

What You Can Ask and What You Can't – Legal/Illegal Interview Questions

If you have any questions, please contact Human Resource Services.

IMPORTANT – All settings, including informal gatherings with department members who are not members of the search committee, are considered to be part of the interview of the candidate. Everyone who will have contact with candidates should be made aware of areas of inquiry that are not appropriate or illegal questions that should not be asked in order to avoid future complaints.

AREA OF INQUIRY	LEGAL	ILLEGAL
Address/ Housing/Length of Residence	<p>CAN ASK:</p> <ul style="list-style-type: none"> Place and length of current and previous address ("How long have you lived in [city]")? For applicant's phone number or how s/he can be reached 	<p><u>IT IS ILLEGAL TO ASK/REQUEST:</u></p> <ul style="list-style-type: none"> Specific inquiry into foreign addresses that would indicate national origin Names or relationship of persons with whom applicant resides Whether applicant rents or owns home
Age	<p>BEFORE HIRING ONLY:</p> <ul style="list-style-type: none"> If a minor, require proof of age in the form of a work permit or a certificate of age If age is a legal requirement, can ask "If hired, can you furnish proof of age?" or a statement that hire is subject to verification of age Whether or not an applicant is younger than the employer's regular retirement age <p>AFTER HIRING ONLY:</p> <ul style="list-style-type: none"> Require proof of age by birth certificate 	<p><u>IT IS ILLEGAL TO ASK/REQUEST:</u></p> <ul style="list-style-type: none"> About the age or age group or date of birth of the applicant Birth certificate or baptismal record before hiring Questions that would tend to identify persons between 40 and 60 years of age.
Ancestry/ Birthplace/ National Origin	<p>CAN ASK:</p> <ul style="list-style-type: none"> "After employment, can you submit a birth certificate or other proof of U.S. citizenship or other proof of the right to remain in or work in the U.S.?" About foreign language skills (reading, speaking, and/or writing) if relevant to the job <p>Be sensitive to cultural differences</p> <ul style="list-style-type: none"> Do not assume mispronunciation of English as a lack of education Do not interpret silence as inability or unwillingness 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> If an applicant is native-born or naturalized The birthplace of applicant Questions which identify customs or denomination About birthplace of his/her parents, grandparents and/or spouse or other relatives Require applicant submit a birth certificate or naturalization or baptismal record before employment About any other inquiry into national origin (for applicant or his or her spouse or parents; maiden name of wife or mother) First language Date of arrival in U.S. Port of entry
Citizenship	<p>CAN ASK:</p> <ul style="list-style-type: none"> Whether a U.S. citizen If no, whether intends to become one If you are not a U.S. citizen, do you have the legal right to remain permanently in the U.S.? If not a citizen, are you prevented from lawfully becoming employed because of visa or immigration status? If spouse is a citizen Statement that, if hired, applicant may be required to submit proof of citizenship. <p>AFTER HIRING ONLY:</p> <ul style="list-style-type: none"> Require proof of citizenship 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> "Of what country are you a citizen?" If native born or naturalized (for applicant or his or her parents or spouse) Proof of citizenship before hiring Whether parents and/or spouse is native born or naturalized Date of citizenship (for applicant or his or her parents or spouse)
Credit Rating	NO questions may be asked regarding credit.	You may not ask ANY questions regarding credit.
Criminal Record (Arrests and Convictions)	<p>CAN ASK:</p> <ul style="list-style-type: none"> About actual convictions other than misdemeanors that relate reasonable to fitness to perform a particular job About convictions or imprisonment if crimes relate to job duties and conviction or release from imprisonment occurred within the last ten years 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> To inquire about arrests without convictions Check into a person's arrest, court, or conviction record if not substantially related to functions and responsibilities of the particular job in question. About any involvement in demonstrations
Disabilities (continued on next page)	<p>Accommodations for the interview must be provided.</p> <p>Be careful how applicants with disabilities are evaluated. Do not make judgments based on communication skills of people with hearing and speech impairments.</p> <p>To inquire for the purpose of determining applicant's</p>	<p>AN EMPLOYER</p> <p>The Rehabilitation Act of 1973 forbids employers from asking job applicants general questions about whether they are disabled or asking them about the nature and severity of their disabilities.</p> <p>Don't ask the applicant about what kind of</p>

