

Pre-employment inquiries



Alberta Human Rights
and Citizenship Commission

INFORMATION SHEET

This information sheet will help employers and employees understand what kinds of pre-employment inquiries are acceptable under Alberta's human rights legislation, the *Human Rights, Citizenship and Multiculturalism Act* (the *Act*). It will also help employers develop non-discriminatory job advertisements, application forms, and interview questions.

Human rights law prohibits discrimination in employment

Some of the information typically requested on job application forms and in job interviews is not relevant to an applicant's ability to do a job. In some cases, certain information requested on forms and in interviews could intentionally or inadvertently be used by an employer to discriminate against certain groups of people and restrict or deny their employment. The *Act* prohibits employers from discrimination in the areas of employment practices and employment applications and advertisements.

Section 8 (1) of the *Act* states:

"No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry of an applicant:

- (a) that expresses either directly or indirectly any limitation, specification or preference indicating discrimination on the basis of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, or family status of that person or of any other person, or
- (b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, or family status."

In addition, although not stated explicitly in the *Act*, inquiries about sexual orientation are not allowed. The Supreme Court of Canada "read in" sexual orientation as a protected ground, effective April 2, 1998.

In certain circumstances, pre-employment inquiries that appear to be discriminatory may be acceptable, if they provide information that the employer truly needs to determine if an employee would be suitable for the job, that is, if the information is required for a business purpose that is acceptable under the *Act*.

Gender, marital status or family status

Do not ask questions that require disclosure of an applicant's gender, or marital or family status, unless you need to ask for a specific business-related purpose that is acceptable under the *Act*. Do not:

- make a direct inquiry
- ask the applicant to specify Mr., Mrs., Miss or Ms. on an application form
- ask for a previous or maiden name
- request names of relatives and dependants
- ask for information about child care arrangements
- ask about an applicant's plans to have more children
- ask for information about a spouse's or partner's employment

Source of income

Any inquiry concerning source of income must be job-related. You can request information about former employment. Avoid inquiries about other sources of income that may have a stigma attached to them, such as social assistance, disability pension and child maintenance, unless you have a job-related reason for asking.

Previous names

Asking an applicant to provide previous names can cause the applicant to indirectly disclose marital status, gender, place of origin, or ancestry. A refusal to employ a person on any of these grounds would be contrary to the *Act*. Any inquiry that requires an applicant to disclose this information would be contrary to the *Act*, unless there is a business reason for doing so that is acceptable under the *Act*.

For example, an employer may request a prospective employee's previous names for the purpose of reference checks or to confirm previous employment or attendance at an educational institution. The Commission suggests that a request for any previous name be phrased, "Please indicate any previous names that differ from your current name, to be used only to verify past employment or education, or to do a reference check." Ideally this information should be requested in the section of the application dealing with past employment, education or references.

Next of kin

Asking for names of relatives or next of kin before hiring is not recommended. Such information can reveal the gender, marital status, place of origin or ancestry of the applicant. If you need names of relatives or next of kin for a business purpose, such as knowing whom to notify in case of emergency, pose the question: "Person to notify in case of an emergency." In most cases, you will not need to obtain this information until after an applicant accepts your employment offer.

Dependents and child care

Avoid inquiries about an applicant's spouse, number of children or dependants, childcare arrangements and plans to have children. The answers to these questions are usually not related to the job and can reveal gender and marital or family status. Inquiries that focus on willingness to work the required schedule, to work rotating shifts, or to relocate are clearly business-related and are acceptable.

Age and date of birth

It is not advisable to ask for applicants' date of birth or age, unless the applicant is under 18 years of age. In employment situations where there is a legal minimum age requirement, you can verify that the applicant meets the legal age requirement. Recommended questions include:

- Are you legally entitled to work in this province?
- Are you 18 years of age or older? Ask this question only if the applicant is legally required to be 18 years old to work in a specific environment or under certain circumstances, for example, serving alcoholic drinks in a bar or lounge. If the applicant says they are under 18, you may ask their age.

Previous address

It is not acceptable to request a previous address, unless it is for a business-related purpose that is acceptable under the *Act*. For example, a local municipality may have a residency requirement that has to be met by job applicants, or an employer may be seeking employees with recent northern living experience.

Citizenship

Citizenship is not specifically dealt with in the *Act*. However, asking the applicant to reveal citizenship could require a non-Canadian applicant to disclose place of origin, which is protected under the *Act*. Ask questions to solicit information that is related to the specific requirements of the job to be performed.

Appropriate questions could include:

- Are you legally entitled to work in Canada?
- Are you a Canadian citizen or landed immigrant? Yes No

(Do not make a distinction between the two.)

