

Legal and Illegal Questions of Job Candidates

New York Rulings on Pre-Employment Inquiries

The New York State Human Rights Law prohibits pre-employment and certain other inquiries as to race, creed, color, national origin, sex, age, disability, marital status or arrest records unless based upon a bona-fide occupational qualification or other exception. "No person shall be denied the equal protection of the laws of this State or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation or institution, or by the State or any agency or subdivision of the State." (New York Constitution, Article I, Section II.) The following are examples of different types of inquiries that have been ruled lawful or unlawful:

Subject	Lawful Inquiry	Unlawful Inquiry
Race or color		Complexion, color of skin, coloring.
Religion or creed		Religious denomination, religious affiliations, parish or church, religious holidays observed.
Applicant may not be told "This is a (Catholic, Protestant, Jewish) organization.		
National origin		Lineage, ancestry, national origin, descent, parentage, nationality. Nationality of applicant's parents, spouse.
Sex		Inquiry as to gender.
Marital	You may ask whether the applicant has any commitments that preclude him/her from meeting job schedules. If such questions are routinely asked, they must be asked of both sexes.	Do you wish to be addressed as Miss? Mrs.? Ms.? Are you married? Single? Divorced? Separated? Name or other information about spouse.
Birth control		Capacity to reproduce, advocacy of any form of birth control or family planning.

<u>Subject</u>	<u>Lawful Inquiry</u>	<u>Unlawful Inquiry</u>
Age	Are you 18 years of age or older; if not, state your age.	How old are you? What is your birth date? What are the ages of your children? Inquiries designed to discover age, such as "What year did you graduate?"
Disability	An employer may inquire only whether a prospective employee can perform specific tasks in a reasonable manner. *See below	Do you have a disability? Do you have any impairments, physical, mental or medical, which would interfere with reasonable job performance? Have you ever been treated for any of the following diseases...? Do you have now or have you had a drug or alcohol problem? If there are any positions or duties for which you should not be considered because of a physical, mental medical disability, please describe.
<i>*According to the New York State Division of Human Rights, while an employer may lawfully inquire whether an applicant can perform specific task(s) necessary in the position for which the person has applied, an employer may not ask whether an applicant has a disability or has been treated for specific diseases.</i>		
Arrest record	Have you ever been convicted of a crime? (Give details)	Have you ever been arrested?
Name	Have you ever worked for this institution under a different name? Is additional information relative to name change, assumed name, or nickname necessary to enable a check on your work record? If so, explain.	Original name of applicant whose name has been changed by court order or otherwise? Maiden name of married woman. If you have ever worked under another name, state name, and dates.
Address or duration of residence	Place of residence. How long a resident of this state or city?	
Birth place		Birth place, or birth place of spouse or other relative. Requirement to submit birth certificate, naturalization or baptismal records.

<u>Subject</u>	<u>Lawful Inquiry</u>	<u>Unlawful Inquiry</u>
Photograph**		Requirement or option to affix photo to employment form at any time before hiring.
Citizenship**	<p>"Are you a citizen of the US?"</p> <ul style="list-style-type: none"> • If no: "Do you have a legal right to remain permanently in the US?" • If no: "Do you intend to remain permanently in the US?" • "This is a 2-year term appointment. Are you eligible to work during this entire period or until (X) date?" <p>You may tell applicant that proof of citizenship or a permanent immigration visa will be required at time of employment.</p>	<p>Requirement to produce naturalization papers or first papers.</p> <p>Of what country are you a citizen? Naturalized or native-born? Date citizenship acquired?</p> <p>Are parents, spouse, naturalized or native-born citizens of this country? Date citizenship acquired?</p>
Language	Language(s) spoken or written fluently, when position requires such ability.	<p>What is your native language?</p> <p>How did you acquire your ability to read, write or speak a foreign language?</p>
Education	Academic, vocational, professional education, public and private schools attended.	Years of attendance; dates of graduation.
Experience	Work experience.	
Relatives	Name(s) of relative(s) already employed by this institution.	Number, names, addresses, ages of spouse, children, relatives not employed here. Name and address of person to be notified in case of accident or emergency.
<p>**Note: In accordance with the Immigration Reform and Control Act of 1986, after an offer of employment has been made and before an individual may be hired, he/she must produce some of the documents to establish identity and employment eligibility.</p>		
Military	<p>Experience in United States Armed Forces or State Militia.</p> <p>Service in a particular branch, e.g., Army, Navy.</p> <p>Did you receive a dishonorable discharge?</p>	<p>Experience other than in the United States Armed Forces or State Militia.</p> <p>Did you receive a discharge in other than honorable circumstances?</p>

<u>Subject</u>	<u>Lawful Inquiry</u>	<u>Unlawful Inquiry</u>
Driver's License	Do you possess a valid NYS driver's license (if the driver's license is necessary for the position the applicant is seeking)?	Requirement to produce a driver's license.
Organizations	Membership in organizations specified by applicant to be relevant to his/her ability to perform the job.	List all clubs, societies, lodges to which you belong.