



*Commission
des droits de la personne
et des droits de la jeunesse*

Québec

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EMPLOYMENT APPLICATION FORMS AND EMPLOYMENT INTERVIEWS

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Notice

This document has been published by the Commission des droits de la personne. On November 29, 1995, this Commission has been joined with the Commission de protection des droits de la jeunesse. The new organization is designated as the *Commission des droits de la personne et des droits de la jeunesse*.

Employment Application Forms and Employment Interviews*

Employment application forms and employment or promotion interviews are entirely legitimate selection tools to the extent that they enable employers to assess the qualifications of candidates with respect to the requirements of a job and to select competent people on that basis.

■ The rule of non-discrimination

Under sections 10 and 16 of the *Charter of Human Rights and Freedoms*, is prohibited any discrimination during the selection process based on « race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap » (section 10).

To avoid use of these criteria – which usually bear no relation to the qualifications requested for the job – as a basis for exclusion, section 18.1 of the Charter stipulates that :

« No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in section 10 unless the information is useful for the application of section 20 or the implementation of an affirmative action program in existence at the time of the application. »

Employers, employment bureau or any person involved in personnel selection must therefore refrain from asking direct or indirect questions pertaining to prohibited grounds of discrimination. Questions of this nature, even if asked indirectly or in a subtle manner, are prohibited both in the employment application form and during the interview.

If a complaint is made to the Commission des droits de la personne for refusal to hire based on discrimination, the presence of illegal questions in the employment application form or during the interview may be used as evidence in the Commission's investigation. In addition, the mere act of asking such a question is an offence against the Charter and may lead to penal proceedings against the person concerned.

* This document is an updated version of a brochure published under the same title by the Commission des droits de la personne du Québec in 1985. See also **The new section 18.1 in the Charter of Human Rights and Freedoms : prohibition of discriminatory questions in employment application forms or during employment related interviews**, Commission des droits de la personne du Québec, July 1984. Text drafted by Michel Coutu, legal advisor.

The words « employment application form » include any request for compulsory information or documents to be provided by the candidate, including information to be sent with a résumé and accompanying documents such as a recent photograph or a birth certificate.

However, the answers to some questions needed to assess a candidate's qualifications may sometimes, or incidentally, provide indications on grounds for discrimination. The name of an educational institution or the address of a previous employer may, for example, indicate the person's national origin. While section 18.1 does not prohibit such questions, the Charter prohibits the use of such indications as a basis for exclusion of a candidate through discrimination.

The application of section 18.1 encourages a rigorous approach in the selection process, by leading the employer to focus on candidates' professional qualifications with respect to the specific job rather than on stereotypic generalizations of particular groups of persons.

■ Exceptions

Section 20 of the Charter provides for some exceptions to the rule of non-discrimination :

« A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory. »

Thus, the absence or presence of a characteristic related to a prohibited ground of discrimination may sometimes constitute a qualification or aptitude objectively required by a specific job (for example, the age of majority in order to exercise certain regulated occupations). In other cases, a distinction, exclusion or preference may be justified by the nature of a particular institution (for example, requiring membership of a political party to be eligible for certain permanent positions within the party). In all such cases, the burden of proof lies with the employer.

This type of situation justifies questions on the required characteristics, since the information is « useful for the application of section 20. » More often than not, however, this type of exception does not apply to every job within an organization, and it is thus preferable to mention in the application form that these questions relate to specific jobs, or simply to ask for that information during the interview.

In addition, when a firm or organization implements an affirmative action program to remedy the situation of certain groups discriminated against in employment (under sections 86 and following of the ***Charter of Human Rights and Freedoms***), it may ask candidates for information on their inclusion in target groups (women, visible minorities, Native people, etc.).

These questions must be placed in a separate section of the employment application form in which it is clearly specified that the information is required for the purposes of an affirmative action program and that it will remain confidential.

This insertion is only possible, however, when concrete steps have been taken to implement an affirmative action program. Employers wishing to ascertain or update the composition of their workforce for analysis and program development purposes may ask their personnel, after hiring, whether or not they belong to the target groups.

Other questions prohibited prior to hiring may be asked after hiring (such as age and civil status for the purposes of income tax or social benefits). The information must be sought using a separate form to be filled out after hiring.

The following table contains a list of questions which are consistent with the Charter and others which should be avoided in employment application forms and interviews. It is in no way complete, and you may contact the Commission des droits de la personne for further information.

