

Examples of Illegal Interview Questions

Marital/ Family Status (often alludes to sexual orientation)

The purpose of these “family” inquiries is to explore what some employers believe is a common source of absenteeism and tardiness. Typically, these questions are asked only of women making the inquiry clearly unlawful. However, even if such inquiries are made of both men and women, the questions may still be suspect. Such information has been used to discriminate against women because of society’s general presumption that they are the primary care givers. If the employer’s concern is regular work attendance, a better question would be, “Is there anything that would interfere with regular attendance at work?”

Example of Illegal Questions

Are you married?
Do you have a permanent partner?
With whom do you live?
How many children do you have?
Are you pregnant?
Do you expect to become have a family? When? How many children will you have?
What are your childcare arrangements?

Possible Legal Alternatives

Would you be willing to relocate if necessary?
Travel is an important part of the job. Do you have any restrictions on your ability to travel?
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.

Personal

Minimum height and weight requirements are unlawful if they screen out a disproportionate number of women or minorities. Unless the employer can show that a height or weight requirement is essential for job performance, such inquiries should be avoided.

Example of Illegal Questions

How tall are you?
How much do you weigh?
(Questions about height and weight are always illegal unless it can be proven that there are minimum requirements to do the job.)

How old are you?
When is your birthday?
In what year were you born?
In what year did you graduate from college/high school?

Possible Legal Alternatives

Are you able to lift a 50-pound weight and carry it 100 yards, as that is part of the job?

Are you over the age of 18?
Can you, after employment, provide proof of age?

Disabilities

Inquiries about a person’s disability, health or worker’s compensation histories are unlawful if they imply or express a limitation based on disability. Under the federal Americans with Disabilities Act, any inquiry at the pre-employment stage, which would likely require an applicant to disclose a disability, is unlawful. Employers must avoid such inquiries or medical examinations before making a bona fide job offer.

However, an employer may inquire about an applicant's ability to perform certain job functions and, within certain limits, may conduct tests of all applicants to determine if they can perform essential job functions, with or without an accommodation.

Example of Illegal Questions

Do you have any disabilities?
Have you had any recent illness or operations?
Please complete this medical questionnaire.
What was the date of your last physical exam?
How's your family's health?
When did you lose your eyesight/ leg/ hearing/ etc.?

Possible Legal Alternatives

Are you able to perform the essential functions of this job with or without reasonable accommodations? (Legal if the interviewer thoroughly described the job.)
Will you be able to carry out in a safe manner all job assignments necessary for this position?
Are you able to lift a 50-pound weight and carry it 100 yards, as that is part of the job?
NB: Medical exams are legal AFTER an offer has been extended; results should be held strictly confidential except for reasons of safety.

National Origin/ Citizenship

Inquiries about a person's citizenship or country of birth are unlawful and imply discrimination on the basis of national origin. A lawfully immigrated alien may not be discriminated against on the basis of citizenship. The Immigration Reform and Control Act of 1986 require employers to verify the legal status and right to work of all new hires. Employers should not ask applicants to state their national origin but should ask if they have a legal right to work in America and explain that verification of that right must be submitted after the decision to hire has been made. To satisfy verification requirements, employers should ask all new hires for documents establishing both identity and work authorization.

Example of Illegal Questions

Where were you/your parents born?
What is your native language?
What is your country of citizenship?
Are you a US citizen?

Possible Legal Alternatives

Do you have any language abilities that would be helpful in doing this job? (Legal if language ability is directly relevant to job performance.)
Are you authorized to work in the United States?

Arrest Record

There are laws that prohibits inquiries about past arrest records but permits consideration of a current arrest. If an applicant is under arrest for an offense that is substantially related to the job, an employer may suspend judgment until the case is resolved, advises the applicant to reapply when the charge is resolved, or refuse to employ the applicant. A current employee who is arrested may be suspended if the charge is substantially related to the job.

An employer may not refuse to employ or discharge a person with a conviction record unless the circumstances of the conviction substantially relate to the circumstances of the job. If an inquiry about convictions is made, the employer should add a clarifier, "A conviction will not necessarily disqualify you from employment. It will be considered only as it may relate to the job you are seeking". Anyone who evaluates conviction record information should be knowledgeable about how such data may be used.

Example of Illegal Questions

Have you ever been arrested?

Possible Legal Alternatives

Have you ever been convicted of ____ crime? (Legal if the crime is reasonably relevant to the job, e.g., embezzlement for a banking job.)

