

Basic Pre-Employment Reference Guide

Prepare job postings or advertisements carefully

DO:

Prepare a detailed job description which includes the job title, essential job functions, reporting responsibilities, a summary of the position and work involved, and qualifications for hire.

DON'T:

Use language which illustrates possible prejudice against a protected class, e.g. "young," "waitress," or "repairman."

Determine employee legal status before hiring

DO:

Document and explain to the candidate if the person can be terminated for no reason or any reason not prohibited by law (an "at will" employee) or only for a good reason (a "just cause" employee).

DON'T:

Use language which implies "just cause" employment if you intend the employee to be "at will", e.g. "secure position" or "grow with the company."

Carefully analyze independent contractor situations

Whether a person is legally an employee versus an independent contractor depends on several factors.

DO:

Consult with an employment attorney before hiring an "independent contractor" to evaluate these factors.

Plan application and interview questions

DO:

Use the Michigan Department of Civil Rights pre-employment quick reference guide reprinted on the back of this sheet.

DON'T:

Ask questions which could invite answers that would disclose a person's membership in a protected class or category protected by federal or state law.

Flip over for a Quick Reference Guide

Provided by the Michigan Department of Civil Rights, this guide outlines lawful and unlawful inquiries during the application and interview process.



SUBJECT	LAWFUL INQUIRIES	UNLAWFUL INQUIRIES
Address	Applicant's current and prior addresses	
Age	Are you 18 or older?	Applicant's age or date of birth
Arrests	Have you ever been convicted of a crime? Have you ever been arrested for a felony?	Misdemeanor arrests which did not result in conviction ¹ unless applicant is seeking a position with a law enforcement agency.
Birthplace		Birthplace of applicant and applicant's relatives; birth certificate, naturalization and baptismal records, unless required by federal law. ²
Citizenship	Are you legally authorized to work in the United States?	These questions are unlawful unless asked as part of the Federal I-9 process ³ a. Of what country are you a citizen? b. Are you a naturalized or native-born citizen? c. Are your parents or spouse naturalized or native-born citizens?
Disability	Ability to perform the essential functions of the job with or without accommodation. ⁴	Physical or mental conditions which are not directly related to the requirements of a specific job.
Education	Applicant's academic, vocational or professional education and schools attended.	
Genetic Testing		Applicant's genetic information; requiring application to undergo genetic testing. ¹
Height or Weight		Applicant's height or weight. ¹
Marital Status		Marital status or children; titles such as Mr., Mrs., or Ms. ¹
Name	Applicant's name; other names used by applicant.	Applicant's maiden name. ¹
National Origin	Languages spoken and written by applicant.	Applicant's lineage, ancestry, national origin or nationality. ²
Notice in Case of Emergency	Name, address and phone number of person to be notified in case of accident or emergency.	Name, address and phone number of relative to be notified in case of accident or emergency.
Organizations	The organizations and clubs to which applicant belongs except as noted in the column to the right.	Names and organizations to which an applicant belongs IF information would reveal the race, color, religion, national origin or ancestry of the members of the organization.
Photograph		Applicant's photograph prior to hire .
Race or Color		Applicant's race, national origin or color.
Religion		Religious denomination or affiliation; religious holidays observed.
Sex		Applicant's gender, ability or desire to have children; child care arrangements.

This quick reference guide provides employers with basic legal advice for the application and interview process. It is not a substitute for individual consultations, nor is it intended to cover all employment laws or unique individual situations.

¹ Unlawful under Michigan law only, not covered by federal law.

² Documents required by the Immigration Reform and Control Act (IRCA), 8 USCA §§ 1234a et seq., may only be collected after a conditional offer of employment has been made.

³ The IRCA mandates that employers verify citizenship and work authorization, but only after a conditional offer of employment.

⁴ This question is only lawful if applicant has been informed of the essential job functions.