

Lawful and Unlawful Interview Questions

Job applicants may be asked questions related to their performance in the position they are seeking, as long as the questions do not indicate possible discriminatory hiring practices under Federal and New York State laws. These Guidelines summarize common areas and/or questions that could be interpreted as discriminatory. This document does not constitute legal advice or legal opinions; it is not a substitute for legal advice from an authorized attorney in your jurisdiction. For additional information see the US Equal Employment Opportunity Commission (www.eeoc.gov/) and the NYS Division of Human Rights (www.nysdhr.com/employment.html).

| Subject | Not Permitted | Permitted |
|---|---|--|
| Age | 1. Any questions that would directly or indirectly indicate age, e.g. birth date, dates of attendance or completion of school. | 1. Asking whether applicant is age 18 or older 2. If applicant can provide proof of legal age 3. If applicant is under 18, requirement to submit a work permit after employment 4. Whether or not applicant meets minimum/maximum age requirements |
| Arrests, Convictions, Criminal Record (other than for traffic violations) | 1. If applicant has been arrested or has an arrest record (arrests are not the same as convictions) 2. Questions about convictions that have been sealed, expunged or statutorily eradicated | 1. Questions about convictions for acts of dishonesty or breach of trust if applicable to job (see FDIC requirements) |
| Birthplace, Citizenship | 1. Birthplace of applicant, applicant's parents, spouse, or other relatives 2. Naturalization, first papers, or alien card prior to a job offer. | 1. As a condition of employment, applicant can be asked to submit verification of legal right to work in the U.S., e.g. proof of citizenship, appropriate visa, alien |

registration number.

3. Whether applicant or other members of applicant's family are U.S. citizens
 4. Any inquiry into citizenship that would divulge applicant's lineage, descent, etc.
2. In NYS, it is legal to ask if applicant is a US citizen, or if not a citizen, if applicant has the legal right to remain permanently or intends to remain permanently in the US

Credit Report,
Financial Status

1. Questions about credit standing or financial status, bankruptcies, garnishments, etc.
2. Any report that would indicate information that is otherwise unlawful to seek, e.g., marital status, age, residency, etc.

1. As a condition of employment for certain jobs, a report may be requested for employment purposes only and in accordance with the Fair Credit Reporting Act

Driver's License

1. Requirement that applicant produce license **prior** to offer of employment

1. Whether applicant possesses a valid NYS driver's license if required for the position

Education

1. Questions regarding national, racial, or religious affiliation of schools attended

1. Transcripts, if required of all applicants for similar work
2. Questions related to academic, vocational or professional education of applicant, relevant to the position, e.g. names of schools attended, degrees/diplomas received, courses of study, and in this case only, graduation dates

Friends, Family,

1. Any questions, with

1. Names of relatives al-

| | | |
|--|--|--|
| Relatives | <p>few exceptions</p> <ol style="list-style-type: none"> 2. Questions about spouse's employment, salary, etc. 3. Number and ages of dependent children 4. All questions related to pregnancy or family planning 5. All questions regarding child care arrangements | <p>ready employed by the company or a competitor (explain conflict of interest rules and ask if these affect applicant)</p> <ol style="list-style-type: none"> 2. Name and address of parent or guardian if applicant is a minor |
| Gender | <ol style="list-style-type: none"> 1. Any questions regarding gender of the applicant unless based on bona fide occupational qualification (e.g., a mens locker room attendant) 2. Questions about applicant's view on gender rights | <ol style="list-style-type: none"> 1. None |
| Genetic Predisposition, Carrier Status (NYS) | <ol style="list-style-type: none"> 1. Any questions regarding genetic predisposition to a disease, including health status of parents or other family members | <ol style="list-style-type: none"> 1. None |
| Handicap, Disability, Health | <ol style="list-style-type: none"> 1. Any general questions that would divulge handicap, disabilities, physical defects, on-the-job injuries, or health conditions not specifically related to ability to perform job 2. Any regarding general medical condition, state of health, or illnesses 3. Questions regarding receipt of Worker's Compensation | <ol style="list-style-type: none"> 1. Specific questions related to performance of job or tasks, or any special accommodations needed to perform the job 2. May inquire how applicant would perform tasks with or without reasonable accommodations if they have an obvious disability 3. Number of days missed from work or school in the past year (although not recommended) 4. Statement that job offer may be made contingent on passing a job-related physical examination |

