

Pre-Employment Guide

Utah Labor Commission | Antidiscrimination Unit





Pre-Employment Guide

In general, any questions asked as part of a job application or during a job interview should be designed solely for purposes of determining whether a candidate has the skills and experience necessary to perform the job. Questions or requests for information based on age (*if over 40*), gender, race, color, national origin, disability, religion or pregnancy should never be used to make hiring decisions. This can also apply to asking individuals about their marital status.

Although this is not an exhaustive list, employers may find the following guide useful to ensure compliance with anti-discrimination laws.



A NAME

Proper

First, middle and last name and any other name used prior to employment.

Improper

Asking about the origin of the applicant's name cannot be used for discriminatory purposes.

The following are improper:

- ▶ asking about the applicant's name which would indicate applicant's lineage, ancestry, national origin, or descent.
- ▶ a requirement to provide a prefix to applicants name (Mr., Mrs., Miss, Ms.)
- ▶ asking about marital status unless based on legitimate bona fide occupational qualifications or prior employment history.

B ADDRESS

Proper

Applicant's current place of residence.

Improper

Inquiry into prior or current foreign addresses which could show national origin.

C BIRTHPLACE

Proper

Proof of citizenship or verification of authorization to work may be requested prior to hiring in accordance with the Immigration Reform and Control Act of 1986 (IRCA).

Improper

Inquiry into birthplace of applicant, or birthplace of applicant's parents, spouse or relatives. Prior to hiring, requiring a birth certificate, naturalization or baptismal records.

D RACE OR COLOR

- Proper** Never.
- Improper** Any inquiry which would indicate the race or color of the individual is prohibited.

E AGE

- Proper** Are you under the age of 18? If there is a question as to the applicant being of legal working age or there is a certain age that is reasonably necessary to perform in the job, proof may be requested.
- Improper** Requesting an individual's date of birth prior to employment is prohibited, unless relative to whether the individual is a minor.

F HANDICAP/DISABILITY

- Proper**
- a. An inquiry about ability to perform job-related tasks as long as the questions are not phrased in the terms of asking about a specific disability, symptoms or treatment of the disability.
 - b. Asking a job applicant to describe or demonstrate, with or without reasonable accommodation, his/her ability to perform job related tasks.
- Improper**
- a. Any inquiry whether an applicant is disabled or about the nature or severity of a disability.
 - b. Any requirement for an applicant to take a medical examination prior to an offer of employment.

G GENDER

- Proper** Where the gender of the applicant is reasonably necessary to perform the job in question or to the normal operations of the employer.
- Improper**
- a. Any other inquiry which would indicate gender or related conditions such as pregnancy or plans to have children.
 - b. Inquiry into the gender of applicant.

H PHOTO

- Proper** Photographs may be requested only after hiring and then only for a legitimate business purpose.
- Improper** Any request for a photograph prior to hiring is improper as it may disclose age, race, color, gender, religion or national origin.

I RELIGION OR CLOSELY HELD RELIGIOUS BELIEFS

- Proper** None.
- Improper** Inquiry into an applicant's religious denomination, religious affiliations, religious beliefs, church, parish, pastor or religious holidays observed prior to hiring is prohibited.



J CRIMINAL RECORDS

Proper Questions about past felony convictions if the nature of the criminal conviction would otherwise preclude the individual from being qualified for the position OR relate to a job performed by the position. See www.eeoc.gov/laws/guidance/arrest_conviction.cfm

Improper Inquiry into any arrest records.

K HEIGHT or WEIGHT

Proper Only if height and/or weight is reasonably necessary to perform the tasks of the job or to normal operation of the employer.

Improper Any inquiry into an applicant's height and/or weight except as noted above.

Minors are not require to have a work permit for employment purposes. However, all school districts are expected to cooperate with employers' requests for information regarding a prospective minor employee's age (*i.e., age certificate.*)



Utah's Employment Selection Procedures Act

As part of the Employment Selections Procedures Act (Utah Code Ann. §34-46-101 et sec.), an employer **may not** ask for the following information before making a job offer (exceptions listed below):

- ▶ Social Security number
- ▶ Date of birth or
- ▶ Driver's license number

An employer **may ask** for the information listed above before making an offer of employment only if:

1. The information is requested during the time of the employer's employment selection process when the employer:
 - a. obtains a criminal background check; or
 - b. obtains a credit history of an applicant for employment; or
 - c. obtains a driving record of a driver from the Drivers' License Division
2. The employer conducts a review of its internal record to determine whether:
 - a. the applicant was previously employed by the employer; or
 - b. the applicant previously applied for employment with the employer
3. The employer collects the information to provide it to a government entity for the purpose of determining eligibility for, or participating in, a government service, benefit, or program that requires that the information is collected on or before the day on which an offer of employment is made.

The applicant must consent to releasing the information before the employer may collect it. The employer must then actually use the information as part of its application.



Utah Labor Commission

Utah Antidiscrimination and Labor Division

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