

Don't Ask: Avoiding Illegal Interview Questions

By Brad Schwartz

Question: As a hiring manager, which questions are illegal for me to ask during an interview?

Answer: Use this rule of thumb — Interview questions must be job-related and not used to find out personal information.

These days, it's fairly common for candidates to be asked "illegal" questions because most hiring managers are untrained in the legalities of interviewing. Are you and your company up-to-date on the latest laws? Take this brief quiz and determine which questions are legal or "illegal" to ask during an interview:

1. Where were you born?
2. Have you ever been arrested?
3. Is this your maiden name or your married name?
4. How many kids do you have?
5. When did you graduate from high school?
6. Do you have a visual, speech, or hearing disability?

Have you guessed my angle? All of the above questions are illegal to ask during a job interview. If you not sure why, keep reading.

Ignorance Is Not An Excuse

Most "illegal" interview questions are asked when you are trying to be friendly and ask an innocent question about the candidate's personal life. Many illegal questions are asked in ignorance without malicious intent. Don't make this costly mistake. You, or your company, could be accused of asking improper interview questions or making discriminatory statements that reflect bias. You can be held criminally liable if you make hiring decisions based on anything personal that is not directly job-related.

Avoid These Topics

Although laws vary from state to state, there are common areas of interview questions that can be viewed as discriminatory. Steer clear of these topics:

- Location of birthplace or nationality
- Country or origin
- Relatives
- Marital status
- Sexual orientation
- Gender
- Race or color
- Religion
- Physical disabilities
- Health or medical history
- Pregnancy plans
- Age or number of children
- Childcare arrangements
- Date and type of military discharge

This list was compiled based on Federal discrimination laws enforced by the Equal Employment Opportunity Commission (EEOC) and various state-enacted laws. (States and municipalities are allowed to enact their own employment discrimination laws that include or expand the provisions in the Federal laws.)

Train Your People

Anyone involved in the interviewing process should be aware of which questions may be discriminatory and therefore illegal to ask. Smart companies train their recruiters, executives, department supervisors and hiring managers on legal and effective interview practices.

Because the law keeps changing, your company must keep up-to-date