



## Do NOT Ask Job Interview or Employment Questions

Characteristics that are identified as protected under anti-discrimination laws by the US Government:

1. Disability
2. Race or Color
3. Religion
4. National Origin
5. Age (40 or older)
6. Gender including Sexual Identity or Orientation i.e. LGBTQ
7. Citizenship (but must be legally able to work, see I-9)
8. Veteran (unless voluntary under veterans' preference law), Military, or Discharge Status
9. Familial Status (marital status, any children, plans, or pregnancy)
10. Genetic Information
11. Willingness to take a Polygraph <https://www.dol.gov/whd/polygraph/>
12. Union Membership

Additional Washington State laws, other requirements and limitations may apply.

1. State law prohibits employers from asking applicants about **arrests or convictions** before the applicant is determined to be otherwise qualified for a position.
2. State law prohibits employers from discriminating against employees or refusing to hire individuals who are **victims** of domestic violence, sexual assault, and stalking. It also requires employers from refusing to provide reasonable safety accommodations to victims of domestic violence, sexual assault, and stalking.
3. State law grants exclusive bargaining representatives the right to meet with new employees to present information about their employment rights. New employees are not required to meet with their exclusive bargaining representatives. AKA **Unions**. Similar protections are provided by federal law.
4. Washington State may also have additional anti-discrimination laws restricting making employment decisions or asking applicants about the following:
  - a. Testing positive for HIV or Hep C
  - b. Credit History
  - c. Political Affiliation

We recommend employers stay away from the above topics entirely. Concentrate on whether or not the applicant or employee can or does perform the specific job requirements. Putting those requirements in the job description can be helpful. One example required a property manager to be able to climb the stairs at an apartment complex. A different **Continued on Page 2**

apartment complex manager did not have to deal with stairs, so stairs climbing capability was not a requirement in that specific job description.

This may seem obvious, but never ask an applicant or employee to do anything illegal.

Seek legal counsel before complications arise. These laws can become difficult to comply with. An associate was trying to be empathetic when she asked about an applicant's present health after the applicant conveyed her story about a previous illness she had struggled with. This could have been construed as a question about a disability that is not allowed.

Exceptions: Re: VETS-4212 "While federal contractors and subcontractors have been required to survey applicants for race/ethnicity and gender for some time, there was no requirement to survey applicants regarding veteran or disability status until the revised regulations came into effect. Companies will now be required to begin surveying applicants for veteran and disability status." [www.Localjobnetwork.com](http://www.Localjobnetwork.com)

In another example of complication: In order for an individual's drug (or alcohol) addiction to be considered a disability under the ADA, it would have to pose a substantial limitation on one or more major life activities. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of an "individual with a disability" when an employer takes action on the basis of their current use.

Applicants with felony convictions can be excluded as long as the exclusion is job-related and consistent with business necessity. Source: [www.ada.gov/copsq7a.htm](http://www.ada.gov/copsq7a.htm) But see above for Washington state. Don't ask before determining if the applicant is qualified. The most restrictive law may supersede.

**Additional Sources:**

[www.eeoc.gov/laws/practices/#pre-employment\\_inquiries](http://www.eeoc.gov/laws/practices/#pre-employment_inquiries) ,  
[www.dol.gov](http://www.dol.gov) ,  
<https://news.clearancejobs.com/2013/08/30/cant-ask-veteran-interview-can/>  
<https://www.employmentlawhandbook.com/wage-and-hour-laws/state-wage-and-hour-laws/washington/>  
<https://www.labor.idaho.gov/dnn/Businesses/Idaho-Labor-Laws>  
<https://www.idaho.gov/business/managing-hiring-employees/>  
<https://idahobizhelp.idaho.gov/BusinessEssentials/EmployerIssues.aspx>  
<https://www.dol.gov/dol/fact-sheet/immigration/RetaliationBasedExerciseWorkplaceRightsUnlawful.htm>  
<http://www.lni.wa.gov/>