

PRE-EMPLOYMENT INQUIRY GUIDE

Subject	Lawful Pre-Employment Inquires	Unlawful Pre-Employment Inquiries
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ADDRESS Applicant's current & prior addresses

AGE Are you 18 or older? Applicant's age or date of birth

ARRESTS Have you ever been convicted of a crime?
Have you ever been arrested for a felony? Misdemeanor arrests which did not result in conviction ^{iv} unless applicant is seeking a position with a law enforcement agency

BIRTHPLACE Birthplace of applicant & applicant's relatives; birth certificate, naturalization & baptismal records, unless required by federal law ⁱ

CITIZENSHIP Are you legally authorized to work in the United States?
These questions are unlawful **unless** asked as part of the Federal I-9 processⁱⁱ

1. Of what country are you a citizen?
2. Are you a naturalized or a native born citizen?
3. Are your parents or spouse naturalized or native born citizens?

DISABILITY Ability to perform the essential functions of the job with or without reasonable accommodationⁱⁱⁱ
Physical or mental conditions which are not directly related to the requirements of a specific job

EDUCATION Applicant's academic, vocational or professional education & schools attended

GENETIC TESTING Applicant's genetic information; requiring applicant to undergo genetic testing^{iv}

HEIGHT OR WEIGHT Applicant's height or weight^{iv}

MARITAL STATUS Marital status or children; titles such as Mr., Mrs. or Ms.^{iv}

NAME Applicant's name; other names used by applicant
Applicant's maiden name^{iv}

NATIONAL ORIGIN Languages spoken & written by applicant
Applicant's lineage, ancestry, national origin or nationality (See note ⁱ below)

NOTICE IN CASE OF EMERGENCY Name, address & telephone number of person to be notified in case of accident or emergency
relative to be notified in case of accident or emergency

ORGANIZATIONS The organizations & clubs to which applicant belongs except as noted in the column to the right
Names of organizations to which an applicant belongs **IF** information would reveal the race, color, religion, national origin or ancestry of the members of the organization

PHOTOGRAPH Applicant's photograph **prior to hire**

RACE or COLOR Applicant's race, national origin or color

RELIGION Religious denomination or affiliation; religious holidays observed

SEX Applicant's gender; ability or desire to have children; child care arrangements

ⁱ Documents required by the Immigration Reform & Control Act (IRCA), 8 USCA §§ 1324a et seq., may only be collected after a conditional offer of employment has been made.

ⁱⁱ The IRCA mandates that employers verify citizenship and work authorization, but only after a conditional offer of employment.

ⁱⁱⁱ This question is only lawful if applicant has been informed of the essential job functions.

^{iv} Unlawful under Michigan law only / not covered by federal laws

Introduction

In Michigan, the Elliott-Larsen Civil Rights Act, (ELCRA) MCL §37.2206, and the Persons With Disabilities Civil Rights Act, (PWDCRA) MCL §37.1206 provide significant guidance to employers in the recruitment and selection process. In addition, this guide also includes the requirements of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e) et seq.; Title I of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.; and the Immigration Reform and Control Act of 1986, 8 U.S.C. §§ 1324a et seq.

Recruitment

The referenced federal and state laws make it unlawful for an employer to print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign which indicates a preference, limitation and/or specification, based on religion, race, color, national origin, age, sex, height, weight, marital status, or disability. Employers are not prohibited from including statements that confirm equal employment opportunity.

Pre-Employment Inquiries

Except as permitted by the Michigan Civil Rights Commission (MCRC) Rules or by federal law, these statutes make it unlawful for an employer or employment agency to ask questions, either orally or in writing, that elicit information, attempt to elicit information, or express a preference on the basis of race, color, religion, national origin, age, sex, height, weight, marital status, or disability of a prospective employee. (See Data Collection)

These laws are not intended to interfere with an employer's right to hire qualified persons; rather,

they prevent characteristics which are not job-related (such as race, sex, marital status, et cetera) from influencing the selection process.

Job Descriptions

An effective way to ensure sound selection procedures and avoid unlawful discrimination is for employers to carefully develop written job descriptions which outline the required skills and abilities for each position.

Focusing on the individual's skills and specific job requirements ensures that employers select the most qualified candidate and avoid hiring by stereotypes. For example, it should not be assumed that a woman with small children cannot work odd hours.

Requests for information that are unlawful pre-employment may be lawful once the applicant is hired, such as information needed for payroll and benefit purposes (marital status, number of dependents, et cetera). However, the information should not be requested on the employment application or during the interview.

Arrest Records

Under Michigan law, employers may not ask a job applicant about a misdemeanor arrest which did not result in a conviction. Employers may ask about felony or misdemeanor convictions or felony arrests which did not result in a conviction. Some employers, such as school districts and adult foster care homes, are required by law to conduct criminal history background checks on potential hires to certain positions. However, unless required by law, it is a violation of Title VII of the U.S. Civil Rights Act for employers to have a blanket policy of not hiring or accepting applications from anyone with a criminal conviction.

Data Collection

Under limited circumstances, employers may be required to gather information that might otherwise be unlawful under the ELCRA and the PWDCRA. Documentation required by the Immigration Reform and Control Act, 8 USCA §§ 1324a *et seq.*, and criminal history background checks required for applicants in certain occupations all require the gathering of otherwise prohibited data. Employers must exercise care to gather only the data required by the controlling statute or regulation, restrict access to this information, and require collection only after the employer has made a conditional offer of employment.

Bona Fide Occupational Qualification

Employers may request an exemption from Michigan civil rights laws if they can demonstrate that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification (BFOQ) that is **necessary** to the normal operation of the business. Employers can ask the MCRC to grant a BFOQ before posting a position. If a BFOQ is not requested and the employer is later charged with discrimination, the employer can raise BFOQ business necessity as a defense to the charge.

For example a juvenile detention facility concerned with the privacy and safety of the juveniles may request hiring one person per shift of the same sex as the residents of the facility.

EEO/Workforce Diversity Plans

Equal Employment Opportunity (EEO) and Workforce diversity plans are permitted to require the aggregate collection of data regarding the race, religion, color, national origin, sex, or disability of applicants and employees, so long as the data is separated from any hiring or promotional processes.

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*For questions or to file a complaint,
contact:*



1-800-482-3604

TTY: 1-877-878-8464

INTERNET: www.michigan.gov/mdcr

**Equal Employment
Opportunity Commission
(EEOC)**

1-800-669-4000

<http://www.eeoc.gov>
