



A young female candidate comes to your office for an interview. You notice an engagement ring on her finger, and you begin to wonder, “When is she going to start a family?”

An obese gentleman arrives for his interview, and you begin to worry, “Will this man’s health get in the way of his job performance?”

When you’re interviewing, you can’t always control the thoughts that pop into your head; however, you can – and must – control the words that come out of your mouth!

Interviewing is a tricky situation. On one hand, you want to ask probing questions that will help you discover shortcomings in a prospective employee. On the other hand, if those questions cross the line, you can get yourself – and your company – into serious trouble.

So what should you avoid? Here are 10 questions you should NEVER ask in an interview.

### **Do you have any health conditions?**

According to William Wilson, Esq., “Under the ADA, a bona fide medical examination can explore legitimate interests of the employer such as safety or job qualification, but only after a conditional offer of employment.”

In addition, it is illegal to exclude handicapped applicants as a class on the basis of their type of handicap (Handicap Discrimination Guidelines). You may ask if the applicant is able to perform the essential functions of the job with or without reasonable accommodations, but only if the interviewer thoroughly describes the job.

### **How much do you weigh?**

Besides being rude, issues of weight and height are irrelevant, unless minimum standards must be met to safely do the job. For example, you may ask, “Are you able to lift a 50 lb weight and carry it 50 yards?” only if it is an essential part of doing the job.

### **Can you work on Sunday?**

Religious discrimination is illegal, and questions that can be construed as related to a person’s religion must be avoided. Employers are required to make reasonable accommodations for their employees’ religious beliefs and practices. If you need someone to work on Sunday (or over religious holidays), make sure to also state that accommodations will be made if necessary.

### **Is that your maiden name? (Translation: Are you married?)**

Any and all questions related to marital status are illegal. By asking a woman about her maiden name, you are setting yourself up for a potential lawsuit for gender discrimination. In the most extreme cases, this question can be misconstrued as a “come-on,” and you could end up being liable for sexual harassment.

## What are your plans for children? Do you have any kids?

Questions about children can be seen as a form of gender discrimination. While you may be genuinely interested in a person's family life, do not ask about it during your interview.

If you are asking questions about kids because you are concerned about long work hours, a person's need for time off, travel, overtime, or relocation, it is okay to ask about those issues directly. For example, what percentage of the time are you willing to travel? Or, our work frequently requires starting very early and/or staying at the office very late. Are you able to comply with these requirements?

## How old are you?

According to the Age Discrimination Act of 1967, it is illegal to ask the age or age range of an applicant. It is also illegal to request a birth certificate prior to hire. Even going around the question by asking, "What year did you graduate," may pose problems. You are allowed to ask a candidate if he/she is over the age of 18, if this is a condition of employment.

## Have you ever sued anyone?

According to Wilson, "It is illegal to retaliate against an applicant for having participated in a case concerning many kinds of unlawful employment actions." A candidate's past legal history is not relevant in evaluating fitness for future employment.

## May I have a copy of your military records?

It is illegal to ask for copies of military records, what the discharge status was, or to ask about military service for any other

country besides the US. It is okay to ask if the person has served in the US Armed Forces, which branch and rank he/she achieved, and any job related experience he/she gained from their service.

## How many times have you been arrested?

It is illegal to ask if the applicant has been arrested. However, it is okay to ask if the person has ever been convicted of (insert crime here), if the crime in question is reasonably related to the performance of the job available.

## Can I take your picture?

You may not ask to photograph or video tape a prospective employee due to the potential for race and gender discrimination. You may take a person's picture for identification purposes or your corporate website ONLY after that person is hired.

## Think Before You Ask

The bottom line is that you want to avoid asking about any topic that could be viewed as the basis for discrimination, such as race, gender, marital status, birthplace or national origin, religion, or sexual preferences.

The best strategy to protect your firm is to plan interview questions well in advance. This policy not only helps you avoid problematic questions, it adds structure to your hiring process and helps ensure that a consistent methodology is followed, which further helps protect you from liability.

And in the unlikely event that an illegal question slips out, it does not mean that a crime has been committed. It is ultimately up to a court of law to determine whether the question or the resulting information was used in a discriminatory manner.

### Disclaimer:

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