Chapter 162-12 WAC

PREEMPLOYMENT INQUIRY GUIDE

WAC 162-12-100 Purpose. (1) These regulations carry out the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and interpret RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission generally follows chapter 49.60 RCW and federal court decisions that interpret comparable statutes and rules. The commission will not follow federal precedents when a different interpretation of state statutes and rules will better carry out the purpose of chapter 49.60 RCW.

(3) This regulation cannot cover every question that might arise in connection with inquiries prior to employment. The commission expects that in most cases these rules, either directly or by analogy, will guide those who are covered by the law.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, gender expression or gender identity, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

WAC 162-12-120 General approach. (1) Inquiries that convey to a reasonable person that applicants in a protected class will be discriminated against are prohibited whether or not they are connected to a discriminatory purpose.

(2) The commission recognizes the legitimate interests of employers and employment agencies with respect to making preemployment inquiries that are consistent with the purpose of the law against discrimination, or where required by government or to carry out an employer's policy of nondiscrimination. In the absence of safeguards, preemployment inquiries or records of applicants' protected status can be misused for discriminatory purposes. The rules in WAC 162-12-140 identify common fair and unfair preemployment inquiries so that employers and employment agencies do not convey the impression that applicants will be discriminated against based on protected status.

WAC 162-12-130 Discriminatory inquiries are prohibited. Any preemployment inquiry or the keeping of any record of protected status before employment for a discriminatory purpose is prohibited and may be evidence of an unfair practice when connected to the applicant's protected status unless the particular quality inquired about is a bona fide occupational qualification.

WAC 162-12-135 Bona fide occupational qualifications. Chapter 49.60 RCW recognizes an exception to unfair preemployment inquiries when the inquiries are based upon a "bona fide occupational qualification." (See WAC 162-12-240.)

WAC 162-12-140 Preemployment inquiries. (1) The following examples of fair and unfair inquiries apply when made in reference to job application forms, preemployment interviews, or any other type of inquiry made of job applicants. The rules also apply to inquiries made to persons other than an applicant and to inquiries made by third parties such...
as a credit reporting service. The rules do not apply after a person is employed. See WAC 162-12-180.

(2) Employers and employment agencies shall comply with these rules except where one or more of the following conditions exist:

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<th>FAIR PREEMPLOYMENT INQUIRIES</th>
<th>UNFAIR PREEMPLOYMENT INQUIRIES</th>
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<tbody>
<tr>
<td>a. Age</td>
<td>Inquiries as to birth date and proof of true age are permitted by RCW 49.44.090.</td>
<td>Any inquiry not in compliance with RCW 49.44.090 that implies a preference for persons under 40 years of age.</td>
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<td>(For age discrimination, RCW 49.44.090 must be read in conjunction with RCW 49.60.180 and 49.60.200. RCW 49.44.090 limits age discrimination coverage to persons 40 years of age and older, and makes other limitations and exceptions to the age discrimination law.)</td>
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<td>b. Arrests (see also Convictions)</td>
<td>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 that 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.</td>
<td>Any inquiry that does not meet the requirements for fair pre-employment inquiries.</td>
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<td>Specific inquiries concerning spouse, spouse’s gender, spouse’s employment or salary, children, child care arrangements, or dependents.</td>
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<tr>
<td>c. Citizenship</td>
<td>Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status.</td>
<td>Whether applicant is citizen. Requirement before job offer that applicant present birth certificate, naturalization or baptismal diploma applicant’s lineage, ancestry, national origin, descent, or birth place.</td>
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<td>d. Convictions (see also Arrests)</td>
<td>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 reasonably to the job duties, and if such convictions (or release from prison) occurred within the last ten years. Law enforcement agencies, 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 are exempt from this rule. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.</td>
<td>Inquiries concerning convictions and imprisonment which either do not relate reasonably to job duties or did not occur within the last ten years will not be considered justified by business necessity.</td>
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(3) The following examples of fair and unfair pre-employment inquiries define what is an unfair practice under RCW 49.60.180 and 49.60.200. RCW 49.44.090 limits age discrimination 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 reasonably to the job duties, and if such convictions (or release from prison) occurred within the last ten years. Law enforcement agencies, 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 are exempt from this rule. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.

If one or more of the above conditions apply, the inquiries of employers and employment agencies must be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-160 and 162-12-170.

