

## Interviews – What’s Illegal to Ask

Federal and state laws require that questions on the job application, during an interview, and during the testing process be job-related. Employers should not ask about race, gender, religion, marital status, disabilities, ethnic background, country of origin, or age. Illegal interview questions are those that single an individual out for reasons that are contrary to equal employment opportunity and anti-discrimination laws. Some employers ask these questions to intentionally discriminate, and others do innocently because they are unaware of the laws. Technically it is not illegal to ask these questions, but if a question has discriminatory implications, and employment is denied based on the applicant’s answer, the employer may have broken the law. The following are examples of “illegal” questions and their “legal” alternatives.

1. **Illegal:** What is your marital status? What is the name of your relative/spouse/children? Do you plan to have a family? How many kids do you have? What are your child care arrangements?

**Legal:** What are the names of relatives already employed by the company or a competitor? Are you willing to relocate if necessary? Are you willing to travel as needed by the job? (Must be asked of all applicants) Are you willing and able to work overtime as necessary? (Must be asked of all applicants)

### 2. **Subject: Residence**

**Illegal:** With whom do you reside? Do you rent or own? Do you live in town?

**Legal:** Inquiries about address to the extent needed to facilitate contacting the applicant are O.K. Will you have problems getting to work by 9 a.m.?

### 3. **Subject: Pregnancy**

**Illegal:** Questions relating to pregnancy and medical history concerning pregnancy are illegal. Do you plan on having more children?

**Legal:** Inquiries to duration of stay on a job or anticipated absence which are made to males and females alike are legal. Do you foresee any long term absences in the future?

### 4. **Subject: Physical Health**

**Illegal:** Over general questions which would tend to divulge handicaps or health conditions which do not relate reasonably to fitness to perform the job are illegal. Do you have any handicaps or disabilities? What caused your handicap? What is the prognosis of your handicap? Have you ever had any serious illness? Please complete the following medical history. Have you had any recent or past illness or operations? What was the date of your last physical exam? How’s your family’s

health? Have you ever been treated for a mental condition? Are you taking prescription drugs? Have you ever been treated for drug or alcohol addiction? Have you ever filed a worker's compensation claim?

**Legal:** Can you lift 40lbs? Do you need any special accommodations to perform the job you've applied for? How many days did you miss from work (or school) in the past year? The questions have to relate to the job. Are you able to perform the essential functions of this job with or without reasonable accommodations?

## **5. Subject: Family**

**Illegal:** Questions concerning spouse, or spouse's employment, salary, child care, arrangements, or dependents are illegal. How will your husband feel about the amount of time you will be traveling if you get this job? What kind of child care arrangement have you made?

**Legal:** You 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. Is there any reason why you can't be on the job at 7:30 am? This job requires that you work overtime on occasion. Would you be able and willing to work overtime if necessary?

## **6. Subject: Name**

**Illegal:** Any inquiries about an individual's name which would divulge marital status, lineage, ancestry, national origin or descent are illegal. If your name has been legally changed, what was your former name?

**Legal:** Whether an applicant has worked for the company or a competitor under any other name and if so, what name was used is legal. Name under which applicant is known to references if different from presents name. i.e. By what name do your references know you? Have you ever been convicted of a crime under another name?

## **7. Subject: Sex**

**Illegal:** Any inquiry that relates to sex is illegal. Do you wish to be addressed as Mr., Mrs., Miss, or Ms.? Do you have the capacity to reproduce? What are your plans to have children in the future?

**Legal:** None

## **8. Subject: Photographs**

**Illegal:** Requests that an applicant submit a photo at any time prior to hiring is illegal

**Legal:** Photos may be requested after hiring for identification purposes.

**9. Subject: Age**

**Illegal:** Any questions that tends to identify applicants age 40 or older are illegal, How old are you? When did you graduate from college? What is your birthday? Requests for birth certificate or record.

**Legal:** Are you 18 years of age? If hired, can you furnish proof of age?

**10. Subject: Education**

**Illegal:** Any questions asking specifically the nationality, racial or religious affiliation of a school is illegal.

**Legal:** All questions related to academic, vocational or professional education of an applicant, including the names of the schools attended, degrees/diplomas received, and dates of graduation and courses of study are legal. What is the highest grade you have completed?

**11. Subject: Citizenship**

**Illegal:** Asking whether an applicant is a citizen or requiring a birth certificate, naturalization or baptismal certificate are illegal. Any inquiry into citizenship that would tend to divulge an applicant's lineage, descent, etc. are illegal. Are you a citizen of the United States? Are your parents or spouse citizens? On what dates did you, your parents or spouse acquire US citizenship? Are you, your parents or your spouse naturalized or native-born US citizens? What is your native tongue?

**Legal:** Questioning whether applicant is prevented from lawfully being employed in this country because of visa or immigrations requirements is illegal. It is legal to ask an applicant to provide proof of citizenship (passport), visa, and alien registration number after being hired. If you are not a US citizen, do you have the legal right to remain permanently in the US? What is your visa status? (if no to previous question.)? Are you able to provide proof of employment eligibility upon hire? Are you authorized to work in the United States? What languages do you speak, read or write fluently? (Ability must be relevant to performance on the job).

**12. Subject: National Origin / Ancestry**

**Illegal:** 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 is your mother tongue?

**Legal:** What languages do you speak, read or write fluently. This is only legal when the inquiry is based on job requirements?

**13. Subject: Race or Color**

**Illegal:** Any question that directly or indirectly relates to race or color is illegal. What is your race? What is your complexion?

**Legal:** None

**14. Subject: Religion**

**Illegal:** Any question that directly or indirectly relates to a religion is illegal. What religious holidays do you observe? What is your religious affiliation?

**Legal:** Can you work on Saturday? (Only if it is relevant to the job.)

**15. Subject: Organizations**

**Illegal:** To what organizations, clubs, societies and lodges do you belong?

**Legal:** To what professional organizations do you belong which you consider relevant to your ability to perform this work? (Exclude those names that indicate race, religious creed, color, national origin or ancestry of its members. These inquiries must only relate to the applicant's professional qualifications.)

**16. Subject: Military**

**Illegal:** It is illegal to ask the type or condition of military discharge or an applicant's experience in other than US armed forces. A request for discharge papers is illegal. Were you honorably discharged? In what branch of the Armed Forces did you serve?

**Legal:** Inquiries concerning education, training or work experience in the armed forces of the United States are legal. What type of training or education did you received in the military?

**17. Subject: Height & Weight**

**Illegal:** Any inquiries not based on actual job requirements are illegal. How tall are you? How much do you weigh? What color are your eyes/hair?

**Legal:** Inquiries about the ability to perform a certain job are legal. Being of a certain weight or height will not be considered a job requirement unless the employer can show that no employee with the ineligible height and weight could

do the work. Are you able to lift a 50 pound weight which is an essential function required by the job?

## **18. Subject: Arrests & Convictions**

**Illegal:** All inquiries relating to arrests are illegal. Have you ever been arrested? (Arrests are not the same as convictions. An innocent person can be arrested.)

**Legal:** Legal inquiries about convictions are: Have you ever been convicted of any crime? If so, when, where and what was the disposition of the case? Have you ever been convicted under criminal law within the past five years (excluding minor traffic violations?) It is permissible to inquire about convictions for acts of dishonesty or breach of trust. These relate to fitness to perform the particular job being applied for.