Subject	Questions consistent with the Charter*	Questions to be avoided*
Race / color	None.	Any question related to race or colour, including eye, skin or hair colour. Any request for a photograph to accompany an employment application, or for a photograph to be submitted before the aptitude test or interview.
	Comments : A photograph may be requested after hiring for identification purposes.	
Sex	None, except where sex is an attribute objectively required for the job.	Mr., Ms., Miss or Mrs. Different forms or different codes for men and women.
	Comments : A person's given name usually indicates his or her sex, but section 18.1 does not prohibit questions in this respect.	
Civil Status	Would you be available to travel as part of your work ?	Miss or Mrs. Maiden name. Married, separated, divorced, etc. Name and occupation of spouse and his or her eventual agreement in case of a transfer involving a move. Number of dependent persons. Arrangements for care of dependent persons. Family ties with a person already employed by the firm or organization, without further explanation.
	Comments : <ul style="list-style-type: none"> . It is common practice to address a woman as « Ms. » regardless of her civil status. . If the employer has an anti-nepotism policy, this could be mentioned in the application form or during the interview, and applicants may be asked at that point about any family ties that may place them in a situation of conflict of interest. . In addition, some questions concerning civil status, to be avoided in the application form or during the interview, may be asked after hiring, for, among other reasons, income tax or social benefits purposes. . After hiring, employees may also be asked to specify their family ties with the people to be notified in case of emergency. 	

* Exceptions to these guidelines may arise where section 20 of the Charter applies (see page 2). In such a case, the burden of proof lies with the employer.

Subject	Questions consistent with the Charter*	Questions to be avoided*
Sexual orientation	None.	
Age	None, except where a minimum age is fixed by legislation for a particular job.	Date of birth. Health insurance number. Driver's licence number.. A request to enclose a birth certificate with the application form.
	Comments :	<ul style="list-style-type: none"> . There is no legal age for working in Québec, except for certain occupations which are regulated due to the dangers they present. However, students who are subject to compulsory school attendance may not be employed during school hours. In this case, a question concerning the candidate's age may be asked at the time of the interview. . Proof of age may be required after hiring.
Ethnic or national origin	Are you entitled to work in Canada ?	Place of birth. Place of birth of spouse or parents. Previous addresses. Experience in Canada or Québec, unless a specific type of experience is objectively required for the job, in which case the nature of the experience must be specified. Citizenship, landed immigrant status or possession of a work permit. Social insurance number.
	Comments :	<ul style="list-style-type: none"> . Anyone having Canadian citizenship, landed immigrant status or a work permit is entitled to work in Canada. .The work permit or, where required to the job, proof of citizenship or landed immigrant status, may be requested before hiring. . The social insurance number must not be requested until after hiring because in some cases it may provide information on national origin.

* Exceptions to these guidelines may arise where section 20 of the Charter applies (see page 2). In such a case, the burden of proof lies with the employer.

Subject	Questions consistent with the Charter*	Questions to be avoided*
Pregnancy	None.	<p>Are you pregnant?</p> <p>Do you intend to have children?</p> <p>Have you ever had pregnancy-related health problems?</p> <p>How long do you think you will remain on the employment market?</p>
Language	<p>Candidates may be asked if they can understand, speak, read or write the language or languages required for the job.</p> <p>Comments :</p> <ul style="list-style-type: none"> . The employer may not require knowledge of any language other than that or those needed for the job. . A candidate's knowledge of or fluency in a language may be used to assess the candidacy only where knowledge or fluency is required for the job. 	<p>Mother tongue.</p> <p>Place where languages were learnt.</p>
Religion	<p>None, except where adherence to a particular religion is an attribute required for the job or justified by the religious nature of a non-profit institution.</p> <p>Comments : If a person's religious practices make it difficult for him or her to comply with a specific work schedule, the employer is bound to try to adapt the schedule to suit the person, unless doing so would cause undue hardship.</p>	<p>Adherence to a religion or religious practices.</p> <p>Availability to work on a specific religious holiday.</p> <p>References from clergy or religious leaders.</p>
Political convictions	None, unless the job objectively requires membership of a political party.	Political affiliation or activities.

