

Cal. Admin. Code tit. 2, s 7287.3

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 2. ADMINISTRATION DIVISION
4. FAIR EMPLOYMENT AND HOUSING COMMISSION
CHAPTER 2. DISCRIMINATION IN EMPLOYMENT
SUBCHAPTER 2. PARTICULAR EMPLOYMENT PRACTICES This database is current through 02/17/2006, Register 2006, No. 7 .

s 7287.3. Pre-Employment Practices.

(a) Recruitment.

(1) Duty Not to Discriminate. Any employer or other covered entity engaged in recruitment activity shall recruit in a non-discriminatory manner. However, nothing in these regulations shall preclude affirmative efforts to utilize recruitment practices to attract minorities, individuals of one sex or the other, individuals with disabilities, individuals over 40 years of age, and any other individual covered by the Act.

(2) Prohibited Recruitment Practices. An employer or other covered entity shall not, unless pursuant to a permissible defense, engage in any recruitment activity which:

(A) Restricts, excludes, or classifies individuals on a basis enumerated in the Act

;(B) Expresses a preference for individuals on a basis enumerated in the Act; or

(C) Communicates or uses advertising methods to communicate the availability of employment benefits in a manner intended to discriminate on a basis enumerated in the Act.

(b) Pre-Employment Inquiries.

(1) Limited Permissible Inquiries. An employer or other covered entity may make any pre-employment inquiries which do not discriminate on a basis enumerated in the Act. Inquiries which directly or indirectly identify an individual on a basis enumerated in the Act are unlawful unless pursuant to a permissible defense. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) (42 U.S.C.A. s12101 et seq.) and the regulations adopted pursuant thereto, nothing in Government Code section 12940, subdivision (d), or in this subdivision, shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(2) Applicant Flow and Other Statistical Recordkeeping. Notwithstanding any prohibition in these regulations on pre-employment inquiries, it is not unlawful for an employer or other covered entity to collect applicant-flow and other recordkeeping data for statistical purposes as provided in

Section 7287.0(b) of these regulations or in other provisions of state and federal law.

(c) Applications.

(1) Application Forms. When employers or other covered entities provide, accept, and consider application forms in the normal course of business, in so doing they shall not discriminate on a basis enumerated in the Act.

(2) Photographs. Photographs shall not be required as part of an application unless pursuant to a permissible defense.

(3) Separation or Coding. Application forms shall not be separated or coded or otherwise treated so as to identify individuals on a basis enumerated in the Act unless pursuant to a permissible defense or for recordkeeping or statistical purposes.

(d) Interviews. Personal interviews shall be free of discrimination. Notwithstanding any internal safeguards taken to secure a discrimination-free atmosphere in interviews, the entire interview process is subject to review for adverse impact on individuals on a basis enumerated in the Act.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12940, 12941 and 12942, Government Code.

HISTORY 1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

2. Change without regulatory effect amending subsections (a)(1), (b)(1) and Note filed 7-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

3. Editorial correction of subsection (a)(1) (Register 95, No. 38). 2 CA ADC s 7287.3

Cal. Admin. Code tit. 2, s 7287.7 BARCLAYS OFFICIAL
CALIFORNIA CODE OF REGULATIONS TITLE 2.
ADMINISTRATION DIVISION 4. FAIR EMPLOYMENT
AND HOUSING COMMISSION CHAPTER 2.
DISCRIMINATION IN EMPLOYMENT SUBCHAPTER 2.
PARTICULAR EMPLOYMENT PRACTICES

This database is current through 02/17/2006, Register 2006,
No. 7 .

s 7287.7. Aiding and Abetting.

(a) Prohibited Practices.

(1) It is unlawful to assist any person or individual in doing
any act known to constitute unlawful employment
discrimination.

(2) It is unlawful to solicit or encourage any person or
individual to violate the Act, whether or not the Act is in fact
violated.

(3) It is unlawful to coerce any person or individual to commit
unlawful employment discrimination with offers of cash, other
consideration, or an employment benefit, or to impose or
threaten to impose any penalty, including denial of an
employment benefit.

(4) It is unlawful to conceal or destroy evidence relevant to
investigations initiated by the Commission or the Department
or their staffs.

(5) It is unlawful to advertise for employment on a basis
prohibited in the Act.

(b) Permissible Practices.

(1) It shall not be unlawful, without more, to have been present
during the commission of acts amounting to unlawful
discrimination or to fail to prevent or report such acts unless it
is the normal business duty of the person or individual to
prevent or report such acts.

