

To Ask, or Not to Ask?

Legal alternatives to illegal interview questions



How old are you?

Do you have, or do you plan to have, children?

How many sick days did you take last year?

Most hiring managers would love to ask these revealing (although, unfortunately, *illegal*) questions when interviewing job candidates. But as we all know, asking improper interview questions can lead to discrimination or wrongful-discharge lawsuits. So how do you get the information you need without putting your company at risk?

Protect yourself and your organization from legal trouble by carefully planning your interview questions. Start by conducting a job analysis to objectively identify the core competencies required for the position. Then, develop a list of behavior-based interview questions to identify those competencies. When broaching sensitive issues such as age, marital status or disabilities, consider the following legal alternatives to illegal interview questions:

Root concern:
Legal ability to work

Illegal: *Are you a U.S. citizen?*

Legal: *Are you authorized to work in the U.S.?*

While you can't ask about citizenship, you can ask whether or not the candidate is authorized for work – and legally able to work for your company.

Root concern:
Work availability

Illegal: *What religion are you?*

Legal: *Are you able to work with our required schedule?*

At all costs, refrain from asking any questions about religion. To find out whether or not a candidate's religious practices may interfere with his ability to work when you need him to, just ask directly when he's able to work.

**Root concern:
Long-term commitment**

Illegal: *How many years do you plan to work before retiring?*

And: *If you get pregnant, will you come back after maternity leave?*

Legal: *What are your long-term career goals?*

Although you may be concerned about hiring an older worker (just to have him retire in a year or two), or a young woman who plans to get pregnant in the next year (just to have her quit once she has the baby), you can't legally dismiss applicants for these reasons. As an alternative, ask candidates about their career plans for the future – you can effectively gauge long-term commitment level without discriminating.

**Root concern:
Work availability**

Illegal: *Do you have children? How old are they?*

Legal: *Are you able to travel or work overtime on short notice?*

Again, if what you really want to know is whether family obligations will interfere with work availability, be direct.

**Root concern:
Ability to perform on-the-job**

Illegal: *Do you smoke or drink?*

Legal: *Have you ever been disciplined for violating company policies forbidding the use of alcohol or tobacco products?*

You probably want to avoid hiring someone with a chronic drinking problem, or who will take cigarette breaks every hour. In addition to being disruptive, these habits may affect your company's insurance rates. Instead of asking directly, find out if they've had trouble with company health policies in the past.

**Root concern:
Flexibility, ability to meet new challenges**

Illegal: *How do you feel about managing men/women?*

Legal: *Can you describe a situation where you've had to take on new tasks or roles?*

Both questions will help you gauge a candidate's adaptability, but only the second is acceptable.

**Root concern:
Physical ability to perform a job**

Illegal: *Do you have any disabilities?*

Legal: *Are you able to perform the specific duties of this position, with or without reasonable accommodations?*

Physical or mental disabilities may adversely impact a candidate's ability to perform a job. However, it is illegal to ask about disabilities. To avoid discriminating, focus questions on the candidate's ability to carry out job responsibilities.

Sources:

HR World Editors. 30 Interview Questions You Can't Ask and 30 Sneaky, Legal Alternatives to Get the Same Info. Retrieved from <http://www.hrworld.com/features/30-interview-questions-111507/> July 2010.

Poskey, Mike. Interview for Success and Avoid the Legal Pitfalls. ZERORISK HR, Inc. Retrieved from <http://www.zeroriskhr.com/articles/interviewforsuccess.aspx> July 2010.