ANSWERING IMPROPER OR ILLEGAL INTERVIEW QUESTIONS

When you interview for a job, your prospective employer will ask questions—on the job application, in the interview, and/or during the testing process—that are related to the job you are seeking. Federal, state, and local laws prohibit discrimination in employment based on certain characteristics protected by law, such as race, sex, disability, age, and so on, however, many of these laws do not ban specific interview questions.

The focus of interview questions should be: What does the employer need to know to decide whether you can perform the functions of the job?

If asked an improper question, you have a few options:

- **You are free to answer the question.** However, keep in mind that if you provide this information, you may jeopardize your chances of getting hired, in the event you provide the “wrong” answer. There may be a legal recourse available to you, but this is not the preferred outcome for most job applicants.

- **You can refuse to answer the question.** Unfortunately, depending on how the refusal is phrased, you run the risk of appearing uncooperative or confrontational, and losing the job. Again, there may be legal recourse, but this hardly an ideal situation.

- **You can examine the question for its intent and respond with an answer as it might apply to the job.** For example, if the interviewer asks, “Are you a U.S. citizen?” or “What country are you from?,” you have been asked an improper question. You could respond, however, with “I am authorized to work in the United States.” Similarly, if the interviewer asks, “Who is going to take care of your children when you have to travel for the job?” your answer could be, “I can meet the travel and work schedule that this job requires.”

Following is a synopsis of various federal laws that prohibit discrimination in employment, with examples of improper questions and the questions employers may ask.

You can use your answer to the “proper questions” to answer an improper question.
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| Age                  | • May not require an applicant’s age, date of birth, or for records to prove his/her age.  
• Year of graduation from high school.                                               | • An employer may ask whether an individual meets the minimum age requirements set by law. “Are you over the age of 18?” is an appropriate question. |
| National Origin/Citizenship | • Are you a U.S. citizen?  
• Where were you/your parents born?  
• What is your “native tongue”?                                                      | • Are you authorized to work in the United States?                                                                                         |
| Race/Color           | • All questions regarding a person’s race/color will be deemed illegal under state and federal laws. | None!                                                                                                                                   |
| Religion             | • Any question with regard to an applicant’s religious beliefs, denomination, or any questions that indicate religious customs or holidays observed. | • After an individual is hired, an employer may inquire about religious accommodations.                                                      |
| Marital/Family Status| • Are you married?  
• With whom do you live?  
• Do you plan to have a family?  
• What are your child-care arrangements?                                             | • Would you be willing to relocate if necessary?  
• Would you be able and willing to work overtime as necessary?                                                                         |
| Personal             | • How tall are you?  
• How much do you weigh?                                                             | • Are you able to lift a 50-pound weight and carry it 100 yards, as that is part of the job?                                            |
| Disabilities         | • Do you have any disabilities?  
• Please complete the following medical history.  
• How’s your family’s health?                                                        | • Are you able to perform the essential job functions?  
• Can you demonstrate how you would perform the following job-related functions?                                                        |
| Arrest Record        | • Have you ever been arrested?                                                      | • Have you ever been convicted of __________________________________________?                                                             |
| Military             | • If you’ve been in the military, were you honorably discharged?                   | • In what branch of the Armed Forces did you serve?  
• What type of training or education did you receive in the military?                                                                  |
Questions based on race, color, religion, sex, and national origin

According to the Equal Employment Opportunity Commission (EEOC), there are no job-related considerations that would justify asking an applicant a question based on race. Further, questions about height and weight are not acceptable unless minimum standards are essential for the safe performance of the job’s duties.

Examples of improper questions (race/color):
- What is your skin color?
- What is your race?
- Are you a member of a minority group?
- What color are your eyes and/or hair?
- Will you submit a photo prior to hiring?
- Is your spouse Caucasian/Hispanic/African American/Asian, etc?
- What is your: nationality, racial, or religious affiliation of a school?

Examples of proper questions (race/color):
- An employer may ask you to voluntarily offer your race for affirmative action programs.
- Photos may be requested after hiring for identification purposes.

Examples of improper questions (national origin):
- You sound like you have an accent; where are you from?
- What is your nationality?
- What is your heritage?
- Where were you born?
- Are you an American citizen?/Are you a citizen of the United States?
- Are your parents or spouse citizens of the United States?
- Are you, your parents, or your spouse naturalized or native-born U.S. citizens?/Where are your parents from?
- What is your native tongue?
- 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?
- Any questions asking specifically about the nationality, racial, or religious affiliation of a school are also improper.