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<td>See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.</td>
<td>Whether applicant is citizen. Requirement before job offer that applicant present birth certificate, naturalization or baptismal diploma applicant's lineage, ancestry, national origin, descent, or birth place.</td>
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| a. Age | Inquiries as to birth date and proof of true age are permitted by RCW 49.44.090. | Any inquiry not in compliance with RCW 49.44.090 that implies a preference for persons under 40 years of age. |
|        | (For age discrimination, RCW 49.44.090 must be read in conjunction with RCW 49.60.180 and 49.60.200. RCW 49.44.090 limits age discrimination coverage to persons 40 years of age and older, and makes other limitations and exceptions to the age discrimination law.) | |
| b. Arrests (see also 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 that 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. | Any inquiry that does not meet the requirements for fair pre-employment inquiries. |
| c. Citizenship | Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status. | Whether applicant is citizen. Requirement before job offer that applicant present birth certificate, naturalization or baptismal diploma applicant's lineage, ancestry, national origin, descent, or birth place. |
| d. Convictions (see also Arrests) | 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 reasonably to the job duties, and if such convictions (or release from prison) occurred within the last ten years. Law enforcement agencies, 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 are exempt from this rule. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035. | Inquiries concerning convictions and imprisonment which either do not relate reasonably to job duties or did not occur within the last ten years will not be considered justified by business necessity. |
SUBJECT | FAIR PREEMPLOYMENT INQUIRIES | UNFAIR PREEMPLOYMENT INQUIRIES
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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.
g. Height and Weight | 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.
h. Marital Status (see also Name and Family) | None. ( ) Mr. ( ) Mrs. ( ) Miss ( ) Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, has a same sex spouse, etc.
i. Military | Inquiries concerning education, training, or work experience in the armed forces of the United States.
j. Name | 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 from present name.
k. National Origin | Inquiries into applicant's ability to read, write and speak foreign languages, when such inquiries are based on job requirements.
l. Organizations | Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, sexual orientation, gender expression or gender identity, marital status, religion, or national origin or ancestry of its members.
m. Photographs | May be requested after hiring for identification purposes.
n. Pregnancy (see also Disability) | Inquiries as to a duration of stay on job or anticipated absences which are made to males and females alike.
o. Race or Color | None. See WAC 162-12-150, 162-12-160, and 162-12-170.
p. Relatives | Name of applicant's relatives already employed by this company or by any competitor.
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.
s. Sex | None. Any inquiry concerning sex assigned at birth is prohibited.
t. Sexual Orientation, Gender Expression or Gender Identity | None. Any inquiry concerning sexual orientation, gender expression or gender identity, or character of which indicates the race, color, creed, sex, sexual orientation, expression or gender identity, marital status, religion, or national origin or ancestry of its members.

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required by the court or government, the information shall be acquired by means other than inquiry to the applicants, unless the court or government expressly requires the inquiries or unless the inquiries are made in conformity with WAC 162-12-160 and 162-12-170.

[Statutory Authority: RCW 49.60.120(3). WSR 00-01-177, § 162-12-150, filed 12/21/99, effective 1/21/00; WSR 96-21-054, § 162-12-150, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-150, filed 5/22/74; Order 9, § 162-12-180, filed 9/23/71; § 162-12-180, filed 10/23/67.]

**WAC 162-12-160  Data for legitimate purposes.** (1) An employer or employment agency may make inquiries as to race, sex, national origin, or disability for purposes of affirmative action, when the inquiries are made in the manner provided in WAC 162-12-170.

(2) Data on protected status shall not be recorded on any record that is kept in the applicant's preemployment file, nor shall such data be kept in any other place or form where it is available to those who process the application. Application records that identify the protected status of a particular person shall be kept confidential, except to the extent necessary to implement an affirmative action program as authorized by law, to permit the compilation of statistics, and to permit verification of the statistics by top management of the employer, or by the Washington state human rights commission.

[Statutory Authority: RCW 49.60.120(3). WSR 00-01-177, § 162-12-160, filed 12/21/99, effective 1/21/00; WSR 96-21-054, § 162-12-160, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-160, filed 5/22/74; Order 9, § 162-12-160, filed 9/23/71; § 162-12-160, filed 10/23/67.]

**WAC 162-12-170  Conditions for inquiries to applicants.** An employer or employment agency may ask an applicant to voluntarily state his or her protected status for reasons stated in WAC 162-12-150 and 162-12-160 only if it has satisfied all of the following conditions:

(1) The employer shall have adopted a written equal employment policy which authorizes the inquiries as a means of monitoring its enforcement, and which sets out detailed procedures for keeping the responses confidential and separate from other records relating to applicants, in fulfillment of the requirements of WAC 162-12-160(2); and

(2) The form on which the question appears contains statements clearly informing the applicant the information is strictly voluntary, the reasons for asking for the information, the uses to which the information will be put, and the safeguards that will prevent use of the information by those who will process the application.

[Statutory Authority: RCW 49.60.120(3). WSR 00-01-177, § 162-12-170, filed 12/21/99, effective 1/21/00; WSR 96-21-054, § 162-12-170, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-170, filed 5/22/74; Order 9, § 162-12-170, filed 9/23/71; § 162-12-170, filed 10/23/67.]

**WAC 162-12-180  Post employment records.** RCW 49.60.180 and 49.60.200 and these rules do not prohibit making or keeping records of the protected status of persons after they are employed, unless the records are used for the purpose of discrimination. To prevent improper use, records of an employee's protected status must be maintained in a manner accessible only on a need to know basis.

[Ch. 162-12 WAC p. 4]  

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