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Subject	Questions consistent with the Charter*	Questions to be avoided*
Social condition	Could you obtain a car if needed for the job or to get to work?	Do you have a car? Are you a landlord or a tenant?
	Comments : <ul style="list-style-type: none"> . Some people do not own a car but could buy or lease one if they had a job. . The fact of owning or renting a house often creates a specific perception of a person's social condition. 	
Handicap	<p>An employer may ask a candidate to agree to undergo a medical examination before hiring.</p> <p>An employer who implements a plan for the hiring of handicapped persons under the Act to secure the handicapped in the exercise of their rights (R.S.Q., chapter E-20.1) may add a note to the application form on the following lines :</p> <p>To further your candidacy, you may inform us of any handicap which would require adaptation of our selection methods (interviews, tests, etc.).</p>	<p>Health condition.</p> <p>List of deficiencies.</p> <p>Hospitalization or previous or present medical treatment, including treatment for mental health.</p> <p>Compensations for previous employment injuries.</p> <p>Have you previously taken part in a detoxification program?</p>
	Comments : <ul style="list-style-type: none"> . Employers must adapt their selection methods to suit any handicapped person who so requests. . Employers may take account of deficiencies only where they limit the person's ability to carry out the essential duties of the job. . If, by reason of a deficiency, a person has difficulty gaining access to the workplace or carrying out certain duties, the employer must try to adapt the premises, equipment or work organization for that person, except where doing so would cause undue hardship. . The medical examination should take place after an offer of employment conditional to its results and must be limited to ascertain whether or not the person is capable of carrying out the duties of the job, with or without restriction. . An employer is not justified in excluding a person who is capable of doing the work for the sole reason that he or she does not qualify for a group insurance plan in force in the organization. 	

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Supplementary Information

▪ **Criminal record**

The Charter does not prohibit employers from seeking information on candidates' criminal record. However, it is important to bear in mind section 18.2, which says this :

« No one may dismiss, refuse to hire or other wise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence. »

A question concerning previous penal or criminal charges or convictions may, if not explained, lead to a presumption that the employer does not intend to comply with section 18.2. It may constitute a presumption of fact in the case of a complaint filed with the Commission des droits de la personne for refusal to hire.

It is therefore better, where necessary, to ask if the applicant has been convicted of any penal or criminal offence « connected with the job and for which you have not obtained a pardon », or to list the types of offences considered incompatible with a given job.

During the interview, the candidate will be able to obtain more information on the requirements of the job and will be in a better position to judge any possible connection between his criminal record and the job.

In case of doubt about any such connection, the candidate and employer may consider the problem together.

▪ **Bonding**

For some jobs, candidates may be required to be bonded.

It should be noted that it is possible to obtain a special individual bonding for people with criminal record.

▪ **Height and weight**

Questions concerning the height and weight of candidates are not specifically prohibited under section 18.1 of the Charter. However, hiring criteria based on height and weight may, if not job related, have a discriminatory impact on women, members of some cultural communities and some handicapped persons. The Commission des droits de la personne therefore recommends that such questions be avoided, unless the employer can prove that certain height and weight

requirements are directly related to the capacity to carry out the duties associated with a given job and cannot be changed without undue hardship.

- **Paraprofessional activities**

The Commission also recommends that unexplained questions concerning aspects of a person's private life, such as leisure activities, hobbies, reading, etc., be avoided.

In this respect, it is preferable to invite candidates to supply information on their paraprofessional activities that may be related to the qualifications needed for the job.

- **References**

The employer is entitled to verify any information provided in an employment application form or during the interview, to the extent that the information is related to the qualifications needed for the job.

However, if the verification also reveals information on grounds for illegal discrimination (such as sexual orientation, political convictions, divorce, etc.), the employer must not use that information to discriminate against the candidate, since doing so would be a ground for complaint to the Commission des droits de la personne.

Disclosure of certain information may also be considered by a candidate as a reflection on his or her private life or reputation, and thus as a ground for legal proceedings.

Finally, the use of information provided by an investigation agency on grounds for discrimination or on a person's private life may have the same consequences.

- **Non-smoking policy**

An employer is entitled to impose a non-smoking policy to protect the health of its personnel.

However, it is advisable to notify candidates in advance that they will be required to comply with this policy if their candidacy is accepted. A note to that effect could be included in the employment application form. Excluding a person who refuses to comply with a non-smoking policy would not constitute discrimination within the meaning of the *Charter of Human Rights and Freedoms*.

- **Information certification**

The formula to certify the information contained in the application form should not include an authorization to gather all kinds of information not related to the job.

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Services to ensure respect and promote human rights and freedoms

- If you would like information on the rights guaranteed by the Charter,
- if you wish to file a complaint of discrimination or harassment, or if you wish to report a case of exploitation of an elderly or disabled person,

call the office of the Commission des droits de la personne et des droits de la jeunesse in your region :

Chicoutimi

Hull

Longueuil

Montréal

Québec

Rimouski

Val d'Or

Saint-Jérôme

Sept-Iles

Sherbrooke

Trois-Rivières

To take advantage of the other services offered by the Commission : documentation, education, research, assistance with affirmative action programs and the specialized library...please contact the Commission's head office :

Montréal.....514 873-5146 ou 1800 361-6477