

Legal Issues to Consider

TOPIC	EMPLOYERS MAY ASK (LEGAL)	EMPLOYERS MAY NOT ASK (ILLEGAL)
Age	Generally, the only proper question is, "Are you under 18, yes or no?", unless a <i>bona fide occupational qualification</i> , ruled as a legitimate requirement for the particular position.	Inquiry into the date of birth or age of an applicant.
Disability / Handicap	<p>Can you perform any and all job functions with or without reasonable accommodation?</p> <p>Can you describe how you would perform (any or) all job functions?</p> <p>Once an offer of employment has been made, an employer may condition that offer on the results of a medical examination conducted solely for the purpose of determining whether the employee, with or without reasonable accommodation, is capable of performing the essential functions of the job.</p>	<p>Inquiry into whether the applicant has a physical or mental disability/handicap or about the nature or severity of the disability/handicap.</p> <p>Inquiry into whether an applicant has AIDS or any other disease.</p> <p>Inquiry into any hospitalizations or rehabilitations.</p> <p>Inquiry into any history of Workmen's Compensation claims.</p>
National Origin / Ancestry / Citizenship	<p>Are you legally authorized to work in the United States? (Documentation proving work authorization must be requested of <u>all</u> new employees.)</p> <p>"What languages do you speak?" if a legitimate requirement for the particular position.</p>	<p>Inquiry into the birthplace of an applicant or the birthplace of her parents(s), spouse and/or other close relatives.</p> <p>Inquiry into the national origin, ancestry or ethnicity of an applicant.</p> <p>Inquiry into whether an applicant for employment or an applicant's parent(s), and/or spouse are naturalized or native born citizens of the U.S.</p>
Race/Color	No questions.	<p>Inquiry into the race or color of an applicant.</p> <p>An employer cannot ask for a photograph to accompany an application.</p>
Religious Creed	No questions.	Inquiry into the religious denomination or practices of an applicant, her religious obligations, or what religious holidays she observes.
Sex (Gender)	Generally, no questions, unless a <i>bona fide occupational qualification</i> , ruled as a legitimate requirement for the particular position.	<p>Inquiry into an applicant's maiden name or any question that pertains to only one sex (for example inquiries into marital status only asked of women).</p> <p>Inquiries into whether applicant has children, plans to have children, or has child care arrangements.</p>
Sexual Orientation	Not federally legislated. If included in the state or organizational non-discrimination policy, no questions.	If included in non-discrimination policy, Inquiry into applicant's sexuality, relationships or living situation (gay, bisexual, lesbian, heterosexual).

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Education/ Experience/ References/ Organizations	<p>Inquiry into the academic, vocational or professional education of an applicant for employment. Inquiry into the work experience shall also contain a statement that the applicant may include in such history any verified work performed on a volunteer basis.</p> <p>Inquiry into references.</p>	<p>Questions about education designed to determine how old the applicant is.</p> <p>Inquiry into the organizations of which the applicant is a member; the nature, name or character of which would likely disclose the applicant's protected class status.</p>
Criminal Record	<p>Employers may ask the following:</p> <ol style="list-style-type: none"> 1. Have you ever been convicted of a felony? Yes or No? 2. Have you been convicted of a misdemeanor within the past five years (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or No? 3. Have you completed a period of incarceration within the past five years for any misdemeanor (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or No? 4. If the answer to question number 3 above is "yes," please state whether you were convicted more than five years ago for any offense (other than a first time conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or No? 	<p>It is unlawful for an employer to make any inquiry of an applicant or employee regarding:</p> <ol style="list-style-type: none"> 1. An arrest, detention or disposition regarding any violation of law in which no conviction resulted. 2. First convictions for the misdemeanors of drunkenness, simple assault, speeding, minor traffic violations, affrays or disturbance of the peace. For the purposes of 804 CMR 3.02 minor traffic violations include any moving traffic violation other than reckless driving, driving to endanger and motor vehicle homicide. 3. Any conviction of a misdemeanor where the date of the conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred five or more years prior to the date of such inquiry, unless such person has been convicted of any offense within five years immediately preceding the date of inquiry. 4. No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by 804 CMR 3.02.
Military Experience	<p>Are you a U.S. veteran?</p> <p>What is your U.S. military service history?</p>	<p>Inquiry into any service related disabilities.</p> <p>Inquiry into foreign military service history.</p> <p>Inquiry into the nature of any discharge.</p>
Lie Detector Test	<p>No questions.</p>	<p>It is unlawful to require or administer a lie detector test as a condition of employment or continued employment.</p>

From the MA Commission Against Discrimination, 3.02: Reference Chart Regarding Permissible Inquiries, <http://www.mass.gov/mcad/regs804cmr0300.html>