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Disabilities (continued from previous page)	<p>capability to perform the job. (Burden of proof for non-discrimination lies with the employer.)</p> <p>CAN ASK:</p> <ul style="list-style-type: none"> Whether or not applicant is able to carry out all necessary job assignments/functions and perform them in a safe manner <p>"How would you perform this particular task?"</p> <p>CAN INVITE only if a disability has been identified by the candidate:</p> <ul style="list-style-type: none"> Applicant to indicate how and to what extent they are disabled. Employer must indicate to applicants that (1) compliance with the invitation is voluntary; (2) information is being sought only to remedy discrimination or provide opportunities for the disabled; (3) information will be kept confidential; and (4) refusing to provide information will not result in adverse treatment. 	<p>accommodation(s) he or she may need until after the interviewer has established that the applicant is qualified for the job and is considering that person for employment.</p> <p>An employer must be prepared to prove that any physical and mental requirements for a job are due to "business" necessity" and the safe performance of the job.</p> <p>Except in cases where undue hardship can be proven, employer must make "reasonable accommodations" for the physical and mental limitations of an employee or applicant. Includes alteration of duties, alteration of physical setting, and provision of aids.</p> <p>To exclude disabled applicants as a class on the basis of their type of disability. (Each case must be determined on an individual basis by law.)</p>
Education	<p>CAN ASK:</p> <ul style="list-style-type: none"> What academic, professional or vocational schools attended About language skills such as reading and writing foreign languages Office skills 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Specifically ask the nationality, racial or religious affiliation of schools attended To ask how foreign language ability was acquired
Emergency notification	<ul style="list-style-type: none"> Name and address of <i>persons</i> to be notified in case of accident or emergency 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Name and address of <i>relatives</i> to be notified in case of accident or emergency
Experience	<p>CAN ASK ABOUT:</p> <ul style="list-style-type: none"> Applicant's work experience, including names and addresses of previous employers, dates of employment, reasons for leaving, and salary history Other countries visited 	
Family/Relatives	<p>CAN ASK:</p> <ul style="list-style-type: none"> If the spouse is employed at MTU (CANNOT ASK NAME) Names of applicant's relatives already employed by company Names and addresses of parents or guardian of minor applicants <p>AFTER HIRING ONLY:</p> <ul style="list-style-type: none"> To ask name, relationship and address of person to be notified in case of emergency 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Name of a spouse Whether or not a spouse is employed How much a spouse earns Whether or not a spouse is subject to transfer Questions about any relative of a candidate Names of relatives not working for the institution Name or address of any relative of adult applicant, other than those employed by institution
Gender/Sex	<p>Inquiry as to sex or restriction of employment to one's sex is permissible only where a <i>bona fide occupational qualification</i> exists. Burden of proof is on the employer to prove that the BFOQ does exist and that all members of the affected class are incapable of performing the job.</p> <p>CAN INFORM:</p> <ul style="list-style-type: none"> That the institution is an equal opportunity employer <p>AFTER HIRING ONLY:</p> <ul style="list-style-type: none"> Can ask about gender for affirmative action plan statistics 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Sex of applicant Anything which would indicate gender unless job related. (Only such jobs in education would be a full time locker room or restroom attendant.) Sex is not a BFOQ because a job involves physical labor beyond the capacity of some women, nor can employment be restricted just because the job is traditionally labeled "men's work" or "women's work" Sex cannot be used as a factor for determining whether an applicant will be satisfied in a particular job Avoid questions concerning applicant's height or weight unless you can prove they are necessary requirements for the job to be performed.
Health/Physical Condition	<p>May ask "Do you have any physical, mental or sensory handicaps which might affect work performance or which should be considered in job placement?"</p>	<p>May NOT ask</p> <ul style="list-style-type: none"> "Do you have any handicaps?" or questions that divulge handicaps which do not relate to the job. Any questions regarding having received worker's compensation.
Marital/ Parental Status (continued on next page)	<p>BEFORE HIRING:</p> <ul style="list-style-type: none"> Whether applicant can meet specified work schedules or has activities, commitments, or responsibilities that may hinder the meeting of 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> About marital status before hiring (married, single, divorced, engaged, etc.) About the number and age of children

