

# HR Insights

Middle Tennessee SHRM

## 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 prohibited to ask these questions in any context, but if a question has discriminatory implications or 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.

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

### 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, rather than inquiries related to an applicant owning a car, an employer may ask if the candidate will have problems getting to work by 8 a.m.

### Subject: Pregnancy

**Illegal Questions:** Questions relating to pregnancy and medical history concerning pregnancy. For example—are you able to have children? Do you plan to have more children?

- **Acceptable Job-related Questions:** General inquiries about job history and tenure or anticipated absences that are made to males and females alike.

## 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?
- **Acceptable Job-related Questions:** An employer may ask an applicant whether he or she is able to carry out 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 accommodations if they rationally believe that the applicant may need accommodations. This is also true when the applicant has disclosed a need for accommodations.

## 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?

## 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.

## Subject: Photographs

- **Illegal Questions:** Requests that an applicant submit a photo at any time prior to hiring.
- **Acceptable Job-related Questions:** None, however, photos may be requested after hiring for identification purposes.

## 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 inform applicants of the legal age requirement (for example, must be 21 to hold a specific license) and ask if they will be able to provide proof of meeting the age requirement if hired.

## 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?

## 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."

## 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.

## 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.

## 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:** Generally, 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 laws 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.

## 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 which you consider relevant to your ability to perform this position? These inquiries must only relate to the applicant's professional qualifications.

## Subject: Military

- **Illegal Questions:** What type of military discharge did you receive? When?
- **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 that would be relevant to this position?

## 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 the essential functions of the job.

## Subject: Criminal Record

- **Illegal Questions:** Inquiries relating to arrests or 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.) Many states have adopted "ban the box" laws that prohibit inquiries concerning criminal history until after a conditional job offer has been made.
- **Acceptable Job-related Questions:** After a conditional job offer has been made, an employer may inquire about an applicant's criminal history. Hiring decisions must be made based on how the criminal history relates to

the position. Some states also limit how many years back an employer may look into a candidate's criminal history.

## Subject: Sexual Orientation

- **Illegal Questions:** Any inquiries 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.