(2) It shall not be unlawful to maintain good faith lawful
defenses or privileges to charges of discrimination.

Note: Authority cited: Section 1418(a), Labor Code. (Section
12935(a), Government Code.) Reference: Sections 1411, 1412,
1420, 1420.1, 1420.15, Labor Code. (Sections 12920, 12921,
12940, 12941, 12942, Government Code.)
2 CA ADC s 7287.7

Cal. Admin. Code tit. 2, s 7290.9

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 2. ADMINISTRATION DIVISION 4. FAIR EMPLOYMENT AND HOUSING COMMISSION CHAPTER 2. DISCRIMINATION IN EMPLOYMENT SUBCHAPTER 6. SEX DISCRIMINATION This database is current through 02/17/2006, Register 2006, No. 7 .

s 7290.9. Pre-Employment Practices.

(a) Recruitment and Advertising.

(1) Employers or other covered entities engaged in recruiting activity (see Section 7287.2(a)) shall recruit individuals of both sexes for all jobs unless pursuant to a permissible defense.

(2) It is unlawful for any publication or other media to separate listings of job openings into "male" and "female" classifications.

(b) Pre-Employment Inquiries and Applications.

(1) For all employers or other covered entities who provide, accept and consider applications, it shall be unlawful to refuse to provide, accept and consider applications from individuals of one sex unless pursuant to a permissible defense.

2Cal. Admin. Code tit. 2, s 7294.0 BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 2. ADMINISTRATION DIVISION 4. FAIR EMPLOYMENT AND HOUSING COMMISSION CHAPTER 2. DISCRIMINATION IN EMPLOYMENT SUBCHAPTER 9. DISABILITY DISCRIMINATION

This database is current through 02/17/2006, Register 2006, No. 7 .

s 7294.0. Pre-Employment Practices.

(a) Recruitment and Advertising.

(1) Employers and other covered entities engaged in recruiting activities shall consider individuals with disabilities on an equal basis with individuals without disabilities for all jobs unless pursuant to a permissible defense.

(2) It is unlawful to advertise or publicize an employment benefit in any way which discourages or is designed to discourage individuals with disabilities to a greater extent than individuals without disabilities.

(b) Applications.

(1) An employer or other covered entity must consider applications from individuals with disabilities equally with applications from individuals without disabilities. Where applications are being accepted in the normal course of business, an application from an individual with a disability must be accepted.

(2) It is unlawful for an employer or other covered entity to ask the sex of the applicant on an application form or pre-employment questionnaire unless pursuant to a permissible defense or for recordkeeping purposes. After an individual is hired, the employer or other covered entity may record the employee's sex for non-discriminatory personnel purposes.

(3) It is unlawful for an employer or other covered entity to ask questions regarding childbearing, pregnancy, birth control, or familial responsibilities unless they are related to specific and relevant working conditions of the job in question.

Note: Authority cited: Section 1418(a), Labor Code. (Section 12935(a), Government Code.) Reference: Sections 1411, 1412, 1420, 1420., 1420.35, Labor Code. (Sections 12920, 12921, 12940, 12943, 12945, Government Code.)

HISTORY 1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25). 2 CA ADC s 7290.9

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

(2) Prohibited Inquiries. It is unlawful to ask general questions on disability in an application form or pre-employment questionnaire or in the course of the selection process. Examples of prohibited inquiries are:

(A) "Do you have any particular disabilities?"

(B) "Have you ever been treated for any of the following diseases or conditions?"

(C) "Are you now receiving or have you ever received Workers Compensation?"

(3) Permissible Job-Related Inquiry. Except as provided in the Americans with Disabilities Act of 1990 (Public Law 101-336) (42 U.S.C.A. s12101 et seq.) and the regulations adopted pursuant thereto, nothing in Government Code Section 12940, subdivision (d), or in this subdivision, shall prohibit any employer from making, in connection with prospective employment, an inquiry as to, or a request for information regarding, the physical fitness, medical condition, physical condition, or medical history of applicants if that inquiry or request for information is directly related and pertinent to the position the applicant is applying for or directly related to a determination of whether the applicant would endanger his or her health or safety or the health or safety of others.

(c) Interviews. An employer or other covered entity shall make reasonable accommodation to the needs of individuals with disabilities in interviewing situations, e.g., providing interpreters for the hearing-impaired, or scheduling the interview in a room accessible to wheelchairs.

