

Interviews: What's Illegal to Ask?

Federal and state laws generally require employers to limit their interview questions to those that are essential for determining if a person is qualified for the job. In general, employers should not ask about race, gender, religion, marital status, national origin or age because that information is irrelevant in determining if an applicant is qualified for the job. Also, federal law expressly prohibits employers from making pre-employment inquiries about an applicant's disability.

Illegal interview questions are those that single an individual out for reasons that are contrary to employment anti-discrimination laws. It is not illegal to ask these questions in every context, but if a question has discriminatory implications and employment is denied based on the applicant's answer, the employer may have broken the law. As an overall rule, employers should limit their interview questions to those that are job-related and should discourage applicants from providing unsolicited personal information.

The following are examples of illegal or inadvisable questions and some acceptable alternatives.

1. Subject: Marital Status/Family

Illegal Questions: What is your marital status? What does your husband/wife do? Do you plan to have a family? How many kids do you have? How old are your

children? What are your child care arrangements?

Acceptable Job-related Questions:

Employers may ask whether an applicant can meet specified work schedules or has activities or commitments that may prevent him or her from meeting attendance requirements. These questions must be based on a business necessity and asked of all applicants for the position. For example—what hours can you work? Can you work on weekends and holidays? Are you willing to relocate if necessary? Are you willing

There are many laws governing questions that employers may ask during the interview process. If a question has discriminatory implications and employment is denied based on the applicant's answer, the employer may have broken the law. This article offers examples of illegal or inadvisable questions and some acceptable alternatives.

to travel as needed by the job? Are you willing and able to work overtime as necessary?

2. Subject: Economic Status

Illegal Questions: Do you own a car? Do you rent or own a house? What is your credit rating? Have you ever declared bankruptcy? Have your wages ever been garnished?

Acceptable Job-related Questions:

Questions about the financial status of an applicant should be avoided, unless the information is essential to the job. For example, inquiries related to an applicant's residence may be permissible to determine availability for work—will you have problems getting to work by 8 a.m.?

3. Subject: Pregnancy

Illegal Questions: Questions relating to pregnancy and medical history concerning pregnancy. For example—are

you able to have children? Do you plan on having more children?

Acceptable Job-related Questions:

General inquiries about duration of stay on a job or anticipated absences that are made to males and females alike.

4. Subject: Physical Health

Illegal Questions: Employers generally cannot ask disability-related questions or require medical examinations until after

an applicant has been given a conditional job offer. For example, the following interview questions should be avoided—do you have any health conditions? Are you taking prescribed drugs? Have you ever been treated for a mental health condition? How many sick days did you take last year? Have you ever filed a worker's compensation claim?

Also, when it is obvious that an applicant has a disability (or if the applicant voluntarily discloses information about a disability), employers may not ask interview questions about the nature of severity of the disability.

Acceptable Job-related Questions: An employer may ask an applicant whether he or she is able to carry out all the essential functions of the job (with or without reasonable accommodation), if this question is asked of all applicants. Employers are permitted to ask limited questions about reasonable accommodation if they reasonably believe that the applicant may need accommodation because of an obvious or voluntarily disclosed disability, or where the applicant has disclosed a need for accommodation.

5. Subject: Name

Illegal Questions: Any inquiries about an individual's name that would indicate marital status, birthplace, ancestry or national origin. For example—you have an unusual name, what does it mean?

Acceptable Job-related Questions: It's permissible to ask whether an applicant's work records are under another name. For example – Have you worked for this company under another name? By what name do your references know you?

6. Subject: Gender

Illegal Questions: Any inquiry that relates to an applicant's sex, unless it is a bona fide occupational qualification and is essential to the position. For example—Do you wish to be addressed as Mr.,

Mrs., Miss or Ms.? What is your spouse's name?

Acceptable Job-related Questions: None, unless sex is a bona fide occupational qualification and is essential to the position.

7. Subject: Photographs

Illegal Questions: Requests that an applicant submit a photo at any time prior to hiring. (Photos may be requested after hiring for identification purposes.)