Examples of proper questions (national origin):
- Are you eligible to work in the United States?
- If you are not a U.S. citizen, do you have the legal right to remain permanently in the United States?
- What is your visa status? (If no to the previous question.)
- Are you able to provide proof of employment eligibility upon hire?
- What languages do you speak, read, or write fluently? (Only if relevant to the job.)
Questions based on age
Under the Age Discrimination in Employment Act (ADEA), it is unlawful for an employer to fail or refuse to hire any individual or otherwise discriminate against any individual because of age. A request for your date of birth on the employment application is improper. Also, questions relating to when you were graduated from college could raise age-related concerns. However, an employer can inquire whether or not you meet the minimum federal age requirement for employment under child-labor law.

Examples of improper questions (age):
- When were you born?/What year were you born?/What is your birth date?
- When did you graduate from high school?
- How old are you?

Examples of proper questions (age):
- Are you over the age of 18?
- After hiring, verifying your age with a birth certificate or other ID and asking age on insurance forms are proper inquiries.

Questions based on religion
It is illegal for employers to discriminate on the basis of religion. The EEOC defines “religious practices” to include “moral or ethical beliefs as to what is right and wrong, which are sincerely held with the strength of traditional religious views.” Religious practices also include religious observances. However, under the “ministerial exemption,” certain employers that have a specific religious orientation, such as churches, may ask questions relevant to religious practices and beliefs.

Examples of improper questions (religion):
- Do you go to church?/Do you attend church regularly?
- Are you religious?/What is your religious affiliation?
- Do you take time off from work for religious purposes?/What religious holidays will you be taking off from work?
- Any questions asking specifically about the nationality, racial, or religious affiliation of a school are also improper.

Example of proper questions (religion):
- Can you work on Saturdays/Sundays? (Only if relevant to the job.)

Questions based on sex
The Civil Rights Act prohibits discrimination based on sex. The Pregnancy Discrimination Act prohibits discrimination based on pregnancy, childbirth, or related medical conditions. A written or unwritten employment practice or policy that excludes applicants or employees due to pregnancy, childbirth, or related medical conditions is a violation.

A pre-employment inquiry should not ask you to indicate “Male/Female” or “Mr./Mrs./Miss” unless the inquiry is in good faith for a nondiscriminatory purpose.
Employers can inquire whether you have worked under a different name or whether you have personal responsibilities that would make you unavailable to travel or put in overtime hours if they are requirements of the job.

Examples of improper questions (sex):
- Do you have small children?
- Are you planning to have children soon?/Do you plan to have children?/Do you plan on having more children?/Do you plan to have a family? When?
- How many kids do you have?
- What is your marital status?/Are you married, divorced, separated, engaged, widowed, etc.?/What is your maiden name?/Is this your maiden or married name?
- Are you pregnant?
- What is the name of your relative/spouse/children?
- Questions concerning the candidate’s spouse, or the spouse’s employment, salary, or dependents are also improper.
- How old are your children?
- What kind of child care arrangements have you made?
- How will your spouse feel about the amount of time you will be traveling if you get this job?

Examples of proper questions (sex):
- Can you work overtime?
- Is there any reason you can’t start at 7:30 a.m.?
- Can you meet specified work schedules or do you have activities or commitments that may prevent you from meeting attendance requirements?
- Would you be willing to relocate if necessary?
- Will you be able and willing to travel as needed for this job?
- What are the names of relatives already employed by the company or a competitor?
- Do you foresee any long-term absences in the future?
- Employers may ask for the name, address, and phone number of the employee’s emergency contact person.

Questions based on sexual orientation
While federal law does not provide any protection based on sexual orientation, many state and local jurisdictions prohibit discrimination based on this characteristic.
Example of improper questions (sexual orientation):
- Are you straight or gay?

Questions based on disability
The American with Disabilities Act (ADA) prohibits employers from asking questions about disability and bars the use of medical examinations until after the employer has given a conditional job offer. However, if it is obvious that you have a disability that will require reasonable accommodations, an employer may ask whether you will need any.

Employers may ask whether you have any conditions that would keep you from performing the specific tasks of the job applied for. Employers may require drug tests or ask if you take illegal drugs.
After making a job offer, an employer may ask any disability-related questions and conduct job-related medical examinations as long as the employer does this for everyone in the same job category. An employer may withdraw an offer from an applicant with a disability only if it becomes clear that he or she cannot do the essential functions of the job or would pose a direct threat (a significant risk of substantial harm) to the health or safety of him/herself or others.