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Marital/ Parental Status (continued from previous page)	<p>work attendance requirements. If such questions are asked, they must be asked of both sexes.</p> <ul style="list-style-type: none"> Inquiries, made to both males and females, as to duration of stay on job or anticipated absences <p>AFTER HIRING ONLY:</p> <ul style="list-style-type: none"> Married or single status for insurance and tax purposes <p>Number and ages of dependents and age of spouse for insurance and tax purposes</p>	<ul style="list-style-type: none"> Information on child-care arrangements About pregnancy and if applicant plans to have (more) children Any question that directly or indirectly results in limitation of job opportunity in any way
Military Service	<p>CAN ASK:</p> <ul style="list-style-type: none"> Inquiry into service in U.S. armed forces Branch of service and rank attained Any education or job related experience as it relates to a particular job Require military discharge certificate after hiring 	<p><u>IT IS ILLEGAL TO ASK ABOUT OR REQUEST</u></p> <ul style="list-style-type: none"> Military records Military service of any country other than the U.S Type of discharge
Miscellaneous	<p>Notice to applicants that any misstatements or omissions of material facts in the application may be cause for dismissal</p>	
Name	<p>For access purposes inquiry into whether the applicant's work records are under another name</p> <p>CAN ASK:</p> <ul style="list-style-type: none"> Have you worked for this organization under a different name? Is any additional information relative to change of name, use of an assumed name or nickname necessary to enable a check on your work and educational record? If yes, please explain. 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> About the name that would indicate applicant's lineage, ancestry, national origin, or descent If a woman is Miss, Mrs. or Ms. Applicant to give maiden name or any previous name s/he has used About names which have been changed by court order, marriage or otherwise
Organizations	<p>CAN ASK:</p> <ul style="list-style-type: none"> Organizational membership (professional, social, etc.) so long as affiliation is not used to discriminate on the basis of race, religion, sex, national origin or ancestry Offices held, if any 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> To request listing of all clubs applicant belongs to or has belonged to Names of organizations to which the applicant belongs if such information would indicate through character or name the race, religion, color, or ancestry of the membership
Other Qualifications	<p>CAN ASK:</p> <ul style="list-style-type: none"> About any area that has a direct reflection on the job applied for 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Any non job related inquiry that may present information permitting unlawful discrimination
Photographs	<p>AFTER HIRING ONLY:</p> <ul style="list-style-type: none"> May be required for identification purposes 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Photographs before hiring (either requirement or request at his/her option) To take pictures of applicants during interviews
Physical Data	<p>CAN REQUIRE:</p> <ul style="list-style-type: none"> Applicant to prove ability to do manual labor, lifting and other physical requirements A physical examination 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> To ask height and weight, impairment or other non specified job-related physical data
Race/Color (also see Ancestry/ Birthplace/ National Origin)	<ul style="list-style-type: none"> Can indicate that the institution is an equal opportunity employer <p>AFTER HIRING ONLY:</p> <ul style="list-style-type: none"> Can ask race for affirmative action plan statistics 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Any inquiry that would indicate race and/or color Color of applicant's skin, eyes, hair Any other questions directly or indirectly relating race or color
References	<p>CAN ASK:</p> <ul style="list-style-type: none"> By whom were you referred for a position here? Names of persons willing to provide professional and/or character references for applicant General and work references not relating to race, color, religion, sex, national origin or ancestry 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> To request references specifically from clergy or any other persons who might reflect race, color, religion, sex, national origin or ancestry
Religion/Creed	<p>CAN ADVISE:</p> <ul style="list-style-type: none"> An applicant about normal hours and days of work required by the job to avoid possible conflict with religions or other personal convictions 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> Applicant's religions denomination or affiliation, church, parish, pastor, or religious holidays observed Applicants may not be told that any particular religious groups are required to work on their religious holidays. About applicant's religion or religious customs and/or holidays Recommendations from church officials