Acceptable Job-related Questions: None

8. Subject: Age

Illegal Questions: Any question that tends to identify applicants age 40 or older. For example—how old are you? When did you graduate from high school or college? What is your birthday? Also, requests for a birth certificate are illegal before employment.

Acceptable Job-related Questions: If age is a legal requirement for a job, employers can ask applicants if they can provide proof of age if hired.

9. Subject: Education

Illegal Questions: Any question that specifically asks about the nationality, racial or religious affiliation of schools attended.

Acceptable Job-related Questions: Questions related to academic, vocational or professional education of an applicant, including the names of the schools attended, degrees/diplomas received and courses of study. For example—what is the highest level of education you have completed?

10. Subject: U.S. Citizenship

Illegal Questions: Asking whether an applicant is a U.S. citizen.

Acceptable Job-related Questions: Because of potential claims of illegal discrimination, employers should verify eligibility to work in the U.S. after an offer to hire has been made. Applicants may be informed of this requirement in the application process by adding the following statement on the employment application: "In compliance with federal law, all persons hired will be required to verify identity and eligibility to work in the U.S. and to complete the required employment eligibility verification document form upon hire."

11. Subject: National Origin/Ancestry

Illegal Questions: What is your nationality? How did you acquire the ability to speak, read or write a foreign language? How did you acquire familiarity with a foreign country? What language is spoken in your home? What country are your parents from?

Acceptable Job-related Questions: What languages do you speak, read or write fluently? This is only permissible when the inquiry is based on a job requirement.

12. Subject: Race

Illegal Questions: Any question that directly or indirectly relates to an applicant's race. For example—what is your race? What is your complexion?

Acceptable Job-related Questions: None

13. Subject: Religious Affiliation or Beliefs

Illegal Questions: Any question that directly or indirectly relates to an applicant's religious affiliation or beliefs, unless the religion is a bona fide occupational qualification for the position. For example—what religious holidays do you observe? What church do you attend? Also, employers should not ask for references from religious leaders (for

example, minister, rabbi, priest, imam or pastor).

Acceptable Job-related Questions: As a general rule, employers should not ask interview questions related to religious affiliation or beliefs. Certain religious corporations, associations, educational institutions or societies are exempt from federal employment discrimination law when it comes to the employment of individuals based on their particular religion. In other words, an employer whose purpose and character is primarily religious is permitted to lean toward hiring persons of the same religion.

14. Subject: Organizations

Illegal Questions: Which organizations, clubs, societies or lodges do you belong to?

Acceptable Job-related Questions: Which professional organizations do you belong to that you consider relevant to your ability to perform this position? These inquiries must only relate to the applicant's professional qualifications.

15. Subject: Military

Illegal Questions: The type or condition of military discharge or an applicant's experience in anything other than the U.S. Armed Forces

Acceptable Job-related Questions: Inquiries concerning education, training or work experience in the U.S. Armed Forces. For example—what type of training or education did you receive in the military?

16. Subject: Height & Weight

Illegal Questions: Any inquiries not based on actual job requirements should be avoided. For example—how tall are you? How much do you weigh?

Acceptable Job-related Questions: Inquiries about the ability to perform a certain job.

17. Subject: Criminal Record

Illegal Questions: Inquiries relating to arrests without convictions. For example—have you ever been arrested for a crime? (The fact that a person was arrested does not mean he or she engaged in criminal conduct.)

Acceptable Job-related Questions: Inquiries about actual criminal convictions that relate to an applicant's fitness for the position.

18. Subject: Sexual Orientation

Note: There is no federal law regarding discrimination in private employment based on sexual orientation or gender identity. However, many states and local governments prohibit discrimination based on sexual orientation and/or gender identity.

Illegal Questions: Any inquiries that are directly or indirectly related to sexual orientation or gender identity. For example—what is your sexual orientation? What is your spouse's gender? Whom do you live with? Do you identify yourself as a man or a woman?

Acceptable Job-related Questions: None