

### Language Proficiency:

Some English skill is probably required for most jobs. Fluency or absence of an accent may not be relevant to the job. If English language skill is not a requirement of the work to be performed, it could be a criteria that would unfairly eliminate certain minority groups. Additionally, some jobs may prefer bilingual individuals. Ultimately, however, care must be taken regarding an English language proficiency requirement and the requirement **should not exceed** the level of proficiency necessary for the job in question.

### Arrest or Conviction Record:

Without proof of business necessity, an employer's use of arrest records to disqualify applicants is unlawful. An employer must be able to show that inquiry into conviction is substantially related to the applicant's suitability to perform major job functions. Conviction records should be cause for rejection **only** if their number, nature, and recentness would cause the applicant to be unsuitable for the position. If the question is asked it is recommended that the clarifier be added "A conviction will not necessarily disqualify you from the job for which you have applied."

### Lowest Acceptable Salary:

This information has been used by some employers in a discriminatory manner. Women, for example, generally have held poorer paying jobs than men, and have been paid less than men for the same work. As a result of these past practices, a woman may be willing to work for less pay than a man would find acceptable. **It is unlawful; however, to pay a woman less than a male employee who is or was performing the same of similar work.**

### Licenses:

It is recommended that a prospective employer ask for information on licenses relevant to the job rather than information on any type of trade or professional license. Similarly, information regarding a current Kentucky driver's license should be requested if a driver's license is needed to perform a job.

### Transportation:

It is recommended that employers not inquire into an applicant's method or mode of transportation, unless a specific method or mode is required in the performance of major job duties.

### U.S. Citizenship and Right to Work:

The Immigration Reform and Control Act of 1986 requires employers to verify the legal status and right to work of all new hires. Employers should not ask if they have the legal right to work in America, and explain that verification of that right must be submitted **after** the decision to hire has been made. To satisfy the verification requirements, employers must ask all new hires for documents establishing both identity and work authorization. Certain documents can establish both:

- A U.S. passport
- a certificate of U.S. citizenship
- a certificate of naturalization
- An unexpired foreign endorsement of the Attorney General authorizing employment in the U.S.
- a resident alien card that contains a photograph of the person or other identifying information (i. e. a physical description)

If an individual cannot produce a document establishing both identity and work authorization, then the employer must request two documents: one establishing identity, the other work authorization. Documents establishing "**work authorization only**" are:

- a Social Security card (unless the card specifically says the individual is not authorized to work in the United States)
- a birth certificate issued in the United States or a certificate establishing birth abroad of a United States citizen
- other work authorization documents deemed

- other identity documents deemed acceptable under final regulations for cases in which state driver's license or identity cards do not contain photos or adequate person descriptions, or if the person is under 16 years of age.

### Gender Based Language:

Care should be taken to use inclusive language. Applications should not refer to the assumed gender of applicants, but should use neutral terms such as "applicants", "candidates" and "employees".

### Affirmative Action Survey:

An employer **may justifiably seek** and obtain information regarding a job applicant's race, sex, or ethnicity as needed for implementation of affirmative action programs, voluntary or court-ordered, or other government reporting or record keeping requirements and for studies to identify and resolve possible problems in the recruitment and testing of members of minority groups and/or women to ensure equal employment for all persons.

The employer must be able to demonstrate that such data was collected for legitimate business purposes. Such information **should be kept separate** from the regular permanent employee records to ensure that it is not used to discriminate in making personnel decisions.

To protect themselves against the improper use of such information by their selecting officials, employers should consider collecting such information by the use of a "tear-off sheet", the latter is separated from the application and used only for purposes unrelated to the selection decision. The tear-off sheet should state the purpose for which the information is being collected, and that the information will not be available or used for making employee selections in order to allay applicants' fears that the information might be used to discriminate. Also, indicate to prospective employees that providing the information is **voluntary**, unless the employer is under a specific court order to obtain it.

## Pre-Employment Inquiries

What may I ask?  
What must I answer?



**Lexington-Fayette Urban County  
Human Rights Commission  
162 East Main Street, Suite 226  
Lexington, KY 40507  
Phone: (859) 252-4931  
Fax & TDD: (859) 252-7057  
E-mail: lexhrc@gte.net  
Web Site: www.lfuchrc.org**



# Pre-Employment Inquiries

## **Date of Birth:**

Inquiries regarding the applicants date of birth or age are **unlawful**.

