can inquire if applicant meets minimum age requirements, or state that proof may be required upon hiring. • Are you 18 years of age or older? If not, state your age. 	<ul style="list-style-type: none"> • Cannot require that applicant state age/date of birth unless under 18. • Cannot require that applicant submit proof of age in the form of a birth certificate, naturalization papers, or baptismal record. • Any question that may tend to identify applicants over 40 years of age (e.g., what year did you graduate high school/college?). • How old are you? What is your date of birth? What are the ages of your children, if any?
Gender**	<ul style="list-style-type: none"> • Inquiry or restriction of employment is permissible only when a Bona Fide Occupational Qualification (BFOQ) exists. 	<ul style="list-style-type: none"> • Applicant's gender cannot be used as a factor for determining whether an applicant will be "satisfied" in a particular job (e.g., because the job involves physical labor, travel away from home, or is traditionally labeled "men's work" or "women's work"). • Any inquiry that would indicate gender of applicant. • Any inquiry into an applicant's caregiving responsibilities (e.g., what childcare arrangements would you make if offered this position?).
Subject	Lawful Inquiries	Unlawful Inquires

Marital and Family Status, Sexual Identity**	<ul style="list-style-type: none"> • Whether applicant can keep specific work schedules. • This is the typical schedule for this position. Is there any reason you would not be able to work this schedule? • <u>Note</u>: These inquiries are permissible provided they are made for both male and female applicants. 	<ul style="list-style-type: none"> • Marital status or number of dependents. Name, age, job, address, or other information about spouse, children, or relatives. • Questions about sexual identity, orientation, or preference. What is your sexual orientation? • Do you wish to be addressed as Mrs.? Miss? Or Ms.? • Are you married? Are you single? Divorced? Separated? Widowed? • Do you have a boyfriend/girlfriend? • What is your maiden name? • Child care arrangements. • Plans to have children.
Race, Color, Physical Features**	<ul style="list-style-type: none"> • Voluntary submission of Equal Employment Opportunity (EEO) information made directly via Human Resources' application process.. 	<ul style="list-style-type: none"> • Inquiry as to applicant's race, color of skin, eyes, or hair or other questions directly or indirectly indicating race or color. • Applicant's height or weight when it is not relevant to the job. • What race are you? • Are you a member of a minority group? • What is your national origin?
Disability	<ul style="list-style-type: none"> • Can ask an applicant questions about his or her ability to perform job-related functions. • Please describe/demonstrate how you would perform the essential functions of this position. (Note: if used, this question should be asked of all candidates). • Only if an employee voluntarily discloses a need for reasonable accommodation, can ask what reasonable accommodation is needed to perform job-related functions, but not about the underlying medical condition. 	<ul style="list-style-type: none"> • General inquires ("Are you disabled?") that would tend to reveal disability or health conditions that do not relate to fitness to perform the job. • Do you have a disability? Have you ever been treated for any of the following diseases . . . ? • Do you need a reasonable accommodation? • What is your medical history? How does your condition affect your abilities? • Have you ever filed a workers' compensation claim?
Education	<ul style="list-style-type: none"> • Applicant's academic, vocational attainment. • Inquiry into applicant's academic, vocational or professional education and the public and private schools attended. • What is your educational background? • Do you have licenses and certifications for this job? 	<ul style="list-style-type: none"> • Date last attended high school or college (reflects age).
Pregnancy**	<ul style="list-style-type: none"> • No acceptable inquiry. 	<ul style="list-style-type: none"> • Any question concerning pregnancy, birth control, or capacity to reproduce. • Advocacy of any form of birth control or family planning.
Arrests and Convictions	<ul style="list-style-type: none"> • Asking about conviction of a crime related to job qualification. • Have you ever been convicted of a crime, other than minor traffic violations? If yes, please describe (No applicant will be denied a position because of a conviction for an offense unless there is a direct relationship between the offense and the position, or unless hiring would be an unreasonable risk). 	<ul style="list-style-type: none"> • Asking about arrests. • Have you ever been arrested? • Have you ever spent a night in jail?

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Religion or Creed	<ul style="list-style-type: none"> No acceptable inquiry. 	<ul style="list-style-type: none"> Any question requesting the applicant's religious denomination, religious affiliations, church, parish, pastor or religious holidays observed. Applicant may not be told "This is a (Catholic, Protestant, or Jewish) organization." What religion are you? Which religious holidays will you be taking off from work? What church do you attend? Do you attend church regularly?
Military Experience	<ul style="list-style-type: none"> If needed for employment history, you may ask about applicant's military experience in the U.S. Armed Forces. 	<ul style="list-style-type: none"> Any question into applicant's general military experience. Any question into type of discharge.
Organizations	<ul style="list-style-type: none"> Inquiry into applicant's membership in organizations that the applicant considers relevant to his/her ability to perform the job. 	<ul style="list-style-type: none"> Asking what organizations, clubs, and societies the applicant belongs to that are not relevant to his/her ability to perform the job (political, social, religious, etc.) List all clubs, societies and lodges to which you belong.
Photograph	<ul style="list-style-type: none"> May not be requested prior to hire. 	<ul style="list-style-type: none"> Requirement or option that applicant affix a photograph to employment form at any time before hiring.
Language**	<ul style="list-style-type: none"> Inquiry into languages applicant speaks and writes fluently if needed for the position. 	<ul style="list-style-type: none"> What is your native language? Inquiry into how applicant acquired ability to read, write or speak a foreign language.
Experience	<ul style="list-style-type: none"> Inquiry into work experience. What experience qualifies you for this job? Inquiries that explore a candidate's diversity experience. How have you supported a prior employer's commitment to diversity? Tell me about your participation in diversity events/and or organizations at other employers. How have you integrated multicultural issues as part of your professional development? 	<ul style="list-style-type: none"> How has your race/gender/national origin affected your work experience?
Relatives	<ul style="list-style-type: none"> Name of applicant's relatives already employed by the college. 	<ul style="list-style-type: none"> Names, addresses, ages, number or other information concerning applicant's spouse, children or other relatives not employed by the college.
Driver's License (if applicable)	<ul style="list-style-type: none"> Do you possess a valid NYS driver's license? (if necessary to perform duties of the position) 	<ul style="list-style-type: none"> Requirement that an applicant produce a driver's license.
Travel	<ul style="list-style-type: none"> This position requires travel. Are you willing to travel? 	<ul style="list-style-type: none"> Since you have children will you have trouble getting the time to travel?
Overtime	<ul style="list-style-type: none"> This position may require overtime. Are you available for overtime? 	<ul style="list-style-type: none"> Since you have children, does that mean you won't be able to work overtime?
Garnishment Records	<ul style="list-style-type: none"> No acceptable inquiry. 	<ul style="list-style-type: none"> Have your wages ever been garnished?
Mode of Transportation	<ul style="list-style-type: none"> Can you arrive to work by the required start time? 	<ul style="list-style-type: none"> Do you own a car? Mode of transportation.
Family History**	<ul style="list-style-type: none"> No acceptable inquiry. 	<ul style="list-style-type: none"> Where were you born? Where are your parents from? What is your heritage? What language do you speak at home?

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