| | | |
|---------------------------|---|---|
| Height, Weight | <ol style="list-style-type: none"> 1. Any question, unless based on a bona fide occupational qualification | <ol style="list-style-type: none"> 1. Specific questions about the ability to perform a certain job, based on bona fide occupational qualifications |
| In case of Emergency | <ol style="list-style-type: none"> 1. Names of relatives to be notified | <ol style="list-style-type: none"> 1. Names of persons to be notified |
| Marital Status | <ol style="list-style-type: none"> 1. Maiden name (see “Name”) 2. Whether applicant is married, single, divorced, widowed, separated, engaged, etc. 3. If over 18, names of relatives, spouse, parents, children, or with whom they reside 4. Questions about spouse’s employment, salary, etc. | <ol style="list-style-type: none"> 1. Whether applicant can meet specified work schedules or has activities or commitments that may conflict with attendance requirements 2. Explain conflict of interest rules regarding spouses or family members and ask if affect applicant |
| Military | <ol style="list-style-type: none"> 1. Dates of service, type of discharge, discharge papers, or disciplinary record 2. Service in a foreign military | <ol style="list-style-type: none"> 1. Experience/education in military related to the specific job (note that veterans are a protected class in some states) |
| Name | <ol style="list-style-type: none"> 1. Questions regarding names changed by marriage (e.g., maiden name), divorce, court order, etc. 2. Requirements of prefix Mr, Miss, Ms., Mrs 3. Any questions which would indicate marital status, lineage, ancestry, national origin, or descent | <ol style="list-style-type: none"> 1. First, middle, last name 2. Other names or nicknames used if necessary to check previous work experience or education 3. Whether applicant has worked for the company or a competitor under any other name, and if so, what name |
| National Origin, Ancestry | <ol style="list-style-type: none"> 1. All questions related to nationality, lineage, ancestry, national origin, | <ol style="list-style-type: none"> 1. Questions about fluency in foreign only if based on a job |

| | | |
|---------------|---|--|
| | <p>descent, or parentage of applicant, applicant's parents, or spouse</p> <p>2. Any questions regarding native language or how applicant acquired fluency in a foreign language</p> | <p>requirement</p> |
| Organizations | <p>1. Any questions regarding membership in organizations, clubs, societies, lodges, unions, political parties, etc.</p> | <p>1. Questions regarding professional organizations are permitted unless nature of organization indicates race, religious creed, color, ancestry, or national origin, disability, gender, age, or marital status of its members</p> <p>2. In NYS, if organization indicates sexual preference of its members</p> <p>3. Questions must be related only to applicant's qualifications for job</p> |
| Photographs | <p>1. Any requests for photographs prior to hiring</p> | <p>1. May be requested after hiring for identification purposes</p> |
| Pregnancy | <p>1. Any questions regarding pregnancy or family planning</p> <p>2. Any questions regarding child care arrangements</p> | <p>1. Questions regarding the length of time applicant expects to stay on a job or applicant's anticipated absences-must be asked of all employees, male and female</p> |

| | | |
|--------------------|---|--|
| Race, Color | <ol style="list-style-type: none"> 1. Any that would directly or indirectly indicate race, e.g. color of eyes, skin, hair | <ol style="list-style-type: none"> 1. None |
| References | <ol style="list-style-type: none"> 1. Any that would indicate applicant's race, color, or religious creed, national origin, ancestry, physical or mental disability, medical condition, marital status, age or sex 2. In NYS, any that would indicate sexual orientation | <ol style="list-style-type: none"> 1. Questions regarding previous work experience 2. Foreign countries visited 3. Names and addresses of persons willing to provide character or professional references for applicant |
| Religion | <ol style="list-style-type: none"> 1. Any questions that directly or indirectly indicate a religion unless based on a bona fide occupational qualification 2. Questions about religious holidays observed | <ol style="list-style-type: none"> 1. Statement by employer of expected work days, hours, or shifts |
| Residence, Address | <ol style="list-style-type: none"> 1. Question that would indicate whether applicant rents or owns residence 2. Any questions that would directly or indirectly indicate national origin, e.g. foreign addresses 3. Names and relationships of persons with whom applicant resides (see "<u>Friends, Family, Relatives</u>") | <ol style="list-style-type: none"> 1. Place of residence 2. Inquiries about address, only as needed to contact the applicant (PO boxes are acceptable) 3. Length of residence in current city or state |
| Sexual orientation | <ol style="list-style-type: none"> 1. Any question that would directly or indirectly indicate sexual orientation | <ol style="list-style-type: none"> 1. None |

