

# Pre-Employment Inquiries

As most of you are aware, Massachusetts law guarantees that no person shall be denied the right to work because of his or her race, color, religion, national origin, sex, sexual orientation, age (over 40), criminal record, or mental or physical handicap/disability. In order to comply with this law, an employer should generally not ask on a job application or during an interview any question that:

- Identifies a person as being within a protected category;
- Results in the screening out of members in a protected category;
- Is not a valid basis for predicting successful job performance.

As a general rule, an employer may seek information that is directly related to the applicant's ability to perform the job for which he or she is applying. For example, with regard to age, you can ask an applicant if they are under 18, however can not ask their date of birth, how old they are, or if they are over 40.

With regard to handicaps or disabilities you can ask the applicant if they can perform specific job functions, you can ask them to describe how they would perform a specific task, or if they can meet attendance requirements. It is always a good idea to ask these questions of all applicants unless there is an obvious disability. You can not ask if an applicant has a disability, if they receive Workers' Compensation, if they have ever been addicted to illegal drugs or if they have been absent from work due to an illness.

These are just a few examples of areas where an employer/interviewer may be caught unaware and find themselves the subject of a discrimination suit, even when their intent was not to discriminate, but was merely to find the best person for the job, and simply did not know the appropriate method of extracting the necessary information.

If you have any questions on this or other employment law topics please feel free to contact me.