

Legal and Illegal Interview Questions

A number of areas are simply off limits when interviewing potential candidates. Here are some guidelines for what you should and shouldn't ask during the interview process.



Marital Status

- **Unlawful inquiries:** Whether the applicant is married, divorced, separated, engaged, widowed, etc. “What is your marital status? What is the name of relative/spouse/children? With whom do you reside? Do you live with your parents? How old are your children?”
- **Lawful inquiries:** “What are the names of relatives already employed by the company or a competitor?” Other than that specific question, NONE.

Residence

- **Unlawful inquiries:** Names and relationships of persons with whom applicant resides. Whether applicant owns or rents a home.
- **Lawful inquiries:** Inquiries about address to the extent needed to facilitate contacting the applicant. (A post office box is a valid address.) “Will you have problems getting to work at 9 a.m.?” is also legal. Also asking about residence in the context of relocation is also legal, for example, “What are the challenges of you relocating for this position?”

Pregnancy

- **Unlawful inquiries:** All questions relating to pregnancy and medical history concerning pregnancy, such as “Do you plan on having more children?”
- **Lawful inquiries:** Inquiries about duration of stay on a job or anticipated absences, which are made to males and females alike.

Physical Health

- **Unlawful inquiries:** General questions (“Do you have any handicaps?”), which would tend to elicit information about handicaps or health conditions that do not relate reasonably to fitness to perform the job. “Have you ever had any serious illnesses?” or “Do you have any physical disabilities?” or “What is the prognosis of your handicap?”

- **Lawful inquiries:** “Can you lift 40 pounds?” or “Do you need any special accommodations to perform the job you’ve applied for?” or “How many days did you miss from work (or school) in the past year?” Such questions must be specific and relate to requirements listed in the job description.

Family

- **Unlawful inquiries:** Questions concerning a spouse or spouse’s employment or salary, child-care arrangements, or dependents, such as “How will your husband feel about the amount of time you will be traveling if you get this job?” or “What kind of child-care arrangements have you made?”
- **Lawful inquiries:** Whether an applicant can meet specified work schedules or has activities or commitments that may prevent him or her from meeting attendance requirements. “Can you work overtime?” or “Is there any reason why you can’t be on the job at 7:30 a.m.?” are acceptable.

Name

- **Unlawful inquiries:** Any inquiries about names, which would divulge marital status, lineage, ancestry, national origin, or descent. (e.g., “If your name has been legally changed, what was your former name?”)
- **Lawful inquiries:** Whether an applicant has worked for the company or a competitor under any other name and if so, what name.

Photographs

- **Unlawful inquiries:** Requests that an applicant submit a photo at any time prior to hiring.
- **Lawful inquiries:** A photo may be requested after hiring for identification purposes.

Age

- **Unlawful inquiries:** Questions that seek to identify applicants age 40 or older.
- **Lawful inquiries:** “Are you at least 18 years of age?” or “If hired, can you furnish proof of age?”

Education

- **Unlawful inquiries:** Any question asking specifically the national, racial, or religious affiliation of a school.
- **Lawful inquiries:** All questions related to academic, vocational, or professional education of an applicant, including the names of the schools attended, degrees/diplomas received, dates of graduation, and courses of study.

Citizenship

- **Unlawful inquiries:** Asking whether an applicant is a citizen, or requiring a birth certificate, naturalization, or baptismal certificate. Questions such as “Are you a citizen of the United States?” or “Are your parents and/or spouse

citizens of the United States?” or “Are you, your parents, or your spouse naturalized or native-born US citizens?”

- **Lawful inquiries:** Whether an applicant is prevented from being lawfully employed in this country because of visa or immigration requirements, and/or whether the applicant can provide proof of citizenship (passport), visa, or alien registration number after hiring. For example, “If you are not a US citizen, do you have the legal right to remain permanently in the United States?” or “What is your visa status? Are you able to provide proof of employment eligibility upon hire?”

National Origin/Ancestry

- **Unlawful inquiries:** Everything. “What is your nationality?” or “What language is spoken in your home?” or “What is your mother tongue?”
- **Lawful inquiries:** “What languages do you speak, read, or write fluently?” This is only legal when the inquiry is based on a job requirement.

Race or Color

- **Unlawful inquiries:** Any question that directly or indirectly relates to race or color.
- **Lawful inquiries:** None

Religion

- **Unlawful inquiries:** Any question that directly or indirectly relates to a religion.
- **Lawful inquiries:** None except “Can you work on Saturdays or Sundays?” and then only if this is a requirement of the job.

Organizations

- **Unlawful inquiries:** “To what organizations, clubs, societies, and lodges do you belong?”
- **Lawful inquiries:** “To what professional organizations do you belong?” These inquiries must only relate to the applicant’s professional qualifications.

Military

- **Unlawful inquiries:** Type or condition of military discharge. An applicant’s experience in other than US armed forces. Request for discharge papers.
- **Lawful inquiries:** Inquiries concerning education, training, or work experience in the armed forces of the United States. (Note: In many areas, veterans are a protected class.)

Height and Weight

- **Unlawful inquiries:** Any inquiries not based on actual job requirements.
- **Lawful inquiries:** Inquiries about the ability to perform a certain job. Being of a certain weight or height will not be considered a job requirement unless the

employer can show that no employee with the ineligible height and weight could do the work.

Arrests and Convictions

- **Unlawful inquiries:** All inquiries relating to arrests. For example, “Have you ever been arrested?”
- **Lawful inquiries:** None relating to arrests. Legal inquiries about convictions include: “Have you ever been convicted of any crime? If so, when, where, and what was the disposition of case?” or “Have you ever been convicted under criminal law within the past five years (excluding minor traffic violations)?” It is permissible to inquire about convictions for acts of dishonesty or breach of trust. These relate to fitness to perform the particular job being applied for, as stipulated by FDIC requirements.

We'd like to thank Suzanne King, a partner in the law firm Pierce Atwood LLP, for contributing to this article. Suzanne counsels clients in a broad range of employment practices including hiring, managing employee performance, employment agreements, and more.

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