Examples of improper questions (disability):
- Do you have any disabilities or medical conditions?/Do you have any handicaps?
- What caused your handicap?/What is the prognosis of your handicap?
- What is your medical history?/Have you ever had a serious illness?
- How serious is your disability?
- How does your condition affect your abilities?
- Do you take any prescription drugs?
- Do you take any drugs? (Because it does not distinguish between illegal and legal drug use, this question may cause applicants to disclose their lawful use of prescription drugs.)
- Have you ever been in rehab?/Have you ever been addicted to drugs or been treated for drug addiction?
- Have you ever been an alcoholic?/How much alcohol do you drink?/Do you have a drinking problem?
- How many sick days did you take last year?
- Do you have AIDS?
- Have you been diagnosed with any mental illnesses?
- Are you receiving any psychiatric treatment?
- Have you ever received worker’s compensation or been on disability leave?
- Have you had any recent or past illnesses or operations? If yes, list them and give dates when these occurred.
- What was the date of your last physical exam?
- How is your family’s health?
- When did you lose your eyesight (or hearing, leg, etc.)? How?
- Do you need an accommodation to perform the job? (This question can only be asked after a job offer has been made.)
- Questions asking about an applicant’s legitimate use of sick leave are also improper. (This question is likely to elicit information about a disability.)
- Have you ever taken a test that revealed hearing loss?
- Do you use any assistive devices for a hearing impairment (such as a hearing aid) or have you in the past?
- Do you have any hearing loss due to an on-the-job accident or injury?

Examples of proper questions (disability):
- Can you perform the specific duties of the job?/Are you able to perform the essential functions of the job? (This question should come after the interviewer has thoroughly described the job.)
- Can you demonstrate how you would perform the following job-related functions? (The applicant is given a common job-related task to perform.)
- Questions about an applicant’s current use of illegal drugs are proper.
- If an applicant voluntarily discloses that he or she has a disability, an employer may ask two follow-up questions: Whether he or she needs a reasonable accommodation, and if so, what type? The
employer must keep any information an applicant discloses about his or her medical condition confidential.
• After hiring, the employer may ask questions about medical history on insurance forms.
• As part of the hiring process, after a job offer has been made, you may be required to undergo a medical exam.

Questions based on applicant’s arrest record
Because arrests and investigations alone are not reliable evidence that a person actually has committed a crime, the EEOC has concluded that an employer rarely will be able to justify making broad general inquiries about whether you have ever been arrested or been the subject of an internal company investigation. Some states and localities have laws regulating the use of arrest and/or conviction records in the employment context.
Examples of improper questions (arrest record):
• Have you ever been arrested?
• Have you ever spent a night in jail?

Examples of proper questions (arrest record):
• Have you ever been convicted of a crime? If so, when, where, and what was the disposition of the case? (The information secured on an individual’s conviction record should only be used in employment decisions if the conviction is substantially work-related.)
• Have you ever been convicted of ______? (The crime named should be reasonably related to the performance of the job in question.)

Questions based on military/veteran status
The Uniformed Services Employment and Reemployment Rights Act (USERRA) was signed into law on October 13, 1994, to prohibit discrimination against returning service members because of their military service or obligation. The law seeks to ensure that those who serve their country can retain their civilian employment and benefits and can seek employment free from discrimination because of their service.
Examples of improper questions (military/veteran status):
• Do you plan to take leave to serve in the military?

Examples of proper questions (military/veteran status):
• Describe the relevant work experience that you acquired from U.S. armed forces as it relates to this position.

Questions based on involvement in labor organizations
According to the National Labor Relations Act, it is unlawful for any employer to discriminate in regards to hiring to encourage or discourage membership in any labor organization.
Examples of improper questions (labor organizations):
• Are you a union member?
• What do you think of unions?
Questions based on residence and affiliations/organizations
Here are additional examples of non-job-related questions that are improper.
Examples of improper questions (residence and affiliations/organizations):
  • Do you live in town?
  • With whom do you live?
  • What clubs, social organizations, societies, or lodges do you belong to?
  • What off-the-job activities do you participate in?

Examples of proper questions (residence and affiliations/organizations):
  • Inquiries about the candidate’s address to facilitate contact with the applicant are proper questions.
  • Will you be able to start work at 8:00 a.m.?
  • Will you have problems getting to work at 9:00 a.m.?
  • List any professional or trade groups or other organizations that you belong to that you consider relevant to your ability to perform this job. (Exclude those organizations whose name or character indicates the race, religious creed, color, national origin, or ancestry of its members.)

Courtesy of the National Association of Colleges and Employers.

Shared by the Wright State University Career Center, www.career.wright.edu
To schedule an appointment with a Career Advisor, call 937-775-2556.