



Legal Guidelines for Conducting Job Interviews

Provisions of various federal laws affect the types of questions that organizations may ask an applicant during an employment interview. For example, Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, sex, color, national origin and religion. The Age Discrimination in Employment Act of 1967 prohibits questions about a person's age. The wide-ranging Americans with Disabilities Act of 1990 (ADA) protects qualified individuals with disabilities from discrimination in employment. The Genetic Information Nondiscrimination Act of 2008 prohibits employers from collecting and using genetic information. The Uniform Guidelines on Employee Selection Procedures of 1978, though not in and of themselves legislation or law, have been given deference by the courts in litigation concerning employment issues.

Questions relating either directly or indirectly to age, sex, race, color, national origin, religion, genetics or disabilities should be avoided entirely. If information needed about an applicant might fall into any of those categories, the interviewer should make sure that the question relates to a bona fide occupational qualification or is required by federal or state law to be asked.

Employers should also be aware of some of the specific prohibitions contained in the ADA. Employers may never ask if an applicant has a disability. They may ask only if there is anything that precludes the applicant from performing—with or without a reasonable accommodation—the essential functions of the position for which he or she is applying.

State laws can be broader in scope than federal laws. For example, federal law does not cover sexual orientation, but many states do. In addition, all states have enacted at least one law pertaining to employment discrimination. Whether a particular state's law would apply to a particular organization, however, could depend on the size of its workforce. In some states, employers with just one employee are subject to the state's anti-discrimination laws. By comparison, only employers with 15 or more employees are subject to the most complex and comprehensive federal anti-discrimination laws. Thus, in some states an employer could be exempt from a federal law yet still be subject to a similar provision under state law.

It is important for interviewers to be familiar with the employment laws of the state in which they are operating and to be well versed in the federal and state

legal provisions regulating the types of questions permissible in an employment interview.

Some questions that appear innocent on the surface may be considered discriminatory. The way they are phrased is key. Employers should determine in advance of the interview if the information sought by each question is really necessary for assessing an applicant's competence or qualifications for the job.

Even if a particular question would not be barred under federal or state law, it should be omitted if it is not essential. Asking irrelevant questions may offend an applicant or damage the organization's reputation. Following are examples of questions *not* to ask during an employment interview:

- Are you a U.S. citizen?
- Were you born here?
- Where are you from?
- What is your ethnic heritage?
- What is that accent you have?
- How old are you?
- When were you born?
- Are you married?
- Do you have any children? What are your child care arrangements? (Questions about family status are not job-related and should not be asked.)
- When did you graduate from high school?
- What church do you go to?
- What clubs or organizations do you belong to?
- Have you ever filed a worker's compensation claim? (You may not ask this question or any related question during the pre-offer stage.)
- What disabilities do you have?
- Do you have AIDS, or are you HIV-positive? (There is no acceptable way to inquire about this or any other medical condition.)

In addition, the interviewer should not ask questions about arrests that did *not* result in a conviction. Some states also prohibit employers from asking candidates about marijuana-related convictions that are two or more years old. And employers should never ask an applicant to submit a photograph—even if the request makes clear that providing a photo is optional, not mandatory.

Sample Interview and Application Questions

Recruiters and hiring managers must be cautious to avoid inquiries based on an applicant's protected class or risk a claim of discrimination. The EEOC looks with "extreme disfavor" on questions about age, color, national origin, race, religion, gender or veteran status. If employers are asking these questions, they would have difficult time proving the questions were not used in the hiring decision. In addition, as stated previously, many state employment laws expressly forbid certain types of questions.

Following is a representative list of unacceptable and acceptable questions.

Please note that this list is NOT all-inclusive.