(d) Medical Examination. An employer may condition an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty in order to determine fitness for the job in question provided that:

(1) All entering employees in similar positions are subjected to such an examination.

(2) Where the results of such medical examination would result in disqualification, an applicant or employee may submit independent medical opinions for consideration before a final determination on disqualification is made.

(3) The results are to be maintained on separate forms and shall be accorded confidentiality as medical records, except that:

(A) Supervisors and managers may be informed of restrictions on the work or duties of individuals with disabilities and necessary accommodations; and

(B) First aid and safety personnel may be informed, where appropriate, that the condition might require emergency treatment.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12920, 12921, 12926 and 12940, Government Code. HISTORY

1. Repealer and new section filed 6-20-80 as an emergency; effective upon filing. Certificate of Compliance included (Register 80, No. 25).

2. Change without regulatory effect of NOTE (Register 86, No. 45).

3. Amendment of subsection (a)(1) filed 4-22-88; operative 4-22-88 pursuant to Government Code Section 11346.2(d) (Register 88, No. 18).

4. Change without regulatory effect amending subsections (a)(1)-(2), (b)(1)-(2), (b)(3), (c), (d)(3)(A) and Note filed 7-17-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 29).

Cal. Admin. Code tit. 2, s 7295.4 BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 2. ADMINISTRATION DIVISION 4. FAIR EMPLOYMENT AND HOUSING COMMISSION CHAPTER 2. DISCRIMINATION IN EMPLOYMENT SUBCHAPTER 11. AGE DISCRIMINATION

This database is current through 02/17/2006, Register 2006, No. 7 .

s 7295.4. Pre-Employment Practices.

(a) Recruitment and Advertising.

(1) Recruitment. The provisions of Section 7287.3 (a) are applicable and are incorporated by reference herein.

Generally, during recruitment it is unlawful for employers to refuse to consider applicants because they are over forty years of age. However, it is lawful for an employer to participate in established recruitment programs with high schools, colleges, universities and trade schools. It is also lawful for employers to utilize temporary hiring programs directed at youth, even though such programs traditionally provide disproportionately few applicants who are over forty. However, exclusive screening and hiring of applicants provided through the above recruitment or temporary programs will constitute discrimination on the basis of age if the programs are used to evade the Act's prohibition against age discrimination.

(2) Advertising. It is unlawful for an employer to either express a preference for individuals under forty or to express a limitation against individuals over forty when advertising employment opportunities by any means such as the media, employment agencies, and job announcements.

Note: Authority cited: Section 12935(a), Government Code. Reference: Sections 12941 and 12942, Government Code. HISTORY 1. Amendment filed 5-12-83; effective thirtieth day thereafter (Register 83, No. 20). 2 CA ADC s 7295.4

END OF DOCUMENT

(C) 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works

Cal. Admin. Code tit. 2, s 7295.5 BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 2. ADMINISTRATION DIVISION 4. FAIR EMPLOYMENT AND HOUSING COMMISSION CHAPTER 2. DISCRIMINATION IN EMPLOYMENT SUBCHAPTER 11. AGE DISCRIMINATION

This database is current through 12/29/06, Register 2006, No. 52.

s 7295.5. Pre-Employment Inquiries, Interviews and Applications.

(a) Pre-Employment Inquiries. Pre-employment inquiries which would result in the direct or indirect identification of persons on the basis of age are unlawful. This provision applies to oral and written inquiries and interviews. (See Section 7287.3(b), which is applicable and incorporated by reference herein.)

Pre-employment inquiries which result in the identification of persons on the basis of age shall not be unlawful when made for purposes of applicable reporting requirements or to maintain applicant flow data provided that the inquiries are made in a manner consistent with Section 7287.0 (and particularly subsection (b) of Subchapter 2.

(b) Applications. It is discrimination on the basis of age for an employer or other covered entity to reject or refuse to seriously and fairly consider the application form, preemployment questionnaire, oral application or the oral or written inquiry of an individual because such individual is over forty. (See Section 7287.3(c), which is applicable and incorporated by reference herein.)

Note: Authority cited: Section 12935(a), Government Code. Reference: Section 12941, Government Code. HISTORY

1. Amendment filed 5-12-83; effective thirtieth day thereafter (Register 83, No. 20).

2 CCR s 7295.5, 2 CA ADC s 7295.5
1CAC
2 CA ADC s 7295.5

END OF DOCUMENT

(C) 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.