

## GUIDE TO PRE-EMPLOYMENT INQUIRIES

- I. The Maine Human Rights Act ("MHRA") provides that it is unlawful employment discrimination for an employer, employment agency, or labor organization, prior to admission or membership of any individual, to elicit or attempt to elicit information directly or indirectly pertaining to race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, any previous assertion of a claim or right under the Workers' Compensation Act, or any previous actions that are protected under the Whistleblowers' Protection Act, unless such inquires are based on a bona fide occupational qualification ("BFOQ").
- II. The BFOQ exception is construed very narrowly, and the employer, employment agency, or labor organization must prove that (1) the essence of the business operation requires the discriminatory practice and (2) the employer, employment agency, or labor organization had a factual basis to believe that all or substantially all persons in the excluded category would be unable to safely or efficiently perform the duties of the job involved.
- III. Pre-employment inquiries that are made in conformance with the instructions from, or requirements of, an agency or agencies of the local, state, or federal government in connection with the administration of fair employment practices programs are not unlawful under the MHRA.
- IV. Nor does the MHRA prohibit asking an applicant to voluntarily provide information that would aid in compliance with a valid affirmative action plan.
- V. The following guide pertains only to inquiries directed to an individual prior to hire or membership. Once the applicant is hired or is a member, with the exception of inquires concerning disability, the MHRA may not prohibit an employer, employment agency, or labor organization from asking the questions that are listed as unlawful inquires. Depending on the circumstances, however, such questions may form the basis of an unlawful harassment claim or become evidence in a subsequent discrimination claim.
- VI. This list of acceptable and unacceptable questions by no means includes all inquiries that may be unlawful or lawful but is meant to be illustrative of questions frequently asked. (Rev. 07/2012).

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HUMAN  
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CATEGORY	EXAMPLES OF LAWFUL INQUIRIES	EXAMPLES OF UNLAWFUL INQUIRIES
<b>ANCESTRY/ NATIONAL ORIGIN</b>	<ul style="list-style-type: none"> <li>• Whether applicant is a U.S. citizen.</li> <li>• Whether applicant is legally eligible to work or remain permanently in the U.S.</li> <li>• Compliance with IRCA of 1986.</li> <li>• Language applicant speaks (if job related).</li> <li>• Applicant's current address.</li> <li>• How long applicant has lived in this State or City.</li> <li>• List of membership organizations applicant feels are relevant to the position.</li> <li>• U.S. military experience.</li> </ul>	<ul style="list-style-type: none"> <li>• Nationality, lineage, ancestry, descent, or birthplace of applicant or relatives.</li> <li>• Applicant's native or primary language.</li> <li>• How applicant acquired the ability to read, write, or speak a foreign language.</li> <li>• Maiden or former name (unless necessary to check references).</li> <li>• Photograph with application.</li> <li>• How long applicant has lived in the U.S.</li> <li>• List of all clubs, social fraternities, societies, lodges, or organizations.</li> <li>• Foreign military experience.</li> </ul>
<b>AGE</b>	<ul style="list-style-type: none"> <li>• Whether applicant is under 18 years of age; if so, applicant's age.</li> </ul>	<ul style="list-style-type: none"> <li>• Other questions about date of birth or age.</li> <li>• Dates of graduation from educational institutions.</li> <li>• Questions asked only of a particular age group, e.g., asking only older applicants about health status.</li> <li>• Photograph with application.</li> </ul>
<b>RELIGION</b>	<ul style="list-style-type: none"> <li>• Whether applicant is able to perform the essential functions of the job, including attendance requirements, if provided with reasonable accommodations for religious reasons.</li> <li>• List of educational institutions.</li> </ul>	<ul style="list-style-type: none"> <li>• Religious denomination, affiliation, place of worship, religious leaders, or religious holidays observed.</li> <li>• Name of religious leader as reference.</li> <li>• Whether applicant can work on a particular religious holiday.</li> <li>• Religious affiliation of educational institutions.</li> </ul>
<b>RACE</b>		<ul style="list-style-type: none"> <li>• Race of applicant or relatives.</li> <li>• Complexion or color of skin or eyes.</li> <li>• Photograph with application.</li> <li>• Arrest record.</li> </ul>
<b>SEX/PREGNANCY</b>	<ul style="list-style-type: none"> <li>• Whether applicant has a spouse/significant other/partner that works for employer.</li> </ul>	<ul style="list-style-type: none"> <li>• Whether applicant is pregnant, has children, or plans to have children.</li> <li>• Marital status.</li> <li>• Maiden name.</li> <li>• Questions asked only of one sex but not of the other, e.g., asking only women about childcare.</li> <li>• Inquiry into height or weight.</li> </ul>
<b>SEXUAL ORIENTATION</b>	<ul style="list-style-type: none"> <li>• Whether applicant has a spouse/significant other/partner that works for employer.</li> </ul>	<ul style="list-style-type: none"> <li>• Sexual orientation, gender identity, or gender expression of applicant.</li> <li>• Relationship between household members.</li> <li>• Marital status.</li> <li>• Name of spouse or significant other.</li> <li>• Photograph with application.</li> </ul>
<b>DISABILITY</b>	<ul style="list-style-type: none"> <li>• Whether applicant is able to perform the essential functions of the job, including attendance requirements, if provided with reasonable accommodations for disability-related reasons.</li> <li>• For food handling positions, whether applicant has a listed infectious or communicable disease that is transmitted to others through the handling of food.</li> </ul>	<ul style="list-style-type: none"> <li>• Whether applicant has or has had any physical or mental impairments, disabilities, or health conditions.</li> <li>• Whether applicant has or has had an alcohol or drug addiction problem.</li> <li>• Whether applicant needs a reasonable accommodation in order to perform the job.</li> <li>• Type of military discharge generally, although employer may ask whether applicant received an honorable discharge.</li> <li>• Inquiry into height or weight.</li> </ul>
<b>WORKERS' COMPENSATION</b>	<ul style="list-style-type: none"> <li>• Whether applicant ever violated a workplace safety rule.</li> </ul>	<ul style="list-style-type: none"> <li>• Whether applicant ever received or applied for workers' compensation benefits.</li> <li>• Whether applicant has ever been injured on the job.</li> </ul>
<b>WHISTLEBLOWERS</b>		<ul style="list-style-type: none"> <li>• Whether applicant ever reported violations of law by an employer.</li> <li>• Whether applicant ever reported safety concerns about an employer.</li> <li>• Whether applicant has ever been asked by an employer to do something that was illegal or unsafe and how applicant responded.</li> </ul>

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