

## Pre-Employment Inquiry Guide - Unacceptable Questions\*

*\*This document is a guide only and does not represent an exhaustive list of unacceptable questions. All applicable federal and state statutes, laws, and regulations are applicable and this document does not supersede any of the aforementioned binding authorities. If you have concerns regarding the associated legalities, including state policy compliance, please consult with your agency's legal counsel before proceeding. Please note that this document has been adapted, with permission, based upon a similar University of North Carolina, General Administration, guide.*

Category <sup>1</sup>	What <b>NOT</b> to Ask
Age-based ( <i>ADEA</i> )	<ul style="list-style-type: none"> <li>• How old are you?</li> <li>• When do you plan to retire?</li> </ul>
Religious Inquiries ( <i>Title VII</i> )	<ul style="list-style-type: none"> <li>• What religion are you?</li> <li>• Do you observe any religious holidays?</li> </ul>
National Origin ( <i>Title VII, IRCA</i> )	<ul style="list-style-type: none"> <li>• Are you a native Spanish speaker?</li> <li>• How did you learn to read, write or speak a foreign language?</li> <li>• What country is your family from?</li> <li>• How long have you been in the United States?</li> <li>• Are you a US citizen?</li> </ul>
Race/Color Inquiries ( <i>Title VII</i> )	<ul style="list-style-type: none"> <li>• Any question related to complexion or color of skin.</li> <li>• What is your race?</li> <li>• Do you belong to a minority group?</li> <li>• What is the race or nationality of your spouse?</li> </ul>
Sex Discrimination ( <i>Title VII, PDA</i> )	<ul style="list-style-type: none"> <li>• What do you think about working in an all-male department?</li> <li>• What are your child care arrangements?</li> <li>• How many children do you have?</li> <li>• Are you known as Mr., Ms., Miss, or Mrs.?</li> <li>• Are you married, engaged, or do you have a partner?</li> </ul>
Disability-based Inquiries ( <i>ADA</i> )	<ul style="list-style-type: none"> <li>• Do you have a disability?</li> <li>• What is the nature or severity of your disability?</li> <li>• How many days were you sick during your last job?</li> <li>• Will you need time off for medical treatments or for other reasons associated with your disability?</li> <li>• Have you ever filed a worker's compensation claim or suffered a disabling injury in a previous job?</li> </ul>
Caregivers ( <i>ADA, EPA, PDA, Title VII, FMLA, ERISA</i> )	<ul style="list-style-type: none"> <li>• What are your child care arrangements?</li> </ul>

<sup>1</sup> See References at end of this document for links to these EEO and other regulations and policies.

Genetic Information ( <i>GINA</i> )	<ul style="list-style-type: none"> <li>• Any question related to being genetically tested for a predisposition to an illness or diseases.</li> <li>• What is your family medical history?</li> <li>• Are there any diseases in your family's medical history that might require you to miss work?</li> </ul>
Military/Veteran Record ( <i>USERRA, ADA</i> )	<ul style="list-style-type: none"> <li>• What type of discharge did you receive?</li> <li>• Have you ever been diagnosed with PTSD?</li> </ul>
Job Commitment/ Work Schedule ( <i>Title VII – Racial, Sex, Religion; PDA, ADA, FMLA, ERISA</i> )	<ul style="list-style-type: none"> <li>• Are you available to work on weekends (<i>not appropriate unless indicated on posting as a business necessity</i>)?</li> <li>• Does your religion or family situation restrict you from working on weekends?</li> <li>• Are you pregnant? When are you expecting?</li> <li>• Do you own a car? (<i>unless owning a car is required for the job</i>)</li> </ul>
Education ( <i>ADEA; Title VII – Sex, Race, National Origin, Religion</i> )	<ul style="list-style-type: none"> <li>• Questions about education that are not job-related.</li> </ul>
Affiliation/Organization Membership ( <i>Title VII – Racial, Sex, Religion, National Origin</i> )	<ul style="list-style-type: none"> <li>• What clubs or organizations do you belong to?</li> <li>• “[...]inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided” <a href="https://www.eeoc.gov/laws/practices/">https://www.eeoc.gov/laws/practices/</a></li> <li>• Do you belong to an organization that restricts or prohibits you from working on particular days, or limits or restricts compliance with departmental standards of appearance and/or grooming? (<i>Information can be misused as a basis for discrimination on the bases of religion, national origin and, potentially, race</i>). <a href="https://www.gpo.gov/fdsys/pkg/FR-2003-12-16/html/03-30925.htm">https://www.gpo.gov/fdsys/pkg/FR-2003-12-16/html/03-30925.htm</a></li> </ul>
Physical Characteristics ( <i>Title VII – Race, Sex, National Origin</i> )	<ul style="list-style-type: none"> <li>• To ask questions about height, weight, impairment, or other physical data not related to the job.</li> </ul>
Background Check ( <i>Title VII – Race, Sex, National Origin</i> )	<ul style="list-style-type: none"> <li>• Do you own your own home?</li> <li>• Have you ever declared bankruptcy?</li> <li>• What clubs, societies and lodges do you belong to?</li> <li>• If related to job duties, background check information about convictions can be used: Have you ever been convicted of embezzlement? (<i>Best practice – let HR confirm during background check process on finalists</i>)</li> </ul>
Alcohol or Drug Use ( <i>ADA</i> )	<ul style="list-style-type: none"> <li>• Questions asking how much alcohol an applicant drinks may lead to prohibited information about a disability, such as alcoholism.</li> <li>• How much do you drink socially?</li> <li>• How often did you use illegal drugs in the past?</li> <li>• Have you ever been addicted to drugs?</li> </ul>

