

Guidelines for Pre-Employment Inquires

Illegal interview questions are those that are not relevant to the nature of the job or to the applicant's ability to perform that job, or those that are not asked of every candidate.

It is not unusual to encounter questions in the interview process that are illegal. Typically, this happens because the interviewer has not received proper training or is inexperienced. Occasionally, illegal questions are asked knowingly hoping that the candidate will give the employer more information or to see if you will take a stand.

Regardless of why the question is asked it is important for you to consider how you would deal with a situation where an illegal question is asked. If such questions are asked, you are not obligated to answer them. Usually, illegal questions are asked in a seemingly harmless or casual sort of way. Being aware of them is the first step; handling them well is the most important part. Keep in mind that you are not obligated to answer them. Let's examine four options:

- **Answer the question:** Certainly one option is just to answer the question. Keep in mind that doing so may give the employer information that allows you to be screened out of the pool. For example, if you are asked "do you have children?" The interviewer may be under the assumption that the candidate will miss more work with sick children.
- **Ignore the question:** Occasionally, it is possible to avoid the question or change the subject. However, this method can also create more questions in the interviewer's mind, as you are apparently unable to or uncomfortable in answering the question.
- **Candidly refuse the question:** This can be chancy as you may offend the interviewer. Conversely, you may want to contemplate whether this is someone for whom you'd like to work. The tone of your voice and your choice of words are extremely important in this situation. A more diplomatic reply may be to ask how this question is pertinent to the job.
- **Address the underlying issue:** Often you can readily identify the underlying concern. In that case, it is prudent simply to answer that question rather than the one specifically asked. For example, an interviewer who asks, "of what country are you a citizen?" may really want to know if you are authorized to work in the U.S. (or another country that is directly relevant to the job). In that instance, you may respond: "I am authorized to work in the U.S." Clearly here the risk is in identifying correctly the underlying issue.

Psychological Testing

- *Is psychological testing legal?*
In most cases, yes, the courts have upheld the employer's right to make every effort to avoid the adverse impact of a negligent hire. In fact, an employer can be held liable for negligent hiring or retention if it hired or retained an employee that the employer knew or should have known was unsuitable for the position.
- *How then are the candidates rights protected when psychological tests are used?*
Legally, psychological tests must be free from any characteristic that could negatively affect an individual because of his or her race, gender, ethnicity, national origin, religion, and/or sexual orientation.
- *Why are we seeing such an increase in the use of psychological tests in the employment process?*
One major reason for the increase in the use of testing is the reluctance of past employers to give character references on past employees. It is not unusual for companies to have in place policies which only permit references to include a check on the dates of employment. This is done to avoid the risk of future lawsuits from both employees and their future employers.

Sample Illegal Interview Questions

Category: **Age**

- How old are you?
- What is your date of birth?

Possible Legal Alternatives

- Are you over the age of 18? (or whatever age is required to work in the position for which you are interviewing)

Category: **Arrests and Convictions**

- Have you ever been arrested?

Possible Legal Alternatives

- Have you ever been convicted of ____? (A crime that is reasonably related to the performance of the job in question.)

Category: **Disabilities**

- Do you have any disabilities?
- Please complete this medical questionnaire.

Possible Legal Alternatives

- Are you able to perform the essential functions of this job with or without reasonable accommodations? (Legal if the interviewer thoroughly described the job.)

****Questions related to health are legal only in relation to insurance after you have accepted the position.****

Category: **Marital/Family Status** (often alludes to sexual orientation)

- What is your marital status?
- How many children do you have?
- Do you plan to have a family? When?

Possible Legal Alternatives

- Would you be able to relocate if necessary?
- Travel is an important part of this job. Would you be able to travel as needed by the job?

Category: **Military Service**

- If you have been in the military, were you honorably discharged?
- In what branch of the Armed Forces did you serve?

Possible Legal Alternatives

- What type of training or education did you receive in the military?

Category: **National Origin/Citizenship**

- Are you a U.S. Citizen?
- Where were you/your parents born?

Possible Legal Alternatives

- Are you legally entitled to work full-time in the U.S.?

Category: **Organizations**

- What clubs or social organizations do you belong to?

Possible Legal Alternatives

- Do you belong to any professional or trade groups or other organizations that you consider relevant to your ability to perform this job?

Category: **Personal**

- How tall are you? How much do you weigh?

Possible Legal Alternatives

- Are you able to lift a 50-pound weight and carry it 100-yards, as that is a job requirement?