

# What are my rights when I apply for a job?

## What can they ask?

Someone who interviews you for a job should not ask you questions about:

- Age
- Race
- Creed
- Color
- National origin
- Sexual orientation
- Veteran/military status
- Gender
- Marital/family status
- Disability
- Arrests not followed by conviction

They cannot base hiring decisions on these factors. We recognize, and our laws declare, that it is a civil right for persons to have the chance to get a job without discrimination due to these factors.

Protected classes are made up of people identified for protection under equal employment laws and regulations, because many of them historically have been discriminated against. Various federal laws identify these groups as protected:

Race, ethnic origin, color (African Americans, Hispanic Americans, American Indians, Asian Americans)

- Gender (women)
- Age (over 40)
- Individuals with disabilities
- Vietnam-era veterans
- Religion

## Are dress codes legal?

It is legal for businesses to impose dress codes that do not permit employees to wear certain articles of clothing. (The law excludes certain religious clothing items). Generally, businesses may set different dress codes for male and female employees. They also may forbid employees from having visible tattoos or piercings.

These standards are generally applied to create a professional appearance to customers or patients or to ensure safety on the job. Research a business before you go to the interview to make sure you comply with their standards.

## I have a disability.

Title I of the Americans with Disabilities Act of 1990 (ADA) and the New York State Human Rights Law (HRL) makes it unlawful for a business to discriminate against a qualified applicant with a disability. The ADA applies to private businesses with 15 or more employees, the HRL to businesses with 4 or more employees. Both laws apply to State and local government employers.

An applicant with a disability, like all other applicants, must meet the employer's requirements for the job, such as:

- education
- training
- employment experience
- skills
- licenses

In addition, an applicant with a disability must be able to perform the “essential functions” of the job. That is, you must be able to do the fundamental duties either on your own, or with the help of “reasonable accommodation.”

However, an employer does not have to provide a reasonable accommodation that would impose “undue hardship,” meaning excessive cost, substantial changes, disrupt normal business operations, or fundamentally alter the nature of the program.

### **I was fired from my last job and I fear they will give me a bad reference.**

The law allows an employer to give you a negative reference, as long as the information they provide is accurate. Many companies make it a policy not to provide references, good or bad, and will only give dates of employment and job title. This is not a law in New York or any other state.

If you believe a former supervisor will give a bad reference that is **inaccurate**, it is best not to list that person as a reference. Instead, use as references only coworkers or clients who will speak of your skills accurately. Or, use an HR department that will give an objective reference. This does not guarantee that your old supervisor will not be contacted, but if he or she provides negative feedback, your other references may offset it.

If you must use your former boss as a reference, you may wish to contact that person to discuss what he or she might say about you. This gives you a chance to reach an understanding with that person. At least if you know what they may say, you can warn a prospective employer.

### **I have a criminal record.**

Businesses in NYS may not deny employment based **solely** on a criminal record, unless the offense is related to the job duties, or creates security or safety issues on the job. For example, a bank or financial institution may not hire someone with a conviction related to theft or dishonesty. Businesses may deny employment if you falsify an application by leaving out convictions, unless the conviction is expunged, sealed or has youthful offender status.

### **I have bad credit.**

An employer may use credit history to judge if a potential employee is responsible. Whether or not this is valid, some employers think if you do not pay your bills, then you will not be a reliable employee. Sadly, a bad credit report can work against you in your job search.

The Fair Credit Reporting Act (enforced by the Federal Trade Commission and the State Attorney General) says an employer must get your permission to look at your credit report. If you don't get a job because of bad credit, the employer must show you the report and tell you how to get a copy.

### ***If you have questions, contact:***

#### **New York State Department of Labor**

State Office Campus  
Building 12  
Albany, NY 12240

#### **New York State Division of Human Rights - Albany**

Empire State Plaza  
Corning Tower, 25th Floor  
P.O. Box 2049  
Albany, NY 12220  
(518) 474-2705