

Interview Questions: Lawful and Unlawful Inquiries

The New York State Human Rights Law prohibits discrimination in employment because of age, race, creed, color, national origin, sex, disability, marital status or criminal record gender, gender expression. Courts have the view as discriminating questions attempting to garner information on these topics which do not directly pertain to bona fide occupational qualifications (BFOQs). It is unlawful to ask questions whose answers will indirectly reveal information as to race, creed, color, national origin, sex, marital status, disability, age, or arrest record gender, gender expression in cases where such information may not be asked directly.

Subject	Lawful Inquiries	Unlawful Inquiries
Name	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Whether applicant has used another name (for the purpose of checking the applicant’s past work record). 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Inquiries about the name which would indicate applicant’s lineage, ancestry, national origin, descent, or marital status (i.e., maiden name) <input checked="" type="checkbox"/> Inquiry into previous name of applicant (if not for the purpose of checking the applicant’s work record). <input checked="" type="checkbox"/> Mr., Mrs., Miss, or Ms.
Birthplace or Citizenship	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> “Can you, after employment, submit verification of your legal right to work in the United States?” <input checked="" type="checkbox"/> Or a statement that such proof may be required after being hired. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Whether applicant, parents, or spouse are naturalized or native-born U.S. citizens. <input checked="" type="checkbox"/> Birthplace of applicant. <input checked="" type="checkbox"/> Birthplace of applicant’s parents, spouse, or other relatives. <input checked="" type="checkbox"/> Requirement that applicant submit proof of birth document prior to hiring. <input checked="" type="checkbox"/> “Of what country are you a citizen?” <input checked="" type="checkbox"/> Date when applicant, parents, or spouse acquired U.S. citizenship. <input checked="" type="checkbox"/> Requirement that applicant produce naturalization papers.

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Address or Duration of Residence	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Applicant's address. <input checked="" type="checkbox"/> Inquiry into place and length of current and previous address 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Specific inquiry into foreign addresses which would indicate national origin.
Age	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Inquiry whether or not the applicant meets the minimum age requirement set by law. <input checked="" type="checkbox"/> If a minor, require proof of age in the form of a work permit or a certificate of age. <input checked="" type="checkbox"/> Only if required as a bona fide occupational qualification (BFOQ). <input checked="" type="checkbox"/> After being hired, require proof of age (if age is a legal requirement) or if inquiry serves legitimate record-keeping purpose. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Requirement that applicant state age or date of birth. <input checked="" type="checkbox"/> Requirement that applicant produce proof of age in the form of a birth certificate or baptismal record. <input checked="" type="checkbox"/> Phrases such as: "young," "college student," "girl," "boy," "recent college graduate," "retired person," or "supplement your pension." <input checked="" type="checkbox"/> Dates of attendance/ completion of elementary/high school/college.
Religion	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> An applicant may be advised concerning normal hours and days of work. <input checked="" type="checkbox"/> "Apart from absences for religious observances, will you be available for work at the following times?" <input checked="" type="checkbox"/> After a position is offered, inquiry into the need for reasonable religious accommodation. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Applicant's religious denomination or affiliation, church, parish, pastor, or religious holidays observed. <input checked="" type="checkbox"/> Applicant is told, "This is a Catholic, Protestant, Jewish, Atheist, etc. organization." <input checked="" type="checkbox"/> "Do you attend religious services or a house of worship?" <input checked="" type="checkbox"/> Any inquiry to indicate or identify religious customs or holidays observed. <input checked="" type="checkbox"/> Applicant is told that employees are required to work on religious holidays which are observed by members of their specific faith. (Unless employer is exempt under HRS 378-3(5)).
Sexual Orientation		<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Whether an applicant has a preference for heterosexual, homosexual, or bisexual partners/ relationship.

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References	<input checked="" type="checkbox"/> “By whom were you referred for a position here?” Names of persons willing to provide professional and/or character references for applicant.	<input checked="" type="checkbox"/> Require the submission of a religious reference. <input checked="" type="checkbox"/> Questions to references which elicit information specifying applicant’s race, color, religion, ancestry, age, marital status, national origin, or sexual orientation.
Sex	<input checked="" type="checkbox"/> Only if required as a bona fide occupational qualification (BFOQ)	<input checked="" type="checkbox"/> Sex of applicant. <input checked="" type="checkbox"/> “Are you expecting?” “Are you pregnant?” “Use of birth control?” <input checked="" type="checkbox"/> “What are your plans for having a family?” <input checked="" type="checkbox"/> Applicant’s weight or height (unless it is a BFOQ). <input checked="" type="checkbox"/> Mr., Mrs., Miss, or Ms.
Disability Status	<input checked="" type="checkbox"/> “Are you able to perform the essential functions of this job with or without a reasonable accommodation?” <input checked="" type="checkbox"/> After the job offer is made, require a physical examination if that is a requirement for all employees.	<input checked="" type="checkbox"/> Whether applicant has any physical or mental disability. <input checked="" type="checkbox"/> “Have you ever collected workers’ compensation or temporary disability insurance for a previous illness or injury?” <input checked="" type="checkbox"/> Questions regarding applicant’s general state of health or medical condition.
Marital Status	<input checked="" type="checkbox"/> Only if required as a bona fide occupational qualification (BFOQ).	<input checked="" type="checkbox"/> Whether single, married, divorce, widowed, separated, etc. <input checked="" type="checkbox"/> Mr., Mrs., Miss, or Ms. <input checked="" type="checkbox"/> Names and ages of spouse and children; provisions for child care. Spouse’s place of employment. <input checked="" type="checkbox"/> “With whom do you reside?” “Do you live with your parents?”
Miscellaneous	<input checked="" type="checkbox"/> Notice to applicants that any misstatements or omission of material facts in the application may be cause for dismissal.	<input checked="" type="checkbox"/> Require an applicant to submit a resume containing answers to unlawful inquiries.