MIIA Risk Management

Massachusetts Pre-Employment Inquiries Fact Sheet*

Topic	Employer May Ask	MA Law	Employer May Not Ask
Age	Are you under 18? Questions about age may be allowed if necessary to satisfy provisions of a state or federal law (for example, certain public safety positions have age limits for hiring and retiring).	151B	When were you born? How old are you? Are you over 40? What is your date of birth? How long do you plan to work before you retire?
National Origin/ Ancestry	Are you legally authorized to work in the United States?	151B	Where were you born? What is your primary language? What is your ancestry or ethnicity? What is your national origin? What is the origin of your name? Where are your parents/ spouse from? What is the language of your parents/spouse? What is the national origin of your parents/spouse? What is the ancestry or ethnicity of your parents/spouse?
Handicap/ Disability	Can you perform any or all of these specific job functions? Please describe or demonstrate how you would perform a specific task. (This request should be asked of all applicants unless there is an obvious disability or voluntarily disclosed hidden disability related to a job function. The employer may need to provide reasonable accommodation for the demonstration.)	151B	Do you have a handicap/disability? Do you have any job-related handicaps/limitations that would prevent you from doing the job? Have you ever received Workers' Compensation? Have you ever been addicted to illegal drugs or treated for drug abuse/alcoholism? Have you ever been absent from work due to illness? Do you have AIDS? Have you ever been voluntarily or involuntarily admitted to any public or private facility for the care and treatment of mental illness? What is the nature, severity, treatment, or prognosis of an obvious disability or of a hidden disability voluntarily disclosed by the applicant?
Race/Color	Questions for affirmative action purposes. (See section on disability)	151B	What is your race? Color? Request applicant to send a photograph to accompany an application.

*Overview limited to Massachusetts law

Religions Creed	NO QUESTIONS ALLOWED	151B	To what religious denomination, church or synagogue do you belong (or any related organizations)? What are your religions obligations? What religious holidays do you observe? Do you go to church/temple regularly?
Sex (Gender)	Questions relating to a legitimate requirement for a particular position (i.e. sex of an applicant for an acting role of a female character, or a prison guard who performs strip searches).	151B	What is your maiden name? Do you have/plan to have children? Do you have child care arrangements? No questions may be asked of only one sex.
Sexual Orientation	NO QUESTIONS ALLOWED	151B	Are you gay/lesbian/bisexual/heterosexual ,etc.? Why aren't you married? Are you engaged? Do you plan on getting married? Questions about relationships or living arrangements. Do you have children? Who will take care of your child?
Criminal Record	NO QUESTONS ALLOWED BEFORE AN INTERVIEW Two Exceptions – 1. If the position has a mandatory or presumptive disqualification, or 2. If the Employer by law/regulation is prohibited from employing persons convicted of one or more types of criminal offenses, i.e. Banks.	CORI/ 151B	Questions regarding an arrest, detention, or disposition regarding any violation of law in which no conviction resulted. Questions about first convictions of drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace also sealed or juvenile offense.. Questions regarding a conviction of a misdemeanor where the date of the conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 5 or more years prior to the date of inquiry, unless such person has been convicted of any offense within 5 years immediately preceding the date of the inquiry. An applicant to be held under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of his/her failure to recite or acknowledge such information as s/he has a right to withhold by 804 C.M.R. 3.02.
Education/ Experience/ References/ Organizations	What school, college or vocational program did you attend? Did you graduate? What is your work experience? Do you have any references?	151B	Questions about education or work experience designed to determine an applicant's age. About the organizations which the applicant for employment is a member, the nature, name or character of which would likely disclose the applicant's protected class status.

Military Experience	Are you a U.S. Veteran? What is your U.S. military service history?	151B	Are you receiving a service-connected disability pension? What is your foreign military service history? What was the nature of your discharge? Do not ask for DD-214 as it may disclose medical.
Medical Examinations	Once an offer of employment has been made, an employer may condition that offer on the results of medical examination conducted solely for the purpose of determining whether the employee, with or without reasonable accommodation, is capable of performing the essential functions of the job.	151B	An employer may not ask an applicant to take a medical examination prior to making an offer of employment to that applicant.
Attendance at Prior Job	NO QUESTIONS ALLOWED	151B	
Salary	NO QUESTIONS ALLOWED	MA Equal Pay Act	An employer may not require salary history during a job interview. Forbid employees from discussing salaries.

MIIA provides general guidance to its members for information purposes. Application of individual laws can vary widely based on the specific facts involved. This guideline is not intended as legal advice and should not be construed as such. Any inquiries concerning Massachusetts law should be directed to a licensed attorney.