Physical or mental disability

It is not acceptable to ask questions that are not related to the specific job to be performed. With this in mind, it is contrary to the *Act* to ask applicants to provide information about the general state of their physical or mental health, their appearance, height or weight. It is not advisable to request a general medical history or examination as part of the pre-employment inquiry process.

It is permissible to require a job-related medical examination after an applicant has accepted an employment offer. It is acceptable to ask the applicant to sign a declaration such as "I understand that a job-related medical examination is required and that the offer of employment is contingent upon a satisfactory job-related medical examination." The examination may include both physical and psychological tests.

Apart from the application form, employers can, through the use of a complete job description, ensure that potential applicants have enough information to assess their own suitability for the job. It is acceptable for an employment advertisement or job description to set out details about the nature and extent of key physical and mental requirements of a position. For example, emergency medical services personnel face stressful work conditions in their daily work. Roadway construction personnel face strenuous physical demands on a daily basis.

Sexual orientation

Avoid inquiries about an applicant's sexual orientation. It is unacceptable to express a preference for an applicant to be heterosexual, homosexual or bisexual, unless you have a business-related reason for expressing a preference, and the reason is acceptable under the *Act*.

Workers' Compensation

Asking if the applicant has received or is receiving Workers' Compensation indirectly requires an applicant to provide information about a physical injury or disability. This can be contrary to the *Act*, unless there is a business-related reason for asking that is acceptable under the *Act*.

Language ability

It is appropriate to ask applicants if they have some proficiency in the languages that are specifically required for the job. The job description and employment advertisement should specify which languages are required. The level of language ability required should match the job requirements. If the applicant does not need proficiency in the language to do the job, the employer should not use the word "fluent" to describe the language ability required. Otherwise, to require an applicant to state the languages in which they are fluent could be seen as requiring the disclosure of information about place of origin or ancestry, which is contrary to the *Act*.

Military service

Asking about the applicant's military service may indirectly require an applicant to provide information about place of origin. This can be contrary to the *Act*, unless there is a business-related reason for asking that is acceptable under the *Act*.

Educational institutions

You can request the names and addresses of academic, vocational, technical and professional institutions attended and the nature and level of education received. Requiring information that reflects either the religious or racial affiliation of schools or other institutions attended is not advisable as it could reveal religious beliefs or race.

Religious beliefs

Avoid requesting information about applicants' religious beliefs, including which religious holidays and customs they observe, which church they attend, or if their clothing is prescribed by their religion. It is permissible for an employer to specify the hours of work in a job advertisement. A job advertisement may indicate that the position will require shift, evening or weekend work, or that it is functional 365 days per year.

Courts and tribunals have said that the employer must make all efforts up to the point of undue hardship to accommodate the religious beliefs of an employee. In turn, the employee is expected to cooperate fully with the employer's efforts.

Undue hardship may occur if accommodation would create the following conditions for an employer: an intolerable financial cost, serious disruption to a business or workplace, or other serious issues that cannot be overcome.


Membership in clubs, organizations and professional associations

You can ask applicants to indicate membership in clubs, organizations or associations, if it is job-related. Membership in a professional or technical association may be a requirement for licensing purposes or employment.

Photographs

Avoid asking for photographs. A photograph may reveal race, colour, gender, physical disabilities, age or ancestry, and consideration of these factors could be discriminatory. If you require a photograph for business-related purposes, ask for it after your offer of employment has been accepted.

A note about post-employment inquiries

An employer may ask an employee to provide personal information required for income tax purposes or for the purpose of administering pension or other benefits. The employer must handle and store such information in a secure manner to avoid possible or perceived misuse of the information. 

Contact the Commission

For more information, please contact the **Alberta Human Rights and Citizenship Commission**. We are an independent commission of the Government of Alberta. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

Northern Regional Office

800 Standard Life Centre
10405 Jasper Avenue
Edmonton, Alberta T5J 4R7
(780) 427-7661 Confidential Inquiry Line
(780) 427-6013 Fax

Southern Regional Office

Suite 310, 525 – 11 Avenue SW
Calgary, Alberta T2R 0C9
(403) 297-6571 Confidential Inquiry Line
(403) 297-6567 Fax

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

For province-wide free access from a cellular phone, enter *310 (for Rogers-AT&T) or #310 (for Telus).

TTY service for persons who are deaf or hard of hearing

(780) 427-1597 Edmonton
(403) 297-5639 Calgary
1-800-232-7215 Toll-free within Alberta

E-mail humanrights@gov.ab.ca

Web site www.albertahumanrights.ab.ca

***Please note:** A complaint must be made to the Alberta Human Rights and Citizenship Commission within one year after the alleged incident.*

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