# Guide to Discriminatory Questions

One of the best ways to make sure that your employment and selection process is fair and free from discrimination is to develop written, job-related questions focusing on a person’s skills and abilities in relation to the position.

Questions about a candidate's race, sex, marital status, disability, etc. are unlawful and must not be included in the employment process.

The following table shows examples of lawful and unlawful questions to further help you in conducting pre-employment interviews in a non-discriminatory way.

| LAWFUL QUESTIONS | UNLAWFUL QUESTIONS |
| --- | --- |
| Age | **Age** |
| Can you provide proof of age for the purposes of legal requirements? (i.e. relevant to junior employees) | How old are you?  What is your date of birth?  How do you feel about working for a person younger/older than you? |
| Marital status or family responsibilities | **Marital status or family responsibilities** |
| Nothing.  Employers may ask if applicants have any commitments or responsibilities preventing them from meeting attendance requirements or if they anticipate lengthy work absences.  If this question is asked of one applicant then all applicants should be asked. | Do you have plans for having children/family?  What are your marriage plans?  What does your spouse do?  What happens if you or your spouse gets transferred or needs to relocate?  How would you feel working for a woman/man? |
| Residence | **Residence** |
| What is your present address?  Who should we contact in case of emergency? | Do you own or rent?  What are the names of the persons living with you? |
| Religion Employers may ask about the applicant’s willingness to work the required days and hours. | Religion What is your religion?  What church do you attend?  Do you hold any religious beliefs that would prevent you from working certain days of the week? |
| National origin | **National origin** |
| After making a conditional offer, an employer may inform the job applicant that s/he will have to produce documents to prove work eligibility.  If this question is asked of one applicant then all applicants should be asked. | Where were you born?  Where were your parents born?  Of what country are you a citizen? |
| Race or colour | **Race or colour** |
| Nothing | What is your race?  Do you feel that your race/colour will be a problem in you performing the job? |
| Disability | Disability |
| Are you able to perform these tasks with or without reasonable modifications? (provide a description of the specific job tasks or describe the functions)  If the applicant indicates that s/he can perform the tasks with one or more modifications, s/he may then be asked:  How would you perform the tasks?  What modifications are required?  If it is known that the person has a disability (for example they use a wheelchair or a guide dog, they are missing a limb or have volunteered information about a disability) that would appear to interfere with or prevent performance of an *essential function*, the applicant may be asked to describe or demonstrate how this function would be performed.  This question may be asked even if other applicants are not asked this question.  The interviewer may provide information on the position's regular hours, special attendance needs of the job and leave time policies and ask if the applicant can meet these requirements (provided that the requirements are applied to all employees in the job category). | Do you have any disabilities?  Do you have any handicaps?  Do you have any physical defects that preclude you from performing certain kind of work?  If yes, describe such defects and specific work limitations.  Is there any health-related reason you may not be able to perform the job for which you are applying?  Do you have any disabilities or impairments (or handicaps) which may affect your performance in the position for which you are applying?  If it is known the person has a disability:   * How severe is your disability? * What is the nature of your disability? * Does your disability prevent or limit your performance in the position for which you are applying? * What is the prognosis or expectation regarding the condition or disability? * Will you need or request leave for special treatment or special leave because of the disability? |
| Medical history | **Medical history** |
| Nothing.  Inquiries about previous attendance records may be made, but the question should not refer to illness or disability.  If asked then all applicants should be asked this question to avoid the appearance of discrimination against an individual with an apparent disability.  After making a conditional job offer, questions about prescribed medication that could interfere with performance may be asked to all applicants in the job category.  Are you currently using drugs illegally?  After making a conditional job offer, an employer may ask about a person's workers' compensation  **Medical history (cont.)**  history in a medical inquiry or examination that is required of all applicants in the same job category. | Have you ever had or been treated for any of the following conditions or diseases? (Followed by a checklist for various conditions and diseases)  Please list any conditions or diseases for which you have been treated in the past three years.  Have you ever been hospitalised? If so, for what conditions?  Have you ever been treated by a psychiatrist or psychologist? If so, for what conditions?  Have you ever been treated for any mental conditions?  Have you had a major illness in the last \_\_\_\_\_ years?  How many days were you absent from work because of illness last year?  **Medical history (cont.)**  Is your poor attendance record due to illness, accident, or disability?  Are you taking prescribed drugs?  Have you ever been treated for drug addiction or alcoholism?  Have you ever filed for worker's compensation benefits? |
| Disability/health of family members/dependents | **Disability/health of family members/dependents** |
| Nothing.  Discrimination against an individual, whether or not disabled, because of a known association with an individual with a disability is prohibited. | Do you have any family members or relatives that are disabled?  Are you caring for a disabled dependent or family member? |
| Arrests and criminal convictions | **Arrests and criminal convictions** |
| Have you ever been convicted of a crime?  Employers should consider carefully whether they need to ask this question. Is it relevant to the essential requirements of the job?  Be aware of state spent convictions laws. | Have you ever been arrested?  Have you ever been charged with a crime? |
| Membership of organisations | **Membership of organisations** |
| What professional or career organisations are you active in that are related to the responsibilities of this position? | What organisations are you a member of? |