



## A Lay-Person's Guide To Interviews And Applications: What Not To Ask

A patchwork of Federal, State and local anti-discrimination laws apply to New York State employers. Together, except in certain very limited circumstances, they make it illegal to make hiring decisions based on, among other things, an applicant's race, color, religion, national origin, citizenship, age, sex, gender identity or expression, transgender status, gender dysphoria, marital status, familial status, pregnancy-related condition, sexual orientation, disability, predisposing genetic characteristics, domestic violence victim status, military or veteran status, or union sympathies. These are called "protected classes" and, generally, employers need to avoid any questions that relate to them, even unintentionally. Often some seemingly innocuous questions can elicit information that you cannot or should not have. Therefore, to assist you in thinking about these issues, we have created this guide to specific interview questions. While this guide is focused on specific questions that, as a general rule, should not be asked, remember the golden rule of interviews: never ask a question unless it is job-related.

### Generally Prohibited (and Permitted) Questions

The chart below lists some questions that are generally prohibited and generally permitted. They are listed in categories, but many questions implicate more than one protected class. Below this chart is a list of questions that you need to check your local law before asking and a list of questions that can be lawful under certain circumstances but that you need to be more cautious about.

Obviously, any list of permitted or prohibited questions is not exhaustive and this one is no exception. Some questions are obviously inappropriate (e.g., what race are you?), but some may be less clear if you are not familiar with the array of applicable anti-discrimination laws (e.g., where are you from?). Before you ask a question, always think about whether you need the information, why, and what else you might find out in response.

Moreover, there could be some circumstances where some seemingly off-limit questions are appropriate. (For example, questions about religion are usually prohibited. But, if you are a synagogue hiring a new rabbi, asking questions about religious practice will be necessary). Nevertheless, you should never ask the following questions without first consulting with an employment lawyer.

<b>GENERALLY PROHIBITED QUESTIONS</b>	<b>GENERALLY PERMITTED QUESTIONS</b> <i>(If all applicants are asked the same question)</i>
<p><b>Name and Address</b></p> <ul style="list-style-type: none"><li>• What is your permanent address?</li></ul>	<ul style="list-style-type: none"><li>• What is your name?</li><li>• What is your current address?</li></ul>

## GENERALLY PROHIBITED QUESTIONS

## GENERALLY PERMITTED QUESTIONS

*(If all applicants are asked the same question)*

### Race and Color

- What race are you?
  - Are you biracial?
- What color are you?
- Where is your name from?
- What color are your eyes?
- What color is your hair?

### Religion or Creed

- Do you believe in God?
- What religion are you?
  - Are you religious?
  - What church/synagogue/mosque do you attend?
- What religious holidays do you observe?

- Are there specific times that you cannot work?

### Ancestry and National Origin

- What nationality are you?
- Where were you born?
- Were you born in the United States?
- Where did you live when you were growing up?
- Where are your parents from?
- How long has your family been in the U.S.?
- What does your name mean?
- How did you learn to speak [foreign language]?
- What is your native language? What was your first language?
- What language do you speak at home?
- How did you learn to read?
- What kind of accent is that?
- What country are your parents from?

### Citizenship

- Are you a U.S. citizen?
- When did you become a citizen?
- Are you a naturalized or native-born citizen?

- Are you legally authorized to work in the United States for [name of employer]?

## GENERALLY PROHIBITED QUESTIONS

## GENERALLY PERMITTED QUESTIONS

*(If all applicants are asked the same question)*

### Age

- How old are you?
- What is your birthday? When were you born?
- When did you graduate from high school? When did you graduate from college? When did you graduate from graduate school?
- When did you attend high school? When did you attend college? When did you attend graduate school?
- When did you first start working?
- How long do you plan to work before you retire?

- Are you over the age of 18?

### Sex, Sexual Orientation, Gender and Gender Identity

- What sex are you?
- Are you male or female?
- What is your sexual orientation?  
Are you gay?
- What bathroom do you use?
- Are you transgendered?

### Disability and Genetics

- Do you have a disability?
  - Do you have any pre-existing health conditions?
  - What is your family medical history?
    - o Does [insert condition] run in your family?
  - Have you had a genetic test to determine whether you are at risk for [insert condition]?
  - What medications are you currently taking?
  - Have you ever filed for or received workers' compensation or been injured on the job?
  - Have you ever received disability benefits?
  - Do you drink socially?
  - Have you ever used illegal drugs?
  - How many sick days did you use last year?
- Are you able to perform [insert job function] with or without a reasonable accommodation?
  - If you reasonably believe that the applicant may need a reasonable accommodation to perform the essential functions of the job because of an obvious or voluntarily disclosed disability, you may ask:
    - o Will you need assistance with or a change to the application process because of your disability?
    - o Will you need a change to the work environment or to the way a job is usually done?

## GENERALLY PROHIBITED QUESTIONS

## GENERALLY PERMITTED QUESTIONS

*(If all applicants are asked the same question)*

### **Pregnancy, Marital Status and Familial Status**

- Are you single? Are you married? Are you divorced? Are you engaged?
- What is your maiden name?
- Are you pregnant? Do you plan to get pregnant?
- Are you able to have children? Do you plan to have children? How many children do you plan to have? Do you plan to have more children?
- How old are your children?
- Do you wish to be addressed as Miss., Ms. or Mrs.?
- Do you plan to get married?
- Do you have child care?
- Is your husband/wife employed? What does your husband/wife do?
- What is your spouse's name?
- Do you use birth control?
- Have you had an abortion?

- Do you have a spouse or relative that is already employed here?
- Would you be able to work [the job's schedule]?
- What days/shifts can you work?

### **Arrest and Conviction**

- Have you ever been arrested?

- Do you have any pending arrests?

### **Military Service**

- Will you be deployed soon?

- What did you do in the military?
- How do the skills you used in the military apply to this position?

### **Unions**

- How do you feel about unions?
- Would you join a union?
- Have you ever been a member of a union?

## GENERALLY PROHIBITED QUESTIONS

## GENERALLY PERMITTED QUESTIONS

*(If all applicants are asked the same question)*

### Credit/Transportation

- Do you have a bank account?
- Have your wages ever been garnished?
- Have you ever declared bankruptcy?
- Do you own your home or rent?
- Do you own a car?
- Have you ever declared bankruptcy?

- Do you have a reliable way of getting to work?

### Employment History

- How much did you make in your last job?

- Where have you previously worked?
- How long did you stay in your last job?
- Why are you leaving your current job?

### Other

- What are your political beliefs? What political party are you a member of?
- Do you smoke?
- What is your social security number?
- Can I see your photograph?
- Have you ever been a victim of domestic violence?
- What clubs, societies, lodges or organizations do you belong to?
- What sorority/fraternity did you join?
- How tall are you?
- How much do you weigh?

## Questions to Check Your Local Law Before Asking

In addition to Federal and State law, your locality may have its own laws that further restrict what can be asked during an interview. Here are some questions that you should be sure to check your local laws before asking during an interview:

- Have you ever been convicted of a crime?
- Are you unemployed? Have you ever been unemployed?

## Questions to Be Cautious About

You can ask an applicant the following questions, but only if they are job-related:

- Do you speak a foreign language?
- What is your educational background?
- What professional licenses and certifications do you have?
- What professional associations are you a member of?
- Do you have a driver's license?
- Can you work weekends?
- What type of discharge did you receive from the military?