## Resources

### Age (Age Discrimination in Employment Act of 1967 (ADEA))

<https://www.eeoc.gov/laws/types/age.cfm>)

### Religion (Title VII)

- Title VII Religion Discrimination <https://www.eeoc.gov/laws/types/religion.cfm>;  
<https://www.eeoc.gov/policy/docs/religion.html>
- Title VII Religious Inquiries [https://www.eeoc.gov/laws/practices/inquiries\\_religious.cfm](https://www.eeoc.gov/laws/practices/inquiries_religious.cfm);  
[https://www.eeoc.gov/laws/types/fs-relig\\_ethnic.cfm](https://www.eeoc.gov/laws/types/fs-relig_ethnic.cfm)

### National Origin (Title VII; Immigration Reform and Control Act of 1986 [IRCA])

- Title VII National Origin <https://www.eeoc.gov/laws/types/nationalorigin.cfm>
- Immigration Reform and Control Act of 1986 (IRCA) <https://www.justice.gov/sites/default/files/eoir/legacy/2009/03/04/IRCA.pdf>

### Race/Color (Title VII)

- Race/Color Discrimination [https://www.eeoc.gov/laws/types/race\\_color.cfm](https://www.eeoc.gov/laws/types/race_color.cfm)
- Title VII Pre-employment Inquiries - [https://www.eeoc.gov/eeoc/foia/letters/2007/titlevii\\_preemployment\\_inquiries.html](https://www.eeoc.gov/eeoc/foia/letters/2007/titlevii_preemployment_inquiries.html)

### Sex (Title VII, PDA)

- Title VII Sex Discrimination - <https://www.eeoc.gov/laws/types/sex.cfm>
- Title VII Marital Status Inquiries [https://www.eeoc.gov/laws/practices/inquiries\\_marital\\_status.cfm](https://www.eeoc.gov/laws/practices/inquiries_marital_status.cfm)
- Pregnancy Discrimination Act (PDA) of 1978 <https://www.eeoc.gov/laws/types/pregnancy.cfm>; <https://www.eeoc.gov/laws/statutes/pregnancy.cfm>

### Americans with Disabilities Act (ADA) [https://www.eeoc.gov/eeoc/publications/ada\\_veterans.cfm](https://www.eeoc.gov/eeoc/publications/ada_veterans.cfm)

### Genetic Information Nondiscrimination Act of 2008 (GINA) <https://www.eeoc.gov/laws/types/genetic.cfm>

### Veteran Status/Military Status (USERRA, ADA)

- Uniformed Services Employment and Reemployment Rights Act (USERRA), Title I of ADA [https://www.eeoc.gov/eeoc/publications/ada\\_veterans.cfm](https://www.eeoc.gov/eeoc/publications/ada_veterans.cfm)
- Pre-employment Disability-Related Questions (ADA) - <https://www.eeoc.gov/policy/docs/medfin5.pdf>
- Office of Federal Contract Compliance Programs (OFCCP) [https://www.dol.gov/ofccp/regs/compliance/faqs/Employer-Employee\\_Relationship.html](https://www.dol.gov/ofccp/regs/compliance/faqs/Employer-Employee_Relationship.html)

### Family Medical Leave Act (FMLA)

- FMLA Fact Sheet <https://www.dol.gov/whd/regs/compliance/whdfs28.htm>
- FMLA <https://www.dol.gov/general/topic/benefits-leave/fmla>

### Employee Retirement Income Security Act of 1975 (ERISA) <https://www.dol.gov/general/topic/health-plans/erisa>

**Caregiver (ADA, PDA, EPA, Title VII, FMLA, ERISA)**

- Caregiver Best Practices <https://www.eeoc.gov/policy/docs/caregiver-best-practices.html>
- Pre-employment disability-related questions <https://www.eeoc.gov/policy/docs/preemp.html>
- Americans with Disabilities Act (ADA) [https://www.eeoc.gov/eeoc/publications/ada\\_veterans.cfm](https://www.eeoc.gov/eeoc/publications/ada_veterans.cfm)
- Pregnancy Discrimination Act (PDA) of 1978 <https://www.eeoc.gov/laws/types/pregnancy.cfm>; <https://www.eeoc.gov/laws/statutes/pregnancy.cfm>
- The Equal Pay Act of 1963 (EPA) <https://www.eeoc.gov/laws/statutes/epa.cfm>; <https://www.eeoc.gov/eeoc/publications/fs-epa.cfm>
- Title VII of the Civil Rights Act of 1964 <https://www.eeoc.gov/laws/statutes/titlevii.cfm>
- Title VII (Sex) - <https://www.eeoc.gov/laws/types/sex.cfm>

**Financial Information (Title VII; US Federal Trade Commission's Fair Credit Reporting Act (FCRA))**

- Pre-Employment Inquiries and Financial Information [https://www.eeoc.gov/laws/practices/financial\\_information.cfm](https://www.eeoc.gov/laws/practices/financial_information.cfm)
- Fair Credit Reporting Act (FCRA) <https://www.consumer.ftc.gov/articles/0157-background-checks>