

Illegal Interview Questions

Age? Date of Birth?

Age based inquiries should be avoided because state law prohibits discrimination against persons age 40 and older. An age inquiry may be made to ensure a person is “old enough” to work for the job being filled, or if the job is among the few where age discrimination is permitted such as physically dangerous or hazardous work or driving a school bus.

Example of Illegal Questions	Possible Legal Alternatives
How old are you?	Are you over the age of 18?
When is your birthday?	Can you, after employment, provide proof of age?
In what year were you born?	
In what year did you graduate from college/high school?	

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	Possible Legal Alternatives
Are you married or do you have a permanent partner?	Would you be willing to relocate if necessary?
With whom do you live?	Travel is an important part of the job. Do you have any restrictions on your ability to travel?
How many children do you have?	Do you have responsibilities or commitments that will prevent you from meeting specified work schedules?
Are you pregnant?	Do you anticipate any absences from work on a regular basis? If so, please explain the circumstances.
Do you expect to have a family? When? How many children will you have?	
What are your child care arrangements?	

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	Possible Legal Alternatives
How tall are you?	Are you able to lift a 50-pound weight and carry it 100 yards, as that is part of the job?
How much do you weight? (Questions about height and weight are always illegal unless it can be proven that there are minimum requirements to do the job.)	

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	Possible Legal Alternatives
Do you have any disabilities?	Are you able to perform the essential functions of this job with or without reasonable accommodations? (Legal if the interviewer thoroughly described the job.)
Have you had any recent illness or operations?	Will you be able to carry out in a safe manner all job assignments necessary for this position?
Please complete this medical questionnaire.	Are you able to lift a 50-pound weight and carry it 100 yards, as that is part of the job?
What was the date of your last physical exam?	NB: Medical exams are legal AFTER an offer has been extended; results should be held strictly confidential except for reasons of safety.
How's your family's health?	
When did you lose your eyesight/ leg/ hearing/ etc.?	

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 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	Possible Legal Alternatives
Where were you/your parents born?	Do you have any language abilities that would be helpful in doing this job? (Legal if language ability is directly relevant to job performance.)
What is your native language?	Are you authorized to work in the United States?
What is your country of citizenship?	
Are you a US citizen?	

Arrest Record

There are laws that prohibit 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, advise 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	Possible Legal Alternatives
Have you ever been arrested?	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	Possible Legal Alternatives
What type of discharge did you receive?	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	Possible Legal Alternatives
What clubs or social organizations do you belong to?	List any professional or trade groups or other organizations that you belong to would you consider relevant to your ability to perform this job?
Do you go to church?	

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 not required to make an accommodation if doing so would create an undue hardship on the business.

Example of Illegal Questions	Possible Legal Alternatives
All questions are illegal.	Are you available for work on Saturday or Sunday?