

position or provide candidates a copy of the job description and ask if they are able to perform the job duties, with or without reasonable accommodation. If this inquiry is made, it should be asked of all candidates for the job.⁴

5. Marital Status/Pregnancy/Childbirth.

A person's pregnancy, marital or parental status is irrelevant to an ability to do the job and should not be asked. These types of questions should be barred even in casual conversation, such as the small talk that takes place before the interview, because they could be used as evidence of unlawful discrimination.

6. Military Service.

Employers can ask about military service only for the purpose of exploring experience or training that candidates may have received in the service. It is unlawful to discriminate against candidates because of membership in the armed forces, national guard, state defense force or any reserve unit.⁵

7. Religion.

Employers are prohibited from asking candidates if they attend religious services. They are permitted to ask candidates if they are able to work on the weekends, if that is a requirement of the position; employers should explain their legal obligation to reasonably accommodate religious practices that do not create an undue burden. The use of rotating weekend

shifts, and allowing employees to trade or find another staff member to work a weekend shift, are examples of possible accommodations.

8. Financial Background Questions.

Questions about candidates' financial situations should be avoided, including questions such as:

- Do you have a garnishment record?
- Do you have credit problems?
- Describe your credit history?
- Have you ever declared bankruptcy?
- Are you a homeowner?

These questions often disproportionately exclude minorities from consideration and are largely irrelevant for the vast majority of positions. In addition, the federal Bankruptcy Act prohibits public sector employers from asking about or discriminating against a candidate due to the filing of a bankruptcy action.⁶

9. Lawful Products.

The WFEA prohibits employers from asking about use of lawful products off of the worksite and outside of work hours, subject to some limited exceptions. Therefore, asking an applicant if they smoke cigarettes or drink tobacco should be avoided.

Due to the many different inquiries that could lead to an accusation or finding of unlawful discrimination, an organization's entire recruitment process must be designed to focus on only job-related criteria. Employers should take steps to:

1. Train anyone involved in the hiring process, including boards and commissions such as Police and Fire Commissions or Library Boards.
2. Ensure that all inquiries made in the employment application conform to EEO guidelines.
3. Develop interview questions ahead of time that are carefully tailored to the requirements of and qualifications for the position.
4. Consult employment counsel when issues arise, especially those involving arrest or conviction records and disability/reasonable accommodation situations.

The following resources contain additional guidance:

WI Equal Rights Division, *Fair Hiring and Avoiding Discriminatory Interview Questions*:

https://dwd.wisconsin.gov/er/civil_rights/discrimination/avoiding_discriminatory_interview_questions.htm

Federal Equal Employment Opportunity Commission Hiring Guidance:

<https://www.eeoc.gov/laws/practices/>

United States Office of Personnel Management:

<https://www.opm.gov/policy-data-oversight/assessment-and-selection/structured-interviews/guide.pdf>

4. Employers also have an obligation to extend reasonable accommodations to job candidates with disabilities that permit them to participate in the recruitment process. These links provide additional information about accommodating job applicants: https://dwd.wisconsin.gov/er/civil_rights/discrimination/disabilities_on_the_job.htm; <https://www.eeoc.gov/facts/jobapplicant.html>
 5. In addition to the WFEA, the Uniformed Services Employment & Reemployment Rights Act (USERRA) 38 U.S.C. §§ 4301-4335 (2008) applies to all employers in the U.S.
 6. 11 U.S.C. § 525 (1978)

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