

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 hiring process. In addition, this guide includes the requirements of Title VII of the Civil Rights Act of 1964, 42 USC §§ 2000(e) et seq.; Title I of the Americans with Disabilities Act, 42 USC §§12101 et seq.; the Age Discrimination in Employment Act, 29 USC §§ 621 et seq.; and the Immigration Reform and Control Act of 1986, 8 USC §§ 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 affirm 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, orally or in writing, that elicit information, try 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. 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, etc.) from influencing the selection process.

Job Description

One way to ensure sound hiring procedures and avoid unlawful discrimination is for employers to write job descriptions outlining the required skills and abilities for each position. Focusing on the individual's skills and specific job requirements helps employers select the most qualified candidate.

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

Arrest Records

Under Michigan law, employers **may not** ask an applicant about a misdemeanor arrest that 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 are required to conduct criminal history background checks on potential hires. However, unless required by law, it is a violation of Title VII of the US 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 gathering otherwise prohibited data. Employers must use care to gather **ONLY** the information 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 can request an exemption from Michigan civil rights law if they can show that religion, national origin, age, height, weight or sex is a bona fide occupational qualification (BFOQ) that is **necessary** to normal business operations. Employers can ask the MCRC for 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 of the youth may request hiring one person per shift of the same sex as the facility residents.

EEO/Workforce Diversity Plans

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

To file a complaint, or to ask questions contact 1/800.482.3604 or TTY 1/877.878.8464. You can also file online:

www.michigan.gov/mdcr



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Pre-Employment Inquiry Guide



What can employers ask before hiring someone in Michigan?

What is illegal?



Pre-Employment Inquiry Guide

Subject	Lawful Pre-Employment Inquiries	Unlawful Pre-Employment Inquiries
Address	Applicant's current and 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 ⁱ unless applicant is seeking a position with a law enforcement agency
Birthplace		Birthplace of applicant and applicant's relatives; birth certificate, naturalization and baptismal records, unless required by federal law ⁱⁱ
Citizenship	Are you legally authorized to work in the United States?	These questions are unlawful unless asked as part of the Federal I-9 process ⁱⁱⁱ a.) Of what country are you a citizen? b.) Are you a naturalized or native-born citizen? c.) Are your parents or spouse naturalized or native-born citizens?
Disability	Ability to perform the essential functions of the job with or without accommodation ^{iv}	Physical or mental conditions which are not directly related to the requirements of a specific job
Education	Applicant's academic, vocational or professional education and schools attended	
Genetic Testing		Applicant's genetic information; requiring applicant to undergo genetic testing ⁱ
Height or Weight		Applicant's height or weight ⁱ
Marital Status		Marital status or children; titles such as Mr., Mrs., or Ms. ⁱ
Name	Applicant's name; other names used by applicant	Applicant's maiden name ⁱ
National Origin	Languages spoken and written by applicant	Applicant's lineage, ancestry, national origin or nationality (see note ii below)
Notice in Case of Emergency	Name, address and phone number of person to be notified in case of accident or emergency	Name, address and phone number of relative to be notified in case of accident or emergency
Organizations	The organizations and 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 Unlawful under Michigan law only, not covered by federal law

ⁱⁱ Documents required by the Immigration Reform and Control Act (IRCA), 8 USCA §§ 1234a et seq., may only be collected after a conditional offer of employment has been made

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

^{iv} This question is only lawful if applicant has been informed of the essential job functions