

A GUIDE TO LAWFUL INTERVIEW QUESTIONS

It is the responsibility of every employer to assure that all questions asked of a job applicant are lawful. An untrained or inexperienced interviewer may inadvertently stray into questioning that seems reasonable but, in fact, is inappropriate and unlawful.

The guiding principle for lawful interview questions is: can the employer demonstrate a job-related necessity for asking the question? Use the guidelines below to avoid improper or unlawful interview questions.

GUIDELINES FOR INTERVIEW QUESTIONS

Ask no questions that are posed on the basis of an applicant's gender, race, color, age, national origin, religion*, marital status, disability, sexual orientation, or any other non-job-related basis. (**Note that churches and other religious organizations may give preference to individuals of their own religion.*)

Race/color: No questions about race or color are appropriate

Religion: As noted, churches and other religious organizations may give preference to individuals of their own religion; all others are prohibited from asking questions about religion

Gender: Generally, no gender related questions are appropriate.

- It is inappropriate to ask female applicants different questions than male applicants, or married female applicants different questions from single female applicants.
- Questions regarding pregnancy or potential pregnancy should not be asked.
- Questions on childcare arrangements are not appropriate (See below for lawful questions about family)

Sexual Orientation: Many state and local laws prohibit discrimination on the basis of sexual orientation

National Origin: You may not ask where an applicant was born or where his/her parents were born. You may ask if the applicant is eligible to work in the U.S.

Age: The Age Discrimination in Employment Act bars discrimination against persons age 40 or over.

Age-based recruiting efforts, such as "recent graduate," are unlawful as are any questions during the interview process that deter employment due to age.

Height and/or Weight Restrictions: Unless there is a demonstrable business necessity for such restrictions, these questions may support gender or national origin discrimination

Arrest and Conviction Records: Questions about an applicant's arrest record are improper. Questions about convictions may be asked, if job related. EEOC guidelines say that employers must have a business necessity for the use of conviction records in hiring decisions. (See www.eeoc.gov for details.)

Financial Status: Do not ask if the applicant owns or rents a home or car, or if wages have been previously garnished, unless financial considerations for the job in question exist. If consumer credit reports are used, the employer must comply with the Fair Credit Reporting Act of 1970 and the Consumer Credit Reporting Reform Act of 1996.

Military Record: Do not ask what type of discharge the applicant received from military service. You may ask whether or not the applicant served in the military, the period of service, rank at time of discharge, and type of training and work experience received in the service.

Disability: Do not ask whether or not the applicant has a disability. You may ask whether or not the applicant can perform the duties of the job in question with or without a reasonable accommodation.

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EXAMPLES OF LAWFUL AND UNLAWFUL INTERVIEW QUESTIONS

Fortunately, employers can ask many lawful questions that will help to determine the suitability of job applicants. Following are examples of both acceptable and unacceptable questions:

Topic	Unlawful	Lawful
<i>Family</i>	<ul style="list-style-type: none"> • Number of children, ages • What are your baby-sitting arrangements? • Do you have pre-school age children at home? • Do you have a car? 	<ul style="list-style-type: none"> • What hours and days can you work? • Are there specific times that you cannot work? • What was your attendance record on your last job? • Do you have responsibilities other than work that will interfere with specific job requirements, including reliable attendance?
<i>Citizenship/ National Origin</i>	<ul style="list-style-type: none"> • What is your national origin? • Where are your parents from? • What is your maiden name? 	<ul style="list-style-type: none"> • Are you legally eligible for employment in the U.S.? • Have you ever worked under a different name?
<i>For Reference Checking</i>	<ul style="list-style-type: none"> • What is your father's surname? • What are the names of your relatives? 	<ul style="list-style-type: none"> • Have you ever worked under a different name?
<i>Arrest and Conviction</i>	<ul style="list-style-type: none"> • Have you ever been arrested? 	<ul style="list-style-type: none"> • Have you ever been convicted of a crime? If so when, where, and what was the disposition of the case?
<i>Disabilities</i>	<ul style="list-style-type: none"> • Do you have any disabilities? • Have you been treated for any illnesses in the past 5 years? • Have you been treated for any mental condition? • Are you taking prescription drugs? • Is there any health-related reason you may not be able to perform this job? 	<ul style="list-style-type: none"> • Can you perform the essential duties of the job you are applying for with or without accommodation?
<i>Emergency</i>	<ul style="list-style-type: none"> • What is the name of a relative to be notified in the case of an emergency? 	<ul style="list-style-type: none"> • What is the name of the person to be notified in case of emergency? (Ask only after the individual has been employed.)
Subject	Unlawful	Lawful
<i>Credit Record</i>	<ul style="list-style-type: none"> • Do you own your own home? • Have your wages ever been garnished? • Have you ever declared bankruptcy? 	<ul style="list-style-type: none"> • None (Credit references may be obtained if in compliance with the Fair Credit Reporting Act of 1970 and the Consumer Credit Reporting Reform Act of 1996)



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<i>Military Record</i>	<ul style="list-style-type: none"> • What type of discharge did you receive? 	<ul style="list-style-type: none"> • What type of education, training and work experience did you receive when you were in the military?
<i>Language</i>	<ul style="list-style-type: none"> • What is your native language? 	<ul style="list-style-type: none"> • What languages do you speak and write fluently? (If job related)
<i>Worker's Compensation</i>	<ul style="list-style-type: none"> • Have you ever filed for Worker's Compensation? • Have you had any prior work injuries? 	<ul style="list-style-type: none"> • None
<i>Religion</i>	<ul style="list-style-type: none"> • Any inquiry into religious affiliation, including religious holidays observed, EXCEPT that churches and other religious organizations may give preference to applicants of their own religion. 	<ul style="list-style-type: none"> • None, except as noted
<i>Gender</i>	<ul style="list-style-type: none"> • Do you wish to be addressed as Mr.? Mrs.? Miss? Ms.? 	<ul style="list-style-type: none"> • None
<i>Addresses</i>	<ul style="list-style-type: none"> • What was your previous address? • How long did you reside there? • How long have you lived at your current address? • Do you own your own home? 	<ul style="list-style-type: none"> • None, except as such information may be required for authorized consumer reports, as noted above.

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 is 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.”

Note: This information is provided for educational purposes only. It is not intended to be, and does not represent, legal advice in any form. If you require advice, it is suggested that you contact a competent legal professional to discuss the specifics of your circumstances and obtain the advice you require.

For additional information, see resources at the Equal Employment Opportunity Commission website:

www.EEOC.gov