

Chapter 162-12 WAC

PREEMPLOYMENT INQUIRY GUIDE

WAC

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tive 11/14/96; Order 16, § 162-12-100, filed 5/22/74; Order 9, § 162-12-100, filed 9/23/71; § 162-12-100, filed 10/23/67.]

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.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-120, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-120, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-120, filed 5/22/74; Order 9, § 162-12-120, filed 9/23/71; § 162-12-120, filed 10/23/67.]

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

162-12-020,	162-12-030, 162-12-040. [Guide (part), filed 10/22/62.] Repealed by Rule, filed 10/23/67, § 162-12-910.
162-12-050	Preemployment inquiry guide—Bona fide occupational qualification. [Guide (part), filed 10/22/62.] Repealed by Order 8, filed 6/22/70.
162-12-060	Preemployment inquiry guide—Petitioning for a bona fide occupational qualification exemption. [Guide (part), filed 10/22/62.] Repealed by Order 8, filed 6/22/70.
162-12-070	Preemployment inquiry guide—Exemptions based on government security regulations or directives of other government agencies. [Guide (part), filed 10/22/62.] Repealed by Order 8, filed 6/22/70.
162-12-080	[Rule, filed 7/17/64; Guide (part), filed 10/22/62.] Repealed by Rule, filed 10/23/67, § 162-12-910.
162-12-110	Statutes interpreted. [Order 16, § 162-12-110, filed 5/22/74; Order 9, § 162-12-110, filed 9/23/71; § 162-12-110, filed 10/23/67.] Repealed by 96-21-054, filed 10/14/96, effective 11/14/96. Statutory Authority: RCW 49.60.120(3).

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 purposes 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, 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).

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-100, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-100, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-100, filed 5/22/74; Order 9, § 162-12-100, filed 9/23/71; § 162-12-100, filed 10/23/67.]

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.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-130, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-130, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-130, filed 5/22/74; Order 9, § 162-12-130, filed 9/23/71; Order 8, § 162-12-130, filed 6/22/70; § 162-12-130, filed 10/23/67.]

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 162-16-240.)

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-135, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-135, filed 10/14/96, effective 11/14/96; Order 16, § 162-12-135, filed 5/22/74; Order 9, § 162-12-135, filed 9/23/71; Order 8, § 162-12-135, filed 6/22/70.]

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:

(a) When there is a "bona fide occupational qualification."

(b) A voluntary affirmative action plan that is in compliance with the requirements of a government agency or other competent authority such as a court, and if made in a manner provided in WAC 162-12-160 and 162-12-170.

(c) A requirement of federal law or regulation, as explained in WAC 162-12-150.

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.

(3) The following examples of fair and unfair preemployment inquiries define what is an unfair practice under RCW 49.60.180(4) and 49.60.200. These examples, however, are not all inclusive. All preemployment inquiries that unnecessarily elicit the protected status of a job applicant are prohibited by these statutes irrespective of whether or not the particular inquiry is covered in this regulation.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.	Any inquiry that does not meet the requirements for fair preemployment inquiries.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
c. Citizenship	Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status. Whether applicant can provide proof of a legal right to work in the United States after hire.	Whether applicant is citizen. Requirement before job offer that applicant present birth certificate, naturalization or baptismal divulge applicant's lineage, ancestry, national origin, descent, or birth place. 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.
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.	
e. Family	Whether applicant can meet specified work schedules or has activities, commitments or responsibilities that may prevent him or her from meeting work attendance requirements.	Specific inquiries concerning spouse, spouse's employment or salary, children, child care arrangements, or dependents.
f. Disability	Whether applicant is able to perform the essential functions of the job for which the applicant is applying, with or without reasonable accommodation. Inquiries as to how the applicant could demonstrate or describe the performance of these specific job functions with or without reasonable accommodation. Note: Employers are encouraged to include a statement on the application form apprising applicants that if they require 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.	Inquiries about the nature, severity or extent of a disability or whether the applicant requires reasonable accommodation prior to a conditional job offer. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
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.	Any inquiry which is not based on actual job requirements and not consistent with business necessity.
h. Marital Status (see also Name and Family)	None.	() Mr. () Mrs. () Miss () Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, etc.
i. Military	Inquiries concerning education, training, or work experience in the armed forces of the United States.	Type or condition of military discharge. Applicant's experience in military other than U.S. armed forces. Request for discharge papers.
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.	Inquiry into original name where it has been changed by court order or marriage. Inquiries about a name that would divulge marital status, lineage, ancestry, national origin or descent.
k. National Origin	Inquiries into applicant's ability to read, write and speak foreign languages, when such inquiries are based on job requirements.	Inquiries into applicant's lineage, ancestry, national origin, descent, birthplace, or mother tongue. National origin of applicant's parents or spouse.
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, marital status, religion, or national origin or ancestry of its members.	Requirement that applicant list all organizations, clubs, societies, and lodges to which he or she belongs.
m. Photographs	May be requested <i>after</i> hiring for identification purposes.	Request that applicant submit a photograph, mandatorily or optionally, at any time before hiring.
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.	All questions as to pregnancy, and medical history concerning pregnancy and related matters.
o. Race or Color	None. See WAC 162-12-150, 162-12-160, and 162-12-170.	Any inquiry concerning race or color of skin, hair, eyes, etc., not specifically permitted by WAC 162-12-150, 162-12-160, and 162-12-170.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
p. Relatives	Name of applicant's relatives already employed by this company or by any competitor.	Any other inquiry regarding marital status, identity of one's spouse, or spouse's occupation are considered unfair practices in accordance with WAC 162-12-150. (While the law does not prohibit company policies governing the employment of relatives, any policy that has the effect of disadvantaging minorities, women, married couples, or other protected classes, would be in violation of the law unless it is shown to serve a necessary business purpose.) See WAC 162-12-150, 162-12-160, and 162-12-170.
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.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
s. Sex	None.	Any inquiry concerning gender is prohibited.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-140, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-140, filed 10/14/96, effective 11/14/96; Order 19, § 162-12-140, filed 1/20/75; Order 18, § 162-12-140, filed 1/20/75; Order 16, § 162-12-140, filed 5/22/74; Order 9, § 162-12-140, filed 9/23/71; Order 8, § 162-12-140, filed 6/22/70; § 162-12-140 and chart, filed 10/23/67.]

WAC 162-12-150 Required inquiries. An employer or employment agency may ask applicants about protected status to the extent that the employer is required to do so by the Washington state or the United States government or a federal or state court decree. When the applicant data are 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). 00-01-177, § 162-12-150, filed 12/21/99, effective 1/21/00; 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, § 162-12-150, filed 9/23/71; § 162-12-150, 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 ver-

ification of the statistics by top management of the employer, or by the Washington state human rights commission.

[Statutory Authority: RCW 49.60.120(3). 00-01-177, § 162-12-160, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-160, filed 10/14/96, effective 11/14/96; Order 18, § 162-12-160, filed 1/20/75; 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). 00-01-177, § 162-12-170, filed 12/21/99, effective 1/21/00; 96-21-054, § 162-12-170, filed 10/14/96, effective 11/14/96; Order 18, § 162-12-170, filed 1/20/75; 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.

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