

LEGAL AND ILLEGAL QUESTIONS IN INTERVIEWS

DIRECTLY RELEVANT QUESTIONS

The Law expressly prohibits employers from asking certain questions either in an application form or in a personal interview before selecting an employee. The following are examples of different types of inquiries that have been ruled lawful or unlawful:

SUBJECT	LAWFUL*	UNLAWFUL
Race or Color	None	Complexion or color of applicant's skin, hair, eyes, and so forth.
Religion or Creed	None	Inquiry into applicant's religious denomination, religious affiliations, church, parish, pastor or religious holidays observed.
National Origin	None	Inquiry into applicant's lineage, ancestry, national origin, descent, parentage or nationality. Nationality of applicant's parents or spouse.

*Inquiries which would otherwise be deemed lawful may, in certain circumstances, be deemed as evidence of unlawful discrimination when the inquiry seeks to elicit information about a selection criterion which is not job-related and which has a disproportionately burdensome effect upon the members of a minority group and cannot be justified by business necessity.

SUBJECT	LAWFUL*	UNLAWFUL
Sex	None	Inquiry as to gender.
Marital Status	Is your spouse employed by this employer?	Are you married? Are you single? Divorced? Separated? Name or other information about spouse. Do you wish to be addressed as Miss, Mrs., or Ms.?
Birth Control	None	Inquiry as to capacity to reproduce, advocacy of form of birth control or family planning.
Age	Are you 18 years of age or older? If not, state your age.	How old are you? What is your birth date?

Disability	None	<p>Do you have a disability?</p> <p>Have you ever been treated for any of the following diseases....?</p> <p>Do you have now, or have ever had, a drug or alcohol problem?</p>
Arrest Record	Have you ever been convicted of a criminal offense? (Give details.)*	Have you ever been arrested?

*Effective January 1, 1977, an applicant may not be denied employment because of a conviction record unless there is a direct relationship between the offense and the job or unless hiring would be an unreasonable risk. An ex-offender denied employment is entitled to a statement of the reasons for such denial. (Correction Law, Article 23-A,§754.)

LEGAL AND ILLEGAL QUESTIONS IN INTERVIEWS - INDIRECTLY RELEVANT QUESTIONS

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

SUBJECT	LAWFUL*	UNLAWFUL
Name	<p>Have you ever worked for this company under a different name?</p> <p>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, explain.</p>	<p>Original name of applicant whose name has been changed by court order or otherwise.</p> <p>Maiden name of a married woman.</p> <p>If you have ever worked under another name, state name and dates.</p>
Address or Duration of Residence	<p>Applicant's place of residence.</p> <p>How long a resident of this state or city?</p>	
Birthplace	None	<p>Birthplace of applicant.</p> <p>Birthplace of applicant's parents, spouse or other close relatives.</p>

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SUBJECT	LAWFUL	UNLAWFUL
Birthdate	None	<p>Requirement that applicant submit birth certificate, naturalization or baptismal record. Requirement that applicant produce proof of age in the form of a birth certificate or baptismal record</p>
Photograph	None	<p>Requirement or option that applicant affix a photograph to employment form at any time before hiring.</p>

Citizenship	Are you eligible for employment in the United States?	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 spouses are naturalized or native-born citizens of the United States; the date when such parents or spouse acquired citizenship.
Language	If the duties of the position applicant is seeking requires fluency in a particular language, inquiry may be made into whether applicant speaks or writes that language fluently.	What is your native language? Inquiry into how applicant acquired ability to read, write or speak a foreign language.
Education	Inquiry into applicant's academic, vocational or professional education and the public and private schools attended.	Years of attendance, date(s) of graduation.
Experience	Inquiry into work experience.	
Relatives	Names of applicant's relatives already employed by this company.	Names, addresses, ages, number or other information concerning applicant's spouse, children or other relatives not employed by the company.
Notice in Case of Emergency	None	Name and address of person to be notified in case of accident or emergency.
Military Experience	Inquiry into applicant's military experience in the Armed Forces of the United States or in a State Militia. Did you receive a dishonorable discharge? Inquiry into applicant's service in particular branch of United States Army, Navy, etc.	Inquiry into applicant's military experience, other than in the Armed Forces of the United States, or in a State Militia. Did you receive a discharge from the military in other than honorable circumstances?
Organizations	Inquiry into applicant's membership in organizations which the applicant considers relevant to his or her ability to perform the job.	List all clubs, societies and lodges to which you belong.

Driver's License	Do you possess a New York State Driver's License? (If a driver's license is necessary for position applicant is seeking?)	Requirement that applicant produce a driver's license.
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