

123 South Broad Street,
Avenue of the Arts
Philadelphia, PA 19109
215-772-1500
215-772-7620 fax

1235 Westlakes
Drive, Suite 200
Berwyn, PA 19312
610-889-2210
610-889-2220 fax

Liberty View
457 Haddonfield Road,
Suite 600
Cherry Hill, NJ 08002
856-488-7700
856-488-7720 fax

1105 North Market St.,
15th Floor
Wilmington, DE 19801
302-504-7800
302-504-7820 fax

Cornerstone Commerce Center
1201 New Road, Suite 100
Linwood, NJ 08221
609-601-3010
609-601-3011 fax

Guidelines For Pre-Employment Inquiries

Prior to deciding to hire an applicant, these are the general* legal requirements which apply to any inquiry, oral or written:

| SUBJECT | YOU MAY ASK | YOU MAY NOT ASK |
|---|---|---|
| Name & Address | Current name and address; maiden or former names that may be necessary to verify employment and educational history; length of residence; prior address | Foreign address; birthplace |
| Age | Whether meets minimum age requirements and can prove so | Age, birthdate, or for birth certificate or baptismal record; date of graduation from high school; photo |
| Criminal Record | Convictions for other than summary offenses (State that convictions will not automatically disqualify applicant) | Arrests; convictions of summary offenses |
| Education | Academic, vocational, or professional courses/degrees/institutions, or fluency in foreign languages if it pertains to the job | Nationality, religious affiliation, racial makeup of schools, foreign training or education |
| Genetic Information about the applicant or his/her family members | None | Any |
| Handicap/disability | [After explaining the functions of a particular job to an applicant] Whether able to perform essential functions of job sought with or without reasonable accommodation; whether can meet attendance requirements of a job [Can require a medical exam (but not a family medical history) after making an initial offer as well as drug tests and job related strength/stamina/agility tests that do not discriminate on the basis of age and/or sex] | Anything that might lead to handicap or health information, e.g. workers' compensation claims, sick leave used, medical exams, information, or records |
| Marital Status | None | Any |
| Military service | Service in the U.S. Armed forces when job-related; military work experience; type of discharge if job-related (state that a dishonorable or general discharge is not an absolute bar to employment) | Type of discharge if not job-related; service of another country |
| National Origin | Language(s) applicant reads/speaks/writes fluently, but only if job-related; whether the applicant has a legal right to work in the U.S. | Nationality; ancestry; parentage; birthplace of applicant or applicant's close relatives; U.S. arrival or residency dates; applicant's native language; photo; applicant's, spouse's, or applicant's parents' naturalization or citizenship records or dates; fluency in English, unless job-related; whether the applicant is a U.S. citizen |

*CAUTION: (1) Some states/localities have special rules; (2) even lawful inquiries can be deemed evidence of unlawful discrimination if they seek to elicit information that is not job-related and that has a disparate impact on a protected class; (3) even information that is obtained lawfully may not be used unlawfully; and (4) criminal history and employment references should be routinely checked to avoid liability for negligent hiring/retention.

| SUBJECT | YOU MAY ASK | YOU MAY NOT ASK |
|-----------------------|--|---|
| Organizations | Memberships and activities, but excluding any which by their name or character would indicate race, religion, etc. | Any inquiry within the express exclusion |
| Race or Color | Nothing | Race, complexion, color of skin, eyes, hair; height & weight unless job-related; photo |
| References | Prior employment, terms of employment, reasons for leaving; character references | Religious references |
| Relatives | Whether a relative works for the employer (in the event an employer has a policy or practice of anti-nepotism); maiden name that may be necessary to verify employment and educational history | Name of spouse and other relatives; whether the applicant has any children; the applicant's plans for pregnancy or childbearing |
| Religion | Nothing | Religion, denomination, religious holidays, attendance at a place of worship |
| Sex | None unless bona fide occupational qualification (rare) | Any inquiry that might indicate sex; photo; questions of one sex but not the other |
| Shifts/overtime | Ability to work any/all shifts, overtime (state that a reasonable effort is made to accommodate the religious needs of employees) | Questions to one race, sex, etc., but not to others |
| Transportation/travel | Ability to get to work; distance/time for commute; willingness to travel if job-related | Ownership of auto, unless required in the performance of job duties; questions to one race, sex, etc., but not to others |
| Unions | May state lawful company policy against unions | Union membership, support, activities |

Labor and Employment Law Practice Group

Daniel P. O'Meara†, Chair — 215-772-7647 / domeara@mmwr.com

*Janice G. Dubler**, Vice Chair — 856-488-7723 / jdubler@mmwr.com

The Labor and Employment Law Practice of Montgomery, McCracken, Walker & Rhoads, LLP services clients throughout the United States. Its attorneys are experienced in representing employers in all labor and employment law disciplines including collective bargaining, arbitrations, union organizing campaigns, employment discrimination, wage and hour, OSHA, wrongful discharge, workers' compensation, unemployment compensation, and NLRB and PLRB litigation. Members of the Practice include:

Attorneys

| | | |
|----------------------|--------------------|--------------|
| Georgette Fries* | gfries@mmwr.com | 856-488-7794 |
| Carmon M. Harvey† | charvey@mmwr.com | 215-772-7698 |
| R. Monica Hennessy* | mhennessy@mmwr.com | 856-488-7769 |
| Joyce B. Link† | jlink@mmwr.com | 215-772-7692 |
| Richard H. Martin† | rmartin@mmwr.com | 215-772-7270 |
| Louis R. Moffa, Jr.◇ | lmoffa@mmwr.com | 856-488-7740 |
| John M. Myers† | jmyers@mmwr.com | 215-772-7535 |

E-Mail

Telephone

† Admitted to practice in Pennsylvania.

* Admitted to practice in Pennsylvania and New Jersey.

◇ Admitted to practice in Pennsylvania, New Jersey, District of Columbia.

Louis A. Petroni — Responsible Partner, Cherry Hill, NJ



Montgomery, McCracken, Walker & Rhoads, LLP

A Limited Liability Partnership Formed in Pennsylvania

*Information current
as of May 2010*