

Conducting a Legal Interview

Interviewers need to be aware of lawful and unlawful interview questions. Employers must be able to demonstrate a job-related necessity for all questions.

Interviewers should determine whether the answer to a question is necessary to judge the applicant's qualifications, level of skills, and overall competence for the job that they are interviewing to fill.

Respect for the applicant's personal information should be maintained throughout interview process.

Interviewers need to recognize and consider their own biases before and after an interview. Also be aware of double standards, for example, consider if you would react differently to the same answer provided by someone else who you relate to more easily.

Topic	Lawful	Potentially Unlawful
Age	Inquiry as to minimum age requirement, by law, to work: Appropriate Example: Are you over the minimum age for the hours or working conditions?	The law protects individuals 40 years of age and older. Inappropriate: How old are you? When do you plan to retire? When did you graduate from high school?
Sex	Must be bona fide job qualification or necessity. Distinctions based on gender are uncommon.	Employment decisions should not be based on gender.
Marital & Family Status	Whether candidate can meet specified work schedule. Appropriate Examples: Is there a reason you cannot start at 7:30 am? Can you work overtime? Are there commitments that may prevent you from meeting attendance requirements?	Inappropriate: Are you married, divorced, separated, engaged, widowed? How many children do you have? How old are they? Is this your maiden name? Do you live with your parents? Questions concerning spouse

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Topic	Lawful	Potentially Unlawful
Disability Accommodation	<p>If asked, these questions must be asked of all candidates.</p> <p>Appropriate Examples: After reviewing the essential job functions, are you able to perform them?</p> <p>Can you describe how you would perform the functions of the job?</p>	<p>Any pre-employment question about the existence, nature, or severity of a disability.</p> <p>Inappropriate: Do you have any disabilities?</p> <p>What is your medical history?</p> <p>How does your condition affect your abilities?</p>
Citizenship	<p>If asked, this question must be asked of all candidates.</p> <p>Appropriate Examples: Are you authorized to work in the U.S.?</p> <p>Do you have the legal right to remain permanently in the U.S.?</p> <p>Are you able to provide proof of employment eligibility upon hire?</p> <p>What languages do you speak, read, or write fluently?</p>	<p>Inappropriate: Of what country are you a citizen?</p> <p>Do your parents originate from the U.S.?</p> <p>I see you were born in another country.</p>
Race or Skin Color	<p>None. Race and ethnicity are obtained via voluntary self-disclosure on application and not available to search committee.</p>	<p>Discrimination should not occur based on any issue related to the race or skin color of the applicant.</p>
Religion or Creed	<p>Inquiry must be job related.</p> <p>Appropriate Example: Can you work on Saturdays? (If working Saturdays is required for the position.)</p>	<p>Inappropriate: What is your religious affiliation?</p> <p>Do you attend church regularly?</p> <p>Which religious holidays will you be taking off?</p>

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<p>Criminal Record Convictions/Arrests</p>	<p>Whether the applicant has any actual convictions. *</p> <p style="color: green;">Appropriate Example: Have you ever been convicted of a crime?</p> <p>*Usually not necessary to ask this question as a criminal background check is done by HR as part of hiring process. Decision on exclusion will be based on the nature and gravity of the offense or conduct, the time that has passed since the offense or conduct and completion of sentence, and the nature of the job sought.</p>	<p>Do not make inquiries about arrests.</p> <p style="color: red;">Inappropriate: Have you ever been arrested? Have you ever spent a night in jail?</p>
<p>Residence</p>	<p>As necessary to facilitate contact with the applicant. Also concerning ability to meet schedule requirements.</p> <p style="color: green;">Appropriate: Will you be able to start work at 8:00 am?</p>	<p style="color: red;">Inappropriate: Do you own or rent your home? Do you live in town? With whom do you live?</p>
<p>Name</p>	<p>To obtain required information such as transcript.</p> <p>Appropriate Example: Do you have work or school records under a different name?</p>	<p>Inquiries about national origin or lineage or previous name before marriage.</p> <p style="color: red;">Inappropriate: What nationality does that name originate from?</p>

References:

U.S. Equal Employment Opportunity Commission

Accessed at:

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>

Society for Human Resource Management

Accessed at:

<https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/interviewandemploymentapplicationquestions.aspx>

<https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/have-you-seen-these-gender-biases-during-job-interviews.aspx>

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions#VA>