Acceptable and Unacceptable Inquiries for Interviews and Employment Applications

<i>Topic</i>	<i>Acceptable</i>	<i>Unacceptable</i>	<i>If Unacceptable, What Is the Reason?</i>
Age	If age is a legal requirement, can ask "If hired, can you furnish proof of age?" or a statement that hire is subject to age verification.	What is your date of birth?	Could be viewed as age discrimination
Attendance/reliability	What hours and days can you work?	How many children do you have?	Could be viewed as discriminatory toward females
Attendance/reliability	Are there specific times that you cannot work?	What religion are you?	Could be viewed as religious discrimination



Attendance/reliability	Do you have responsibilities other than work that will interfere with specific job requirements such as traveling?	What are your child care arrangements?	Could be viewed as discriminatory toward females
Attendance/reliability	Do you have a reliable method of getting to work?	Do you own a car?	Could be considered racial discrimination
Citizenship/ national origin	Are you legally eligible for employment in the United States?	What is your national origin? Where are your parents from?	Could be considered national origin discrimination
Citizenship/ national origin	Have you ever worked under a different name?	What is your maiden name?	Could be considered national origin discrimination
National origin	None	What is your father's surname? What are the names of your relatives?	Not only are these irrelevant, but they could be considered national origin discrimination
Arrest and conviction	Have you ever been convicted of a felony? *See note below for additional guidance	Have you ever been arrested?	Could be considered racial discrimination
Disabilities	Can you perform the duties of the job you are applying for?	Do you have any disabilities?	Could be considered discrimination against people with disabilities



Disabilities	None	Have you ever filed a workers' compensation claim?	Could be considered discrimination against people with disabilities
Disabilities	None	Have you ever been injured on the job?	Could be considered discrimination against people with disabilities
Emergency contact information	What is the name and address of the person to be notified in case of an emergency? (Request only after the individual has been employed.)	What is the name and address of a relative to be notified in case of an emergency?	Could be considered national origin discrimination and could possibly violate state anti-discrimination laws relative to sexual orientation
Credit record	None	Do you own your own home?	Irrelevant and could be considered racial discrimination
Credit record	Credit references may be used if in compliance with the Fair Credit Reporting Act of 1970 and the Consumer Credit Reporting Reform Act of 1996	Have your wages ever been garnished?	Irrelevant and could be considered racial discrimination
Credit record	None	Have you ever declared bankruptcy?	Irrelevant and could be considered racial discrimination
Military record	What type of education, training	What type of discharge did you	Irrelevant and could be considered racial



	and work experience relevant to the job did you receive while in the military?	receive?	discrimination
Language	What languages do you speak and write fluently? (if the job requires additional languages)	What is your native language? How did you learn to read, write or speak a foreign language?	Could be considered national origin discrimination
Organizations	Inquiry into an applicant's membership in organizations that the applicant considers relevant to his or her ability to perform the job	List all clubs, societies and lodges to which you belong.	Could be considered racial or national origin discrimination
Race or color	None	Complexion or color of skin	Could be considered racial or national origin discrimination
Weight, height, eye color	Only if there is a bona fide occupational qualification		Could be considered racial or national origin discrimination
Religion	Only if there is a bona fide occupational qualification	What is your religious denomination, religious affiliations, church, parish, pastor? What religious holidays do you observe?	Could be considered religious discrimination



Gender	Only if there is a bona fide occupational qualification	Do you wish to be addressed as Mr., Mrs., Miss or Ms.?	Could be considered gender discrimination
Previous and current addresses	What was your previous address? How long did you reside there? How long have you lived at your current address?	Do you own your own home?	Could be considered racial or national origin discrimination
Salary history	What are your salary expectations for this position? **See note below for additional guidance.	What is your current salary? What was your starting and ending salary in any prior position?	Could be viewed as gender discrimination and may violate state law
Education	Do you have a high school diploma or equivalent? Do you have a university or college degree? (if relevant to job performance)	What year did you graduate from high school or college?	Could be considered age discrimination

***Note on arrest records:** Using arrest or conviction records as an absolute bar to employment disproportionately excludes certain racial groups. Therefore, such records should not be used in this manner unless there is a business need for their use. Thus, an exclusion based on an arrest record is justified only if the conduct is job-related and relatively recent and also if the applicant or employee actually engaged in the conduct for which he or she was arrested. According to the EEOC, whether there is a business need to exclude persons with conviction records from particular jobs depends on the nature of the job, the nature and seriousness of the offense, and the length of time since the conviction or incarceration. In addition, some states bar the use of arrest records in employment decisions.



****Note on salary history:** In general, salary history should not be a factor in setting compensation. Rather, compensation decisions should be based on the value of the position to the organization, competition in the market and other bona fide business factors.