

Can They Ask Me That? ***A Guide to Legal and Illegal Interview Questions***

It is always a good idea to review your job history before you go in to interview for a job so you can clearly communicate the reasons you consider yourself the best candidate for the position. This also helps prepare you for the questions an interviewer is likely to ask about your experience and background, your strengths and weaknesses. The difficulty comes when the interviewer asks questions that the Equal Employment Opportunity Commission (EEOC) has established are illegal based on Title VII of The Civil Rights Act of 1964. This law established that an individual could not be discriminated based on race, color, age, sex, religion, and national origin.

According to the EEOC, *all interview questions must be job related.* Employers cannot discuss the following topics during an interview: ***marital status, family status, military service, sex, national origin, citizenship, religion, color or race, age, physical condition, disability, education, residence, economic status, bonding, arrest record, or a photograph.***

Interviewers should always ask themselves whether the information they seek is necessary to determine whether a candidate is capable of performing the functions of the job. Keeping the illegal topics in mind, the interviewer cannot help but stay focused on the person's abilities to perform the job responsibilities.

Employers have a responsibility for making certain that an inexperienced manager receives a proper orientation to insure against them asking unrelated interview questions. Not taking this step can be costly for the employer. If an applicant was discriminated against due to questions asked during the interview, an applicant may receive damages including a job offer, and attorney costs. Based on the Civil Rights Act of 1991, the applicant may also demand a jury trial to recover compensatory damages for emotional pain and suffering, and punitive damages up to \$300,000, plus money for expert witnesses to testify at the trial.

It is also important for job candidates to know how to handle a situation if asked questions that focus on non-job related topics. If asked an illegal question, what do you do? Do you answer even if it makes you uncomfortable? Do you point out to the interviewer that they asked an illegal question? Do you figure out a way to reply without responding to the question literally?

By looking more closely at each of these topics, employers and job seekers will gain valuable information to help insure that future interviews happen in a professional manner.

Age Discrimination

Although employers cannot refuse to hire an individual based on age, it is an issue that older workers continually face this - either in a direct or indirect manner. In one case, an employer tried to determine a candidate's age by advising them that it was important that they have someone on board who had lots of experience. If a job description required a minimum of five years experience with negotiating contracts, a person who is 28-years old or 48-years could satisfy this requirement.

EXAMPLE: The interviewer is concerned about a candidate's ability to work for a younger manager. The interviewer says, "Your resume says you graduated from college in 1979, but that would make you 46 years old. You look so much younger. That must be a "typo", right?" One way to respond without actually confirming the information is to respond with, "I am accustomed to working with people who are older and younger than me."

National Origin and Citizenship

It is illegal to ask if an individual is a U.S. citizen. It is legal though to ask if an individual is authorized to work in the United States.

Color or Race

The issue of color or race has no bearing on a candidate's ability to perform a job. Joan Endicott with GetThere Direct Meetings had the unfortunate experience with an interviewer who persisted in asking inappropriate questions related to color and race. After the third question, she politely told him she "was not interested in working for a company that could not conduct interviews properly and obviously have a problem employing people of color."

Marital or Family Status

Interviewers cannot ask about an individual's marital status, how long they have been married, plans for having a family, children, or childcare arrangements. Given these restrictions, it is amazing that an interviewer asked Candy Adams, CTSM, CME, CMP, Trade Show Consultant, Carlsbad, CA, "What kind of birth control do you use?" She responded with "What kind would you recommend?"

Most meeting planning positions require a certain amount of travel. In one case, the interviewer asked if the job candidate had any children "as there will be quite a bit of travel involved with the position." The job candidate let the interviewer know that although it was against the law to ask the question that he did not mind and would not tell anyone. He responded that they (the job seeker and his wife) did not currently have any children but hoped to in a few years. Another way to respond would be to say, "I have no problem with making a full commitment to all aspects of this position, including any travel required."

ILLEGAL QUESTIONS: Are you married? When did you get married? What does your spouse do for a living? Do you plan to have a family? How many kids do you have? What are your childcare arrangements?

LEGAL QUESTIONS: Would you be willing to relocate if necessary? Travel is an important part of the job. Are you willing to travel to the level that the job requires?

Sex

ILLEGAL QUESTIONS: Is that your maiden name? Whom do you currently live with?

LEGAL QUESTIONS: An employer may inquire about "Male" or "Female" if it made in good faith and used only to clarify the individual's status.

Education

An employer must show that a specific level of education is necessary for the successful performance of the job. A job listing may state a *preference* for particular type of degree or certification. A growing number of meetings professional positions state a preference for candidates with a CMP, CMM, or CAE.

ILLEGAL QUESTIONS: Did you graduate from high school or college? Do you have any outstanding educational loans? (This question also encroaches on the candidate's economic status.)

LEGAL QUESTIONS: How has your education prepared you for this position? Do you have any special skills or knowledge, and how have you used these in recent positions?

Physical Condition/Disabilities/Photograph

With the implementation of the Americans With Disabilities Act of 1990, employers can no longer ask any questions regarding a candidate's physical impairments. They also cannot ask if an individual has recently been hospitalized or filed a workers' compensation claim.

ILLEGAL QUESTIONS: How tall are you? How much do you weigh? Can you provide us with a photograph of yourself (employers can require this after hiring the person)?

LEGAL QUESTIONS: Are you able to lift _____ pounds as part of the job? (A specific amount of weight must be noted) Do you currently have a drug or alcohol problem that would make you unable to perform the duties of the job, or make you a hazard to yourself or others?

Employers can advise candidates that a medical examination is a requirement once they extend a job offer, and that the offer is conditional on a successful outcome of the examination. The results of the examination can be used to rescind the offer only if the results prohibit the candidate from performing the essential elements of the job.

Economic Status

Personal financial affairs should never be presented as a reason for interest in a position. An employer does not need to know about your mortgage, your child's college tuition expenses, or any outstanding medical expenses. This information could be interpreted as issues that might interfere with an individual's ability to perform the job.

ILLEGAL QUESTIONS: Do you have any liabilities or outstanding loans? What is your credit rating? Have you ever filed for bankruptcy or garnishment? (Employers can ask this question only as it applies to federal and state laws governing credit related information)

LEGAL QUESTIONS: What is your salary in your current position?

If you believe an interviewer unintentionally asked a question about one of these topics, try restating the question. If the interviewer asked the question in error, they will try to rephrase it to make certain to avoid the illegal subject matter.

If the interviewer asked this question intentionally, ask yourself two important questions: 1) Do you want to work for a company or organization that appears to promote a discriminatory environment? 2) Do you want the position badly enough to tolerate this line of questioning from your prospective manager?

What does the interviewer do if a candidate voluntarily offers information considered discriminatory? Some candidates feel this information helps establish a more personal connection with the interviewer. The best approach is to remind the individual that they are not required to provide this information, nor is it relevant to the job requirements, and immediately change the subject.

Employers should also remember that any notes taken during the interview should be job related only. Avoid any comments about age, sex, disabilities, etc. It is also best not to make any written comments about the candidate's physical appearance.

The interviewer's focus needs to be on a candidate's meeting planning skills and experience. Questions need to focus on a candidate's ability to negotiate contracts, select sites, manage budgets, their ability to work with vendors, and their approach to on-site management. Determine if the individual is a strategic planner and whether they understand the importance of return on investment. Knowing the EEOC guidelines helps insure that interviews stay on track and avoid any issues of bias.

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