Military Service

It is unlawful to discriminate against someone because of membership in the National Guard, a state defense force or another state or Federal Reserve unit. Questions relevant to experience or training received in the military or to determine eligibility for any veteran's preference required by law are acceptable.

Example of Illegal Questions

What type of discharge did you receive?

Possible Legal Alternatives

In what branch of the Armed Forces did you serve?
What type of training or education did you receive in the military?

Affiliations

Example of Illegal Questions

What clubs or social organizations do you belong to?
Do you go to church?

Possible Legal Alternatives

List any professional or trade groups or other organizations that you belong to that you consider relevant to your ability to perform this job.

Race/Color/Religion

This question may discourage an applicant whose religion prohibits Saturday or Sunday work. If a question about weekend work is asked, the employer should indicate that a reasonable effort is made to accommodate religious beliefs or practices. An employer is not required to make an accommodation if doing so would create an undue hardship on the business.

Example of Illegal Questions

All questions are illegal.

Possible Legal Alternatives

Are you available for work on Saturday and Sunday?

Gender

Questions about a person's gender are inappropriate and prohibited, however, you have to ensure don't make assumptions about a candidate's abilities and you can make some questions to clarify certain points, without to cause offence to your interviewee.

Example of Illegal Questions

We've always had a man/woman do this job.
How do you feel about supervising men/women?
What do you think of interoffice dating?

Possible Legal Alternatives

What do you have to offer our company?
Tell me about you previous supervising experience.
Have you ever been disciplined for your behavior at work?

Nationality

As in any business, you must be sure that a person may legally work in your company, therefore it is necessary to make some questions such as language and address citizenship, but you don't forget to be very careful how you ask these questions.

Example of Illegal Questions

Are you a U.S. citizen?
What languages do you read, speak, or write fluently?
What is your current address and phone number?
What is your native tongue?
How long have you lived here?

Possible Legal Alternatives

Are you authorized to work in the U.S.?
Do you have any alternative locations where you can be reached?

Health and Physical Abilities

It is important the employees' abilities and health are good, but you have to be careful with discrimination and assumptions, so there are some questions that can help you to avoid the legal troubles and get the information you need.

Example of Illegal Questions

Do you smoke or drink?
Do you take drugs?
How tall are you?
How much do you weigh?
How many sick days did you take last year?
Do you have any disabilities?
Have you had any recent or past illnesses or operations?
Do you use illegal drugs?

Possible Legal Alternatives

In the past, have you been disciplined for violating company policies forbidding the use of alcohol?
Are you able to reach items on a shelf that's 5 ft. tall?
Are you able to lift boxes weighing up to 50 pounds?
How many workdays did you miss last year?
Are you able to perform the specific duties of this position?
Are you able to perform the essential functions of this job with or without reasonable accommodations?

Credit or Garnishment Record? Charge Accounts? Homeowner?

Answers to these inquiries are almost always irrelevant to job performance. Because census data indicates minorities, on average, are poorer than whites, consideration of these factors may have a disparate impact on minorities. Therefore, requests of this nature may be unlawful unless clearly required by business necessity.

Educational Background?

While employers may inquire about a person's education, only clearly job-related education should be considered in making the hiring decision. Educational requirements that are not necessary for performance of the job may be unlawful if they adversely impact protected group members. Rather, find a reliable way to determine if applicants have the skills necessary to function successfully in the job.

Friends or Relatives working for us?

This question is not relevant to an applicant's competence and should be avoided. Since the question implies a preference for friends or relatives, it may be unlawful if the composition of the present work force is such that this preference reduces or eliminates employment opportunity for minorities or women. This question may also reflect a rule that only one partner in a marriage can work for the employer. This tends to have a disproportionate impact on women.

Language Proficiency?

Some level of English skill may be necessary for many jobs. But it is also clear that fluency or absence of an accent is not relevant for a substantial number of jobs. Employers must be careful about requiring English language proficiency and ensure the skill level being sought does not exceed the level required for successful job performance.

Maiden Name, Spouse's Name? Mr., Mrs., Miss., or Ms.?

None of these inquiries are relevant to job performance and could be used to discriminate. A woman's maiden name or spouse's name may indicate religion or national origin. Having a person check a box for Mr., Mrs. or Miss may be an impermissible inquiry with regard to gender or marital status. An employer may not discriminate against a person because of their status of being married, single, divorced, separated, or widowed.

Use or Nonuse of Lawful Products? Do you smoke? Drink Alcohol?

A person may not be discriminated against for using or not using "lawful products" off the employer's premises during nonworking hours. The law contains some exceptions, but employers generally should avoid inquiries in this area.