

## Pre-employment Inquiries

### MASSACHUSETTS

#### DISCRIMINATION

The Massachusetts Fair Employment Practices Act prohibits an employer from asking an individual either on an application form or in an interview, questions about his or her race, color, creed, religious creed, national origin, sex, sexual orientation, age, ancestry, or disability, unless based on a bona fide occupational qualification (BFOQ) (MA Ann. Laws Ch. 151B sec. 4). The Act covers private employers with six or more employees, and all state agencies.

**AIDS policy.** The AIDS testing law prohibits AIDS testing by employers as a condition of employment, requires an individual's informed consent before testing, and protects the confidentiality of results (MA Ann. Laws Ch. 151B Sec. 70F).

**BFOQ exception.** An employer may make an employment inquiry about one of the previously listed characteristics only if it is reasonably necessary to the normal operation of the employer's business and there is no less intrusive way to ensure that the applicant will be able to perform the essential functions of the job in question.

In order to be a BFOQ, a characteristic must be *absolutely* essential to the applicant's ability to perform the job. For example, being female would be a legitimate BFOQ for a person applying for a job as a model of women's clothing. Similarly, being a practicing member of a Methodist church would be a legitimate BFOQ for a person applying for the position of minister in a Methodist church. The BFOQ exception applies only in limited circumstances, and in general, courts have been extremely reluctant to sanction otherwise discriminatory practices on BFOQ grounds. Employers should use caution in relying on the BFOQ rationale and should always consult with legal counsel before making any inquires on the basis of a BFOQ.

#### PERMISSIBLE AND PROHIBITED QUESTIONS

Based on the Commission's guidelines, the following is a list of suggested pre-employment inquiries:

Category	May Ask	May Not Ask
<b>Age</b>	Are you a Minor? Are you over 18?	When were you born? How old are you? (unless the Commission grants a BFOQ)
<b>Ancestry/national origin</b>	No questions.	What is your native language? Ancestry? National origin?
<b>Birthplace</b>	No questions.	Where were you born? Where were you spouse/parents/other close relatives born?
<b>Citizenship</b>	Are you legally eligible to work in United States?	Are you/your spouse/parents citizens? When did you/they become citizens?
<b>Character</b>	Give me an example of a way in which you acted in an honest manner at work.	Do you belong to a church? Do you go to church regularly?
<b>Criminal records</b>	Have you ever been convicted of a felony? Within the last five years have you been convicted of, or released from prison for, a misdemeanor that was not a first offense for drunkenness, simple assault, speeding, a minor traffic violation, or disturbing the peace? (These questions are handled through	Have you ever been arrested? Have you ever been convicted of a misdemeanor?

<b>Category</b>	<b>May Ask</b>	<b>May Not Ask</b>
<b>Dependents</b>	No question. Even if the applicant mentions children or other personal details you may not ask a follow up question.	Do you have any children? Do you plan to have any children? What are your child-care arrangements?
<b>Education, work experience</b>	What school, college or vocational program did you attend? Did you graduate? What is your work experience?	Graduation dates or any other question designed to calculate the applicant's age.
<b>Disability</b>	No questions (unless for affirmative action purposes).	Do you have a disability? What kind of disability do you have? How severe is your disability? Any inquiry into whether an applicant is alcohol or drug addicted; any inquiry into whether the applicant has AIDS or other autoimmune illnesses
<b>Marital status</b>	No question.	What is your maiden name? (or any other question that applies to only one sex). Are you married?
<b>Military experience</b>	Are you a US veteran? What is your US military service history?	Do you receive a service connected disability pension?
<b>Race</b>	No questions (unless for affirmative action purposes).	What is your race? Color? That name is interesting...what part of the world are you (or your parents) from?
<b>Relatives</b>	No questions.	Where do your spouse/parents/any other relatives work or conduct business?
<b>Religion</b>	No questions.	What religious denomination, church, etc. do you belong to? What are your religious obligations? What religious holidays do you observe?
<b>Salary (effective July 1, 2018)</b>	No questions regarding previous salary.	What are you currently making? What did you make at your last job?
<b>Sex</b>	No questions (unless for affirmative action purposes or the Commission grants a BFOQ).	What is your gender? Do you consider yourself to be male or female?