

What You Cannot Ask on Employment Applications



The employment application assists employers with the initial process of screening applicants. Just as employers limit the questions an interviewer may ask of candidates, the application must also be limited in its scope. Often, forming the application or interview questions is like a word scramble—the words may be the same, but the way they are put together determines whether they pose a legal risk. For example:

“Are you a legal citizen of the United States?”

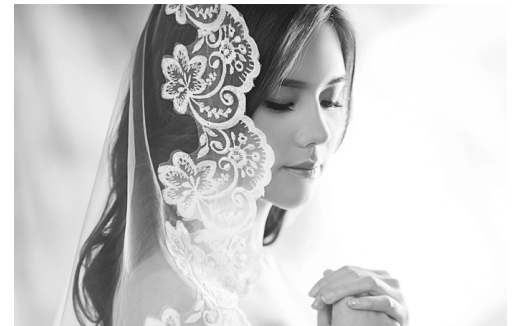
Under immigration laws, employers can only hire individuals who are either citizens of the United States or have legal authority to work in the United States. Focusing on an individual’s citizenship could lead to an unlawful discussion regarding a person’s protected characteristics, such as national origin.

A better question is: “Are you legally eligible to work in the United States?”

“Have you ever been arrested or convicted of a crime?”

Proceed cautiously when asking about an individual’s pending arrest or conviction record. Employers should check state law requirements before using this type of question on an application because in some states, such as Minnesota and Illinois, employers are restricted from making these inquiries on an application form.

If allowed on an application, a better way to ask this question is: “Do you have any pending arrests or have you ever been convicted of a crime? If yes, please describe the nature of the charges/conviction.” Be sure to include a disclaimer that a criminal conviction will not automatically exclude the applicant from consideration for employment, as only convictions that are substantially related to the job the person is applying for are legitimate reasons for disqualification.



“What is your maiden name?”

For reference checking purposes, it is necessary to know whether an applicant went to school or was employed under a different last name. However, many state laws consider it unlawful to ask for a married or maiden name.

A better question is: “Have you attended school or worked for an employer under any other name?”

“List your age.”

Employers cannot discriminate against an applicant because of age; however, certain government regulations must be followed when employing minors under the age of 18. It is important, therefore, that the question be asked.

A better question is: “Are you at least 18 years of age?”

“In what year did you graduate from high school/college?”

Asking an employee for the year of graduation may lead to a claim of age discrimination because one could argue that an age reference may be made from the graduation year. Some institutions, however, maintain records only by year, so for reference checking purposes, it is essential to know this information.

A better practice is: to ask this question on a separate reference authorization form, kept separate from all other employment documents, and used only for the purpose of reference checking.

HR professionals should periodically review their organization’s employment application to ensure it complies with current employment laws. It is strongly recommended that any form you create for applicants to sign receive a final review by legal counsel.

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“List any club memberships or organizations.”

Leadership and involvement are valuable assets in an employee. However, asking applicants for personal information that could reveal an individual’s protected characteristics, such as religion, is unlawful. The focus should be on obtaining job-related information.

A better question is: “List any professional memberships or organizations that you participate in and feel are related to the position for which you are applying.”

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