

Employment Interviews: The Do's And Don'ts

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The employment interview process is a minefield. Interviewers must be able to recognize the potential hazards while getting the information the employer most desires to determine whether the applicant is the right person for the position. Many employers are aware of the obvious interview questions to avoid. However, many seemingly innocuous interview questions expose your business to liability under many New Jersey State and Federal statutes. The hiring interview is both an art and a science. There is a line you cannot cross as an interviewer; knowing that line is paramount. The science is knowing what you can and cannot ask in an interview. The art is getting the information you want to know without asking questions that cross the line. Hiring decisions cannot be based on an applicant's membership in a protected class (i.e. age, race, sexual orientation, family or marital status). Although certain questions may provide an employer with information that may be relevant for the position, it does not mean that the inquiry is permitted. In addition, the responses to your questions may identify the applicant's membership in a protected class. This can be problematic when an employer makes its hiring decision. The applicant who was not selected may present a claim that the hiring decision was unlawfully based on a certain immutable characteristic. A good rule of thumb is to stick to questions that focus on the requirements of the position, education and experience.

Below is a list of common interview question. Do you know which of the following questions you cannot ask? For those improper questions, I offer some suggestions on how to get the information you want without running afoul of State and Federal statutes.

Do you have any children?

This is not a lawful question. Proper questions should focus on the applicant's availability and whether the employee has any responsibilities that would interfere with his/her ability to work certain hours or travel.

Have you ever been arrested or convicted of a crime?

As a result of a new law entitled the Opportunity to Compete Act, employers can ask about the applicant's criminal record only **after** the employer has performed an interview, made a determination that the applicant is qualified for the position and after the applicant has been selected for the position. Employers are prohibited from asking an applicant about his/her criminal record until after these initial hiring steps have been completed. However, unlike legislation in other states, employers are permitted to make an inquiry about an applicant's criminal record immediately prior to making a formal offer.

What is your primary language?

This is not a proper question. However, if being able to read or write in a certain language is a requirement for the position, it is permissible to ask whether the applicant can read and/or write the necessary language.

When have you been most satisfied in your life?

There is nothing unlawful about this question. This question will permit you to understand the personality and thought processes of the applicant without asking an unlawful question. If the interviewer feels the need to know more about the applicant's personality and background, a question like this is a good way of getting this information.

What is your religion?

Obviously, it is not lawful to ask any applicant or employee this question. By asking that question, you may be trying to determine whether an applicant is available to work on certain holidays or days of the week. It is better to ask whether there are any days/times during the week that the applicant is unavailable.

Where are you from?

This question sounds innocuous. However, this is not an appropriate interview question. Frequently, interviewers ask this question in a casual manner veiled as being friendly. Nevertheless, the way the question is asked does not matter, especially when interviewing an applicant who appears to have a diverse background and may not be from the United States. Instead, ask whether the applicant is legally eligible to work in this country.

Under what circumstances did you leave your prior position?

There is nothing improper about this question. With this information, as with all applicants, you should ask the applicant for a list of employment references and contact the individuals provided as well as supervisors from prior employment.

Are you disabled?

That question alone is not lawful. However, asking whether an applicant has any disabilities that would impair his/her ability to perform the position is an acceptable interview question.

What is your social media username?

Legislation signed by Governor Christie in August 2013 prohibits employers from requesting social media usernames and passwords from job applicants and employees. However, employers may, through lawful means, review any public social media profile. Employers should be mindful that viewing an applicant's social media profile may inform the employer about an applicant's membership in a protected class. This may open the door for potential claims.

It is recommended that all individuals performing interviews receive training before interviewing candidates. A checklist of questions may be helpful so that an employer knows those questions that are proper and those that are not. Keep the interview focused on job-related requirements and

directed at evaluation of the applicant's qualifications, skills and ability to meet the challenges of the position.

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