



### **(3) Guidelines for Application Forms Design**

Application forms are often used to expedite the selection and shortlisting processes. Questions on application forms can be unlawful if they ask about sex, marital status, pregnancy, race or disability and, if it can be shown that asking such questions constitutes less favourable treatment. Similarly, questions that relate to the family status of a person can also be unlawful. Family status means having responsibility for the care of an immediate family member.

Employers should avoid asking questions on the application form that might reasonably be perceived as indicating an intention to discriminate on the grounds set out in the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance, namely sex, marital status, pregnancy, disability, family status and race (the protected attributes).

#### ***Why some questions are undesirable***

Questions which are irrelevant for the purpose of selection should not be included. From the applicant's point of view, an application form which asks for information on personal particulars may give the impression that the information will be used for selection purposes. Indeed, a form which asks for personal details may make it more difficult for an employer to select prospective employees in a non-discriminatory manner.

#### ***Questions which should not be asked***

The questions to be included in an application form will depend on the grading and the nature of the job. Questions which suggest stereotyping, arouse suspicions of discrimination and seek irrelevant personal information should not be asked. Examples of such questions are those which deal with family, race of a person and his/her spouse, age of children, marital status, plans to have children and so on.

By the same token, questions on an application form should not suggest that the employer wishes to take into account any factors that

would discriminate on the ground of disability. As such, employers should not ask applicants to provide general medical information about themselves. Also, employers should not request information from persons with a disability which persons without a disability would not ordinarily be requested to provide.

The following are examples of questions for information, by no means exhaustive, which might suggest discrimination on the ground of the protected attributes:

- Photograph: requests for photographs
- Family, spouse, etc.: race; marital status; number and age of children; spouse's employment and salary
- Medical (for women only): pregnancy; intention to become pregnant; female ailments; gynaecological abnormalities; time off work owing to gynaecological problems
- Medical (for persons with a disability): health-related reasons hindering the performance of the job applied for; physical disability which precludes performance of certain kinds of work

#### ***Questions which may be asked***

Questions about health conditions, in particular those that contain the listing out of specific disabilities in a form, should be avoided unless it is essential or specifically relevant to the job, and in that event, reasons for requiring the information should be specified in the job specification.

Likewise, questions should focus on the applicant's ability to perform the job. An employer could attach a job description to the application form with information about specific job functions. It will give necessary information to applicants with a disability to consider whether to request for any accommodation in order to perform the tasks. Furthermore, the standards set in assessing replies should be related to job requirements and not to assumptions about sex, pregnancy, marital status, family status, disabilities or race.

Where the work poses specific hazards for women because of exposure to radiation or chemicals which are known to have adverse effects on



pregnant women, employers should point this out in the form. However, employers should not use this as a discriminatory means to eliminate female candidates who declare they are pregnant or intend to have children.

It is recommended that questions on application forms should not suggest that the employer wishes to take into account any sex, disability and race related factors not relevant to the job which would lead to employment being declined, unless genuine occupation qualification, an exception set out in the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Race Discrimination Ordinance, applies<sup>6</sup>.

Sometimes, it is necessary to gather information from applicants for other purposes. For example, race - related information for purposes of making any special arrangement, with regard to dates or times coinciding with religious festivals or observance, or dietary needs or cultural norms. The purpose for requesting or using such information should be clearly stated. The information obtained for the above purposes should be detachable from the rest of the application form and should not be made known to members of selection panels before the interview. The information should be treated in strict confidence and should not be used for other purposes.

When collecting and using the said information, the Personal Data (Privacy) Ordinance should also be observed.

#### ***Questions which can help better selection***

Invaluable experience, skills and expertise can be gained through involvement in activities which are unpaid or voluntary. Application forms should provide applicants with the opportunities to outline these experiences. These aptitudes or personal qualities, which are undetected in a person's academic qualification or work experience, might be useful to the job.

#### ***Information for monitoring purposes***

Monitoring is an integral element of an equal opportunities policy and for this purpose, information regarding an applicant's sex, marital status, disability or race needs to be collected. This information enables the organisation to monitor employment trends, set recruitment targets, and assess the effectiveness of its own policy and procedures on recruitment and selection.

#### ***Review of application forms***

The design of application forms should be reviewed regularly to keep pace with any amendments of the law.

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<sup>6</sup> Please also read "Sex as a Genuine Occupational Qualification", "Race as a Genuine Occupational Qualification" and "Absence of Disability as a Genuine Occupational Qualification" in this publication.