

Update on Legal and Illegal Interview Questions

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Have you had a business-related nightmare lately? Imagine this one:

You're sitting at your desk looking over books on your shelf. One book in particular catches your eye--The Federal Reporter. You pull it off the shelf and begin to thumb its pages. What leaps to your eye are summaries of civil cases--dozens of them-- involving illegal interview questions and practices. For example, in the case of Maureen Barbano, plaintiff, the employer had asked such questions as "Will you be getting pregnant and quit?" and "Does your husband mind if you travel around the country on business with male employees?" After being turned down for the job, she filed suit based on discriminatory hiring questions. She was awarded substantial backpay, prejudgment interest, and attorney's fees.

To your horror, you realize that one of your managers, Jack, will be interviewing several female applicants in less than an hour. Jack doesn't always think before he speaks. Will you be the next employer to pay out hundreds of thousands of dollars in backpay, damages, and fees?

You can wake up. The world of interviewing has probably changed significantly since you took your last HR seminar or read your last article on how to hire. This article updates you on the "Fatal Five" areas of special sensitivity in selection interviewing. The goal is two-fold: to point out the pitfalls, but also to suggest appropriate interview questions that can help you hire the best and stay out of court.

Who Makes the Rules for Interview Questions?

There is no single federal, state, or local agency or court that defines for all cases which interview questions are legal or illegal. Instead, a plethora of court rulings, legislative decisions, agency regulations, and constitutional laws combine to produce the often confusing and frequently changing list of what you can and can't ask a job applicant.

How can you be sure that your list of questions passes legal muster in your locality? We recommend that you write out all interview questions in advance and have them checked by an attorney familiar with labor law at local, state, and federal levels.

What follows are our suggestions for some of the more difficult areas in which you must exercise caution as an employer when formulating interview questions.

Marital Circumstances

Courts have ruled that it's none of your business how many children an applicant has; whether he or she is married, single, divorced, or engaged; whether the applicant plans to become pregnant at any time in the future; how the applicant's spouse or partner feels about overnight travel; or what plans the applicant has made for child-care during the workday.

Appropriate Questions *

- Do you have responsibilities or commitments that will prevent you from meeting specified work schedules?
- Do you anticipate any absences from work on a regular basis? If so, please explain the circumstances.

Age

In order to prevent age discrimination in hiring, courts have disallowed these sorts of questions: "How old are you?," "In what year were you born?," "When did you graduate from high school?," and so forth. You do have the right to ask if the applicant meets the legal age requirements for work in your city or state.

Appropriate Questions

- Do you meet the minimum age requirement set by law in our area? If hired, can you produce proof of your age?
- If you are a minor, can you provide proof of age in the form of a work permit or certificate of age?

Disabilities

You are forbidden by law from asking an applicant if he or she has mental or physical disabilities. Nor can you inquire about the nature or severity of disabilities, no matter how apparent they seem to you in the hiring process. Any physical or mental requirements you establish as a prerequisite for hiring must be based on "business necessity" and the safe performance of the job.

Appropriate Questions

- You are *invited*, not required, to indicate whether and to what extent you may have physical or mental disabilities. We want you to know in advance, however, that any information you disclose is voluntary. This information is sought only to remedy discrimination and provide opportunities for the disabled persons. All information you disclose will be kept confidential. If you choose not to provide information, that choice will in no way affect your chances for being hired.
- Will you be able to carry out in a safe manner all job assignments necessary for this position?

Sex and Physical Appearance

You cannot ask questions about the person's sex unless the job specifications strictly require either a male or a female. The burden of proof is on the employer to demonstrate that only a man or a woman can do the job. Beware: courts and the EEOC have interpreted very narrowly the notion that only one sex can perform a particular job. In addition, avoid questions about the person's physical appearance, including height, weight, grooming, and dress unless these bear clearly upon job requirements.

Appropriate Question

- We want you to know that both men and women are being considered equally for this position. As you understand the job requirements, are you aware of any circumstances or conditions that may prevent you from successfully performing the job?

Citizenship and National Origin

You cannot legally inquire into the applicant's place of birth, ancestry, native language, spouse's or parents' birthplace or residence. Nor can you ask directly, "Are you a U.S. citizen?" or "Do you have naturalization papers?" Prior to the decision to hire, these questions may tend to reveal racial or ethnic factors that may bias the employer. Request names of *persons* to notify in case of an emergency rather than specifying *relatives*. Do not require that the applicant's photograph be submitted prior to the hiring decision.

Appropriate Questions

- Can you, after employment, provide verification of your legal right to work in the United States?
- Do you have language abilities other than English that may be useful in performing this job successfully?
- After hiring, are you aware that a photograph may be required for identification?

Farewell to Seat-of-the-Pants Interviewing

In most companies, the days are gone when an untrained interviewer simply asked whatever came into his or her head. Applicants know their rights to be treated equally and fairly in the hiring process. If they are not hired, applicants understandably scrutinize the hiring process for flaws and inequities. Here's the bottomline message for owners and managers: even one illegal question in a hiring interview can become grounds for expensive legal action against you. For both the applicant's sake and your own, learn the rules of legal interviewing and play by them.

* Because laws affecting selection interviewing change frequently at all levels of jurisdiction in various locales, we recommend that you review these suggested interview questions with your attorney before making them part of your hiring process.