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GUIDE TO PRE-EMPLOYMENT INQUIRES UNDER THE ARIZONA CIVIL RIGHTS ACT

PURPOSE OF GUIDE:

The Arizona Civil Rights Act contains a number of specific provisions designed to prevent discrimination in employment. Although the Act does not expressly prohibit pre-employment inquiries based on an applicant's race, color, religion, sex, age, disability or national origin, such questions usually bear no demonstrable relationship to a job applicant's abilities or qualifications and, consequently, serve no lawful purpose.

The Act's restrictions may necessitate changes in the content of application forms as well as oral questions asked of applicants. It is the employer's right to establish job related requirements and to seek the most qualified individual for the job. Information obtained through application forms and interviews is presumed to be used by the employer in making selection and assignment decisions. For this reason, the employer should make only those inquiries necessary to determine the applicant's eligibility to be considered for employment.

Documents required for legitimate business purposes that reveal protected information (such as birth certificates or naturalization papers) may be requested at the point of hire, but not before. The point of hire is reached once the employer has decided to hire the applicant and has so informed the applicant.

This guide is provided to assist private employers in understanding and applying the law. The guide is not intended to be an exhaustive list of all acceptable or unacceptable questions that may constitute evidence of unlawful discrimination. Information obtained through acceptable questions may not be used to unlawfully discriminate in the basis of race, color, religion, sex, age, disability, or national origin.

This guide pertains only to inquiries directed to an applicant prior to employment. Employers may obtain and use certain protected information pursuant to an exemption from the Arizona Civil Rights Act. The Act permits certain types of discrimination on the basis of applicable security regulations established by the United States, on the basis of a bona fide occupational qualification which is considered essential to a particular position or occupation, or on the basis of religion by a religious corporation, association, educational institution, or society.

Inquiries that are otherwise unacceptable but necessary for affirmative action programs or other government reporting or record keeping requirements should be made on a separable portion that will be removed prior to processing the application. Forms with such inquiries should include a

statement that the information is for statistical purposes only and will not be part of the application. Such information should be kept separate from regular employee records.

A private employer is covered by the **Arizona Civil Rights Act (ACRA)** if it is an employer with 15 or more employees on each working day in each of 20 or more calendar weeks in the current or preceding calendar year.

<u>Acceptable Pre-Employment Inquires</u>	<u>Subject</u>	<u>Unacceptable Pre-Employment Inquiries</u>
Name of applicant. Any other names applicant may be known by so a proper check of work and educational records can be made.	<u>Name</u>	Inquiries regarding origin of applicant's name that may tend to indicate the applicant's national origin, religion or ancestry.
Place and length of residence, telephone number, only.	<u>Residence</u>	
Statement concerning employment subject to verification that applicant meets legal age requirements.	<u>Age</u>	<p>ACRA prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 70 years of age.</p> <p>It is unlawful for an employer to print or publish any notice or advertisement relating to employment indicating any preference, limitation, specification or discrimination based on age, except when age is bona fide occupational qualification for employment.</p> <p>It is unlawful to limit, segregate or classify applicants for employment in any way which would deprive or tend to deprive employment opportunities based on an individual's age.</p>
Status of Residency: 1) U.S. Citizen? 2) Legal right to work in the U.S.?	<u>Birthplace, Citizenship</u>	It is unlawful to require proof of citizenship or residency <u>prior to offer of employment</u> .
Statement to applicant that, <u>if hired</u> , applicant may be required to submit proof of citizenship/legal right to work in the U.S.		
Foreign languages applicant reads, speaks, or writes, <u>if job related</u> .	<u>National Origin</u>	To inquire, limit, segregate or classify applicants for employment in any way that will deprive or tend to deprive employment opportunities based on an applicant's national origin.
	<u>Gender</u>	To limit, segregate or classify applicants for employment in any way that would deprive or

tend to deprive employment opportunities based on an applicant's gender.

Religion

To inquire, limit, segregate or classify applicants for employment in any way that would deprive or tend to deprive employment opportunities based on an applicant's religion.

Statement of regular days, hours or shifts to be worked.

Work Days/Shifts

Statement that photo may be required after hiring.

Race/Color or, Physical Description

To inquire, limit, segregate or classify applicants for employment in any way which would deprive or tend to deprive employment opportunities based on an applicant's race, color or physical description.

Make pre-employment inquiries into the ability of an applicant to perform job related functions.

Medical

The prohibition against discrimination based on a disability includes medical exams and inquiries. Except as stated, a covered entity shall not conduct a medical exam or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability.

Require a medical examination after an offer of employment has been made to a job applicant and before commencement of employment duties of the applicant and may condition an offer of employment on the results of such examination if both of the following apply:

(a) All entering employees in the same job classification are subjected to the examination regardless of disability.

To fail or refuse to hire, or to otherwise discriminate against, any individual based on the results of a genetic test received by the employer.

b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record.

Use qualification standards, exams, tests or other selection criteria that screen out or tend to screen out an individual with a disability, or a class of individuals with disabilities, unless the standard test or other selection criteria is shown to be job related for the position in question and is consistent with business necessity.

Inquiry into academic, vocational, professional

Education

Specific inquiry into the nationality, racial, or religious

education and schools attended,
degrees/diplomas received.

affiliation of a school.

Inquiry regarding prior convictions. When, where, final disposition of case. *Must include statement that conviction will not be an absolute bar to employment.*

Criminal Record

May ask for references:

Professional/Character References

- (a) Person who referred applicant.
- (b) Names of applicant's relatives currently employed by company.
- (c) Former employers

Emergency contact information.

Notice in case of emergency

List of organizations, clubs, professional societies or other associations of which applicant is a member, **excluding** those which by their name or character indicate race, color, religion, gender, age, disability or national origin.

Organizations

Notice to applicant that any misstatements or omissions of material facts in the application may be cause for dismissal.

Miscellaneous