

**DEVELOPING INTERVIEW QUESTIONS**  
**By Karen Sutherland**

Interview questions that relate to a candidate’s age, race, religion, national origin, marital status, disability, sex, or other protected class are inappropriate under the Washington State Human Rights Commission’s regulations governing pre-employment inquiries, and could lead to a charge of discrimination. The following chart is a summary from the regulations found in the Washington Administrative Code:

SUBJECT	FAIR PREEMPLOYMENT INQUIRIES	UNFAIR PREEMPLOYMENT INQUIRIES
A. Age <sup>1</sup>	Inquiries as to birth date and proof of true age are permitted by RCW 49.44.090	Any inquiries not in compliance with RCW 49.44.090 which implies a preference for persons under 40 years of age.
B. Arrests (also see Convictions)	Because statistical studies regarding arrests have shown a disparate impact on some racial and ethnic minorities, and an arrest by itself is not a reliable indication of criminal behavior, inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to conviction of a crime involving behavior which would adversely affect job performance, and the arrest occurred within the last ten years. Exempt from this rule are law enforcement agencies and state agencies, school districts, businesses and other organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults. See RCW 43.20A.710; 43.43.830 through 43.43.842 and RCW 72.23.035.	Any inquiry which does not meet the requirements for fair preemployment inquiries.
C. Citizenship	Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status. Whether applicant can provide proof of a legal right to work in the United States after hire.	Whether applicant is citizen. Requirement before hiring that applicant present birth certificate, naturalization or baptismal divulge applicant's lineage, ancestry, national origin, descent, or birth place.
D. Convictions (see also Arrests) <sup>2</sup>	Statistical studies on convictions and imprisonment have shown a disparate impact on some racial and ethnic minority groups. Inquiries concerning convictions (or imprisonment) will be considered to be justified by business necessity if the crimes inquired about relate reasonable to the job duties, and if such convictions (or release from	Inquiries concerning convictions and imprisonment which either do not relate reasonable to job duties or did not occur within the last ten years will not be considered justified by business necessity.

<sup>1</sup> (For age discrimination, RCW 49.44.090 must be read in connection with RCW 49.60.180 and 49.44.090, which limits age discrimination claims to persons 40 years of age or older, and makes other limitations and exceptions to the age discrimination law.)

<sup>2</sup> The conviction portions of the regulation may not be enforceable, as the Court of Appeals held that convicted criminals are not a protected class in *Gugin v. Sonico*, 68 Wn. App. 826, 846 P.2d 71 (1993).

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	<p>prison) occurred within the last ten years. Law enforcement agencies, state agencies, school districts, business and other organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons or vulnerable adults are exempt from this rule. See RCW 43.20A.710; 43.43.830 through 43.43.842 and RCW 72.23.035.</p>	
E. Family	<p>Whether applicant can meet specific work schedules or has activities, commitments or responsibilities that may prevent him or her from meeting work attendance requirements.</p>	<p>Specify inquiries concerning spouse, spouse's employment or salary, children, child care arrangements, or dependents.</p>
F. Disability	<p>Whether applicant is able to perform the essential functions of the job for which the applicant is applying, with or without reasonable accommodation. Inquiries as to how the applicant could demonstrate or describe the performance of the specific job functions with or without reasonable accommodation. Note: Employers are encouraged to include a statement on the application form apprising applicants that if they require accommodation to complete the application, testing or interview process, to please contact the employment office, personnel or human resources department or other office as may be able to assist them.</p>	<p>Inquiries about the nature, severity or extent of disability or whether the applicant requires reasonable accommodation. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.</p>
G. Height and Weight	<p>Being of a certain height or weight will not be considered to be a job requirement unless the employer can show that all or substantially all employees who fail to meet the requirement would be unable to perform the job in question with reasonable safety and efficiency.</p>	<p>Any inquiry which is not based on actual job requirements and not consistent with business necessity.</p>
H. Marital Status (See also name and Family)	<p>None</p>	<p>Mr., Mrs., Miss, Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, etc.</p>
I. Military	<p>Inquiries concerning education, training, work experience, in the armed forces of the United States.</p>	<p>Type or condition of military discharge. Applicant's experience in military other than U.S. armed forces. Request for discharge papers.</p>
J. Name	<p>Whether applicant has worked for this company or another employer under a different name and, if so, what name. Name under which applicant is known to references if different than present name.</p>	<p>Inquiry into original name where has changed by court order or marriage. Inquiries about a name which would divulge marital status, lineage, ancestry, national origin or descent.</p>
K. National Origin	<p>Inquiries into applicant's ability to read, write and speak foreign languages, when such inquiries are based on job requirements.</p>	<p>Inquiries into applicant's lineage, ancestry, national origin, descent, birthplace, or mother tongue. National origin of applicant's parents or spouse.</p>

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L. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, marital status, religion, or national origin or ancestry of its members.	Requirement that applicant list all organizations, clubs, societies, and lodges to which he or she belongs.
M. Photographs	May be requested after hiring for identification purposes.	Request that applicant submit a photograph, mandatorily or optionally, at any time before hiring.
N. Pregnancy (see also Disability)	Inquiries as to the duration of stay on job or anticipated absences which are made to males and females alike.	All questions as to pregnancy, and medical history concerning pregnancy and related matters.
O. Race or Color	None. See WAC 162-12-150, 162-12-160 and 162-12-170.	Any inquiry concerning race or color of skin, hair, eyes, etc., and not specifically permitted by WAC 162-12-150,162-160, and 162-12-170.
P. Relatives	Name of applicant's relatives already employed by this company or by any competitor.  (While the law does not prohibit company policies governing the employment of relatives, women, married couples, or other protected classes, it would be in violation of the law unless it is shown to serve a necessary business purpose.) See WAC 162-12-150, 162-12-160 and 162-12-170.	Any other inquiry regarding marital status, identity of one's spouse, or spouse's occupation, are considered unfair practices in accordance with WAC 162-12-150.
Q. Religion or Creed	None	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
R. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
S. Sex	None	Any inquiry concerning gender is prohibited.

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*This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at [ksutherland@omwlaw.com](mailto:ksutherland@omwlaw.com)*