

STETSON UNIVERSITY

Guidelines for Lawful Pre-Employment Questions

There are two basic guidelines for lawful pre-employment questions.

1. Only ask questions that relate to the candidate's ability to perform the job as described.
2. Do not ask an applicant any question you would not also ask of any other applicant regardless of sex, age, marital status, disability, etc.

The following chart addresses specific subjects and, if lawful questions apply, how to ask those questions.

Subject	Lawful Inquiries	Potentially Unlawful Inquiries
Age	Inquiries as to ability to prove true age once employed.	Any inquiry which implies a preference for persons of a particular age. NOTE: Persons age 40 and older are protected by law from age discrimination.
Arrests (Also see Convictions)	None. Florida courts have found it discriminatory to reject an applicant on the basis of a past arrest without consideration of other circumstances. Federal courts have concurred.	All inquiries relating to arrests.
Citizenship	Whether applicant is entitled to be lawfully employed in US because of visa or immigration status. Whether applicant can provide proof of citizenship, visa, or alien registration number after being hired.	Whether applicant is a citizen or any inquiry which would tend to divulge applicant's lineage, ancestry, national origin/descent, or birthplace.
Convictions	Inquiries concerning specified convictions which relate reasonable to fitness to perform the particular job/s applied for.	Inquiries which would divulge convictions which do not relate reasonable to fitness to perform the particular job.

Credit	None.	Such inquiries have been found to have disparate impact on women and minorities.
Education	Inquiries as to degrees/courses that are directly related to the specific job.	Inquiries concerning degrees/courses that cannot be shown to have a direct relationship to job performance.
Family	Whether applicant can meet specified work schedules or has activities, commitments, or responsibilities that may prevent him/her from meeting work attendance requirements.	Specific inquiries concerning spouse, spouse's employment or salary, children, childcare arrangements, or dependents.
Disability	Whether applicant can perform essential job functions as described either with or without reasonable accommodations.	Over-general inquiries (e.g., "Do you have any disabilities?") which would tend to divulge disabilities or conditions which do not relate to ability to perform the essential functions of the job.
Height & Weight	None, unless height and/or weight requirements have been proven to be Bona-fide Occupational Qualification (BFOQ).	Any inquiry which is not based on actual job requirements.
Marital Status	None.	Oral or written inquiries that require applicants to select one of the following: Mr., Mrs., Miss, Ms. Also inquiries as to whether an applicant is married, single, separated, engaged, widowed, etc.
Military	Inquiries concerning education, training, or work experience in the armed forces of the US.	Type or condition of military discharge. Applicant's experiences in other services than US armed forces. Request for discharge papers.
Name	Whether applicant has worked for this employer or a competitor under a different name and, if so, what name. Name under which applicant	Inquiry into original name where it has been changed by court order or marriage. Inquiries about a name which would divulge marital status,

	is known to reference different from present name.	lineage, ancestry, national origin, or descent.
National Origin	Inquiries into applicant's ability to read, write, and speak foreign languages, when such inquiries are based on job requirements.	Inquiries into applicant's lineage, ancestry, national origin, descent, birthplace, or native tongue. National origin of applicant's parents or spouse.
Organizations	Inquiries into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, marital status, religion, national origin, or ancestry of its members.	Requirements that applicants list all organizations, clubs, societies, and lodges to which he/she belongs.
Photographs	May be requested after hiring for identification purposes.	Request that applicant submit a photograph, mandatory or optionally, at any time before hiring.
Pregnancy (also see disability)	Inquiries as to duration of stay on job or anticipated absences which are made to men and women alike.	All questions as to pregnancy, medical history, and related matters.
Race or Color	None.	Any inquiry concerning race or color of skin, hair, eyes, etc.
Relatives	Name of applicant's relatives already employed by this organization or by any competitor.	Names and addresses of any relatives other than those listed as appropriate.
Religion or Creed	None, unless for a ministerial position for a specific denomination.	Inquiries concerning applicant's religious affiliations, church, parish, pastor, or religious holidays observed.
Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationships of persons which whom applicant resides. Whether applicant owns or rents.
Sex	None.	Any inquiry.