

Playing by the Rules: What You Can and Cannot Ask in an Interview

The Equal Employment Opportunity Commission maintains that every question asked on an employment application or in a job interview is intended to elicit information used to screen the applicant. Consequently, questions asked during an interview could put the employer at risk of a charge alleging a violation of Title VII, the ADA, the ADEA, or the NLRA. Therefore, it is important for interviewers to have a well thought out plan for the interview. A rule of thumb that will help avoid interview miss-steps: **ask** questions that are job-related, focusing on skills, knowledge, and past work history. Don't ask any questions that relate to a characteristic protected by law. Below are examples of question that must be avoided, as well as some question types, and decision factors that are fair game.

An interviewer should **NOT** ask:

- The applicant's age
- The applicant's date of birth
- The applicant's date of graduation from high school, or any other questions which may identify the applicant's age unless there is a bona fide business purpose (e.g., how many years experience in a skill relevant to the job which the applicant is seeking)
- What church the applicant attends or the name of his or her priest, rabbi or Imam
- The national origin of the applicant's name
- A female applicant what her "maiden name" was (although for the purpose of doing a background check you can ask if the employee ever worked or was educated under another name)
- Whether the applicant is married, divorced, separated, widowed or single
- Who resides with the applicant
- The number and ages of the applicant's children
- Child-bearing plans
- Who will care for the children while the applicant is working
- How the applicant will get to work, unless owning a car is necessary to the successful completion of one or more job duties (i.e. if the job includes traveling to client sites to deliver products)
- Where the applicant's spouse or parent works
- Whether the applicant ever had wages garnished or declared bankruptcy
- Whether the applicant was ever arrested
- Whether the applicant has filed a workers' compensation claim
- Whether the applicant has a disability or has ever collected disability insurance
- How a disability occurred, even if an applicant's disability is apparent, or the applicant voluntarily informs you of his or her disability
- The status of the applicant's health
- The organizations to which the applicant belongs (other than whether the applicant belongs to a specific non-denominational, professional, job-related organization)
- Whether the applicant is "for" or "against" unions, or whether the applicant was ever a union member

- Whether the applicant has ever made a charge or claim of harassment or discrimination (If applicant volunteers this information, do not follow up)
- The applicants sexual orientation, or gender identification

An interviewer MAY ask:

- Questions regarding information provided on the application
- Why applicant left former employment
- What applicant expects would be said by former employers
- What applicant did at prior job
- What applicant liked/disliked about prior jobs
- What kind of job the applicant is seeking
- What hours applicant is unavailable to work
- What type of training applicant received at prior job
- Information regarding terms and conditions at prior employer
- What applicant thought about working conditions at prior employer
- What type of supervisor applicant worked for previously and what type of supervisor he/she would like to work for
- How employee problems and complaints were solved at applicant's prior job and whether applicant considered it a good procedure
- Whether applicant was ever promoted in prior jobs
- Foreign languages applicant speaks or writes, if job-related
- Professional or trade organizations to which applicant belongs (except the applicant should first be told that he/she does not need to identify any organizations whose name might reveal race or ethnicity)

Appropriate reasons for not hiring an applicant:

- Applicant is not qualified for positions available
- Applicant is not able to perform the essential functions of the job sought
- Applicant indicates a lack of interest in positions available
- After describing required hours, applicant states that he or she is unable to work those hours (**However, if inability is due to applicant's religious beliefs or disability, you must determine whether a reasonable accommodation is possible**)
- Applicant did not return for follow-up interview
- Applicant is unwilling to accept part-time employment (where no full-time employment available)
- Applicant is under age 18 (or under age 21 if position involves driving)
- Applicant is not legally permitted to work in the U.S.
- Applicant has inconsistent, inaccurate or fraudulent statements on application
- Other applicants are more qualified
- Applicant's work history reveals that he or she frequently changes jobs, and applicant does not indicate that unlawful discrimination was the reason for job change
- Applicant has been terminated for misconduct and does not attribute termination to unlawful discrimination