

Code of Massachusetts Regulations Currentness
 Title 804: Massachusetts Commission Against Discrimination
 Chapter 3.00: Discrimination in Employment (Refs & Annos)

804 CMR 3.02

3.02: Reference Chart Regarding Permissible Inquiries

TOPIC	EMPLOYERS MAY ASK	EMPLOYERS MAY NOT ASK
Age	<p>Generally, the only proper question is, “Are you under 18, yes or no?”</p> <p>Questions about age may be allowed if necessary to satisfy the provisions of a state or federal law (for example, certain public safety positions have age limits for hiring and retiring). Also, if the Commission has previously identified age as a <i>bona fide</i> occupational qualification for the position.</p>	<p>Inquiry into the date of birth or age of an applicant, except as indicated to the left.</p>
Disability/Handicap		<p>Inquiry into whether the applicant has a physical or mental disability/handicap or about the nature or severity of the disability/handicap.</p> <p>Inquiry into whether an applicant is alcoholic or drug addicted.</p> <p>Inquiry into whether an applicant has AIDS.</p>
National Origin/ Ancestry/Citizenship	<p>“Are you legally authorized to work in the United States?”</p>	<p>Inquiry into the birthplace of an applicant or the birthplace of his or her parent(s), spouse and/or other close relatives.</p>

	An employer may require an employee to produce documentation which evidences his or her identity and employment eligibility under federal immigration laws.	Inquiry into the national origin, ancestry or ethnicity of an applicant.
		Inquiry into whether an applicant for employment or an applicant's parent(s), and/or spouse are nationalized or native born citizens of the United States.
Medical Examinations	Once an offer of employment has been made, an employer may condition that offer on the results of a medical examination conducted solely for the purpose of determining whether the employee, with or without reasonable accommodation, is capable of performing the essential functions of the job.	
Race/Color	No questions.	Inquiry into the race or color of an applicant.
Photograph	No questions.	An employer cannot ask for a photograph to accompany an application.
Religious Creed	No questions, except by religious organizations as provided in 804 CMR 3.01(7)(a).	Inquiry into the religious denomination or practices of an applicant, his or her religious obligations, or what religious holidays he or she observes.
Sex (Gender)	Generally, no questions. However, questions regarding gender may be permissible if they relate to a <i>bona fide</i> occupational qualification, which has been ruled to be a	Inquiry into an applicant's maiden name or any question that pertain to only one sex (for example inquiries into marital status only asked of women). Inquiries into

	legitimate requirement for a particular position, as provided in 804 CMR 3.01(3)(b)3.	whether applicant has children, plans to have children, or has child care arrangements.
Sexual Orientation	No questions.	Inquiry into applicant's sexuality (gay, bisexual, lesbian, heterosexual).
Criminal Record	<p>Employers may ask the following series of questions:</p> <ol style="list-style-type: none"> 1. Have you been convicted of a felony? Yes or no? 2. Have you been convicted of a misdemeanor within the past five years (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no?. 3. Have you completed a period of incarceration within the past five years for any misdemeanor (other than a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no? 4. If the answer to question number 3 above is "yes" please state whether you were convicted <u>more than five years ago</u> for any offense (other than a first 	<p>It is unlawful for an employer to make any inquiry of an applicant or employee regarding:</p> <ol style="list-style-type: none"> 1. An arrest, detention or disposition regarding any violation of law in which no conviction resulted; 2. First convictions for the misdemeanors of drunkenness, simple assault, speeding, minor traffic violations, affrays or disturbance of the peace. For the purposes of 804 CMR 3.02 minor traffic violations include any moving traffic violation other than reckless driving, driving to endanger and motor vehicle homicide. 3. Any conviction of a misdemeanor where the date of the conviction or the completion of any period of incarceration resulting therefrom, which ever date is later, occurred five or more years prior to the date of such inquiry, unless such person has been convicted of any offense within five years immediately preceding the date of the inquiry.

conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace)? Yes or no?

Some employers are authorized to request, receive, view and/or hold criminal offender record information pursuant to state or federal law.

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by 804 CMR 3.02.

Any inquiry into the criminal record of an applicant must also contain language pursuant to M.G.L. c. 276, § 100A.

Education/Experience/
References/
Organizations

Inquiry into the academic, vocational or professional education of an applicant for employment. Inquiry into the work experience shall also contain a statement that the applicant may include in such history any verified work performed on a volunteer basis.

Questions about education de signed to determine how old the applicant is.

Inquiry into references.

Inquiry into the organizations which the applicant for employment is a member, the nature, name or character of which would likely disclose the applicant's protected class status.

Lie Detector Test

No questions.

It is unlawful to require or administer a lie detector test as condition of employment or continued employment.

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