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Work Schedules	<ul style="list-style-type: none"> To ask willingness to work required work schedule (choice of work days, shifts, etc.) To ask if applicant has military reservist obligations 	<p><u>IT IS ILLEGAL TO ASK/REQUEST</u></p> <ul style="list-style-type: none"> To ask willingness to work any particular religious holiday

You can discuss/ask:

- The duties and responsibilities of the job. Ask questions that are relevant to the job itself.
- The organization's mission, programs, and achievements.
- Career possibilities and opportunities for growth, development, and advancement.
- Where the job is located, travel, mobility, equipment, and facilities available.
- The individual's qualifications, abilities, experience, education, and interests.
- What the person has done in previous job experience that makes them able to perform the job for which they have applied.
- What job related educational experience the applicant has that makes the individual able to do the job.
- What problems the applicant had on previous jobs, what he or she liked or disliked.
- If a topic (disability, religion, race, etc.) is brought up by the candidate you can discuss it - but it is not to be used as a reason for non-hire.

You MAY NOT discuss/ask:

- You may not ask questions about race, color, national origin, religion, sex, sexual orientation, disability, age, or ancestry.
- You may not ask in a series of interviews for a given position, questions directed at one sex and not of the other.
- You may not ask if a candidate has filed or has threatened to file discrimination charges.
- You may not ask questions about one's credit rating or request financial data.
- You may not ask for original name of an applicant whose name has been changed by court order or otherwise.
 - You may ask for applicant's full name.
 - You may also ask: "Have you ever worked for UVM under a different name? Is any additional information relative to a different name necessary to check your work record? If yes, explain."
- Do not ask applicant how long they intend to work.
- Do not ask general questions about high school or college degrees unless you can prove the educational degree inquired about is necessary to perform the job.
- Be professional and consistent in addressing men and women. If using first names, do so for all candidates.
- Avoid flirting, patronizing, or making sexual/ethnic jokes during the interview.
- In making a selection or recommendation, avoid making assumptions such as the following:
 - Supervisors or managers might prefer men or employees of certain ethnic/racial origins
 - Clients or customers might not want to deal with women or minorities
 - Women's work might lack credibility
 - The job might involve unusual working conditions that would disqualify the applicant
- Do not place undue emphasis on conditions of employment (such as travel, heavy lifting, long hours, etc.) in hope of discouraging the candidate and getting him or her to withdraw from the competition.
- If asked, give accurate information about the number of women or minority employees already in the organization. If a candidate asks, and if you don't have women or minorities in your own department, then you may arrange for the person to meet other women or minority staff members if asked to do so. Do not assume that this person will necessarily want to meet other women or minority employees.
- If you're going to discuss the town or city, mention everything and do not try to over-emphasize the town's aspects, such as the town is a good place for families and bring up children.
- In general, avoid references to a candidate's personal happiness (i.e., social and/or sexual). Don't assume that your town or city is not the place for a single person or for minorities.
- Obviously, do not indicate that you're interested in hiring a women or minority person as a statistic to improve your department's Affirmative Action/Equal Employment Opportunity profile. It's unlawful and an insult to apply different standards based on an applicant's sex or minority status.
- Treat the applicant like an adult; don't be patronizing.

Any inquiry should be avoided that, although not specifically listed among the above, is designed to elicit information as to race, color, ancestry, age, sex, religion, disability, or arrest and court record unless based upon a bona fide occupational qualification.

Sources

University at Albany – State University of New York <http://hr.albany.edu/content/sflegalq.asp>

Personnel Practices for Small Colleges, NACUBO

MTU Hiring Guide <http://www.admin.mtu.edu/aao/HGcontents04.htm>

University of Colorado at Colorado Springs http://web.uccs.edu/affirm/Search%20man%20docs/guidelines_for_checking_referenc9.htm