## **Relatives/Friends Who are Working for the Employer:**

It is recommended that this question not be asked. Information about relatives and/or friends working for the employer is not relative to an applicant's competence. Requesting such information may be unlawful if it indicated a preference for relatives and/or friends of present employees and the composition of the present work force is such that this preference would reduce or eliminate employment opportunities for protected classes.

## **Maiden Name:**

This is not relevant to a person's ability to perform a job, and could be used for a discriminatory purpose. For example, a woman's maiden name might be used as an indication of her religion or national origin. This item also constitutes an inquiry into marital status which is information that may legitimately requested **after** the decision to hire is made. If, however, a prospective employer needs to verify education and employment history, the question could be asked "if any of your employment or education was under a different name, please indicate and provide the name."

## **Marital Status:**

It is recommended that questions regarding marital status not be asked since it is doubtful that the information could be job related and has been used discriminatorily in the past. Information needed for tax, insurance, social security, or other similar legitimate business purposes may be obtained **after** employment.

## **Mr./Miss/Mrs./Ms.?**

This is simply another way of asking the applicant's sex and (for women only) marital status, both of which are irrelevant.

## **Dependents:**

The number of persons dependent upon the applicant for support is not relevant to a determination of whether or not the applicant can perform the job. This information can be requested **after** hire.

## **Child Care Arrangements:**

It is illegal to require pre-employment information about child care arrangements from female applicants only. An employer may not have different hiring policies for men and women with preschool age children. However, even if asked of both men and women, the question may still be suspect. In the past, such information has been used discriminatorily because of society's general presumption that the woman is the primary care giver. IF the employer's concern is whether or not the employee will be able to attend work regularly, the question that could be asked is "Is there anything which would interfere with your attending work regularly?"

## **Color of Eyes and Hair:**

Eye and hair color are not related to the performance of jobs and may serve as an indicator of an employee's race, religion, or national origin, which are illegal pre-employment inquiries.

## **Height and Weight:**

It is illegal to use this information for screening purposes unless the employer can show that height and weight requirement is essential to perform the job.

## **Availability for Weekend Work:**

If a question about Saturday and Sunday work is asked, the employer should indicate that a reasonable effort is made to accommodate religious needs of employees. If employers do not make such an accommodation, they must be able to demonstrate that they are unable to reasonably accommodate a prospective employee's (or employee's) religious observance or practice without actual undue hardship on the conduct of the business. Actual undue hardship is more than a minor financial cost or minor disruption to the employer's work policies or manner of doing business.

## **Health History:**

Pre-employment inquiries of an existing disability are unlawful. Current illegal use of a controlled substance is NOT a disability under the Local Ordinance 199-94. A bona fide medical examination may be given **after** an offer of employment to a job applicant or given to a current employee, at which time inquiries about current job-related handicaps or disabilities and reasonable accommodations needed are lawful. **No inquiry should be made into whether the applicant has ever been refused life or health insurance.**

## **Dates of Public School Attendance:**

It is illegal to ask the dates of elementary or high school attendance. The question should be posed "Do you have a high school education? If not, how many years have you completed?" This question includes attainment of General Education Diploma (G.E.D.) but does not differentiate between it and a high school diploma. Dates of public school attendance may be requested if completion of a certain grade level is a valid, job-related requirement, and the employer uses the information to verify the applicant's education.

## **College Locations and Dates Attended:**

Be aware that the name and location of colleges attended have been used by employers in order to determine the race of the applicant for discriminatory purposes. Be sure that if you ask this question, it is used for legitimate purposes. Dates of college attendance also have been used by employers to determine the age of the applicant for discriminatory purposes. Be sure that if you ask this question, it is used to help determine the applicant's fitness for the job and is used for legitimate purposes. If any employer checks transcripts before hire, then this information is needed.

## **Previous Address:**

It is recommended that inquiries not be made into an applicant's previous address or length of residence since it is not related to the applicant's ability to perform the job. The crucial factor here is the employer's ability to justify the request and the ability to prove that it is not used in a discriminatory manner.

## **Military Service:**

Questions relevant to experience or training that was received while in the military or to determine eligibility for any veteran's preference required by law are acceptable. Employers should not, as a matter of policy, reject applicants with less than an honorable discharge from military service. Minority service members have had a higher proportion of general and undesirable discharges than non-minority.

## **Credit Record/Charge Accounts/Home Ownership:**

Answers to these questions are almost always irrelevant to performance of the job in question. Because census figures indicate that minorities, on the average, are poorer than whites, consideration of these factors by employers can have an adverse impact on minorities. Therefore, requests of this nature could probably be shown to be unlawful unless clearly required by business necessity.