

RONALD V. MCGUCKIN AND ASSOCIATES

Post Office Box 2126

Bristol, Pennsylvania 19007

215-785-3400 215-785-3401 (FAX)

Childproviderlaw.com (website)

PRE-EMPLOYMENT INQUIRIES:

Topics and Questions to Avoid in an Interview or on Employment Application

The EEOC and HR Commissions at the state level have published many opinions on what may and may not be asked of candidates for employment on a job application and/or in an interview. The overriding guideline is, all questions must be related to the candidate's ability to perform and qualifications to hold the position for which they are applying and/or interviewing. The employer must show business necessity when asking questions which tend to exclude or discriminate against a protected group. Included below are various questions and topics that should not be asked because they are directly related to a protected class and others that should be avoided unless there is an absolute business necessity.

DATE OF BIRTH: This question is directly related to Age Discrimination and should not be asked. If there is a requirement for a person to be above 18 to work, the question: Are you over 18 years of age and can you provide proof of your age if required?

RELATIVE/FRIENDS WORKING FOR THE EMPLOYER: It is not recommended that this question be asked because it is not related to the person's ability to perform the functions of the job. This question tends to discriminate against minority groups if the question is asked to support the employer preference to hire friends or relatives of current employees or if the question would limit employment opportunities for women. This question may be necessary when determining Conflicts of Interest where a BOD or Policy Council are concerned and may be asked only when this concern exists.

MAIDEN NAME: Again, this is not related to the person's ability to perform the functions of the job, and may be used to surmise information related to other protected classes such as, religion, national origin. This is also an inquiry into Marital Status which is protected in various locations. If the employer has the need to verify previous employment history the question may be asked: "If any of your previous employment experience or education was performed under a different name, please provide those alternate names here."

MARTIAL STATUS: This information is illegal if you are in a location which protects Martial Status. If your state or local government does not protect Martial Status, this question is still not acceptable because it is generally asked only of women and has little or nothing to do with the ability to perform the functions of the job.

MR./MRS./MISS/MS.: This is another way of inferring Martial Status and is irrelevant.

DEPENDENTS: May be asked for payroll with holdings after the person is hired, otherwise this question is irrelevant because it has nothing to do with the person's ability to perform the functions of the job.

CHILD CARE ARRANGEMENTS: This is a major issue in child care because many of us offer free or reduced tuition to our employee's children. The employer must structure the policy of offering free or reduced child care so that this is not addressed until after the candidate is hired. This question tends to discriminate against women, since they are generally perceived to be the primary caregiver and is also related to Marital Status discrimination.

COLOR OF EYES AND HAIR: These are not related to the person's ability to perform the functions of the job and may be used to surmise information related to other protected classes such as, race, religion, and/or national origin.

HEIGHT AND WEIGHT: Unless tied directly to the person's ability to perform the functions of the job this question would be illegal because it tends to discriminate against persons with disabilities.

AVAILABILITY TO WORK ON SATURDAY AND/OR SUNDAY: When Saturday or Sunday hours are required, the employer should indicate that religious accommodations will be attempted for qualified candidates with religious restrictions.

DATE OR LOCATION OF SCHOOL ATTENDANCE: Dates of school attendance have been used to surmise a person's age and location or name of schools attended may be used to surmise a person's religion, race, national origin which would be illegal. If the name and location of the college attended is needed to verify a degree attained then this information can be collected. Employers should be careful to use this information only for this purpose. If a High School education is required, the employer may not differentiate between a High School Diploma and a G.E.D.

PREVIOUS ADDRESS: This is not related to the person's ability to perform the functions of the job and may be used to surmise information related to other protected classes such as, race, religion, and/or national origin. If asked the employer must be able to show business necessity and that the information was not used in a discriminatory manner.

MILITARY SERVICE: Questions related to training received while in the military are permitted if the training is related to the functions of the job for which the candidate is applying. Questions related to the manner of discharge from the military should be avoided because they tend to discriminate against minorities, as a disproportionate number of minorities are given dishonorable, general or medical discharges, unless a business necessity can be documented.

CREDIT RECORD/CHARGE ACCOUNTS/HOME OWNERSHIP: Unless the position for which the candidate is applying involves handling company or client monies, this is not related to the person's ability to perform the functions of the job and tends to discriminate against minorities.

LANGUAGE PROFICIENCY: Fluency with English and/or other language must be directly related to the performance of functions of the job for which the candidate is applying. Employers may not require language proficiency greater than what the job functions necessitate.

ARREST OR CONVICTION RECORD: Unless related to business necessity, this not related to the person's ability to perform the functions of the job. In child care this is directly related to a business necessity as it is required by State Licensing Regulations, therefore this question may be asked.

LOWEST ACCEPTABLE SALARY: This is not related to the person's ability to perform the functions of the job and tends to discriminate against women, as they are often paid less than their male colleagues. It is appropriate to ask if the candidate would be willing to work for a pre-determined hourly rate or salary range, and that all candidates are asked the same question, with the same range.

LICENSES: Employers should only be asking for licenses related to the job for which the candidate is applying. Asking if the candidate has a driver's license should only be asked if the driver's license is a requirement of the job and can not be reasonably accommodated under the American's with Disabilities Act.

TRANSPORTATION TO WORK: Generally this is not related to the person's ability to perform the functions of the job and should only be asked when the mode of transportation is related to the functions of the job.

U.S. CITIZENSHIP AND RIGHT TO WORK IN U.S.: Employers are required to verify that all employees are eligible to work in the U.S. Employers should not ask candidates to state their national origin, but rather is they can provide the appropriate documentation required to verify they are eligible to be employed in the U.S. For information on acceptable documentation contact the INS)

HEALTH AND DISABILITY: The American's with Disabilities Act prohibits discrimination against qualified disabled persons on the basis of the disability. Inquiries into a person's fitness for duty and/or physical or mental abilities must be related to the functions of the job. Employers may ask: Can you perform the functions of this job with or without reasonable accommodations? The candidate should have a job description listing the functions of the job when answering this question. Specific questions related to specific illnesses, and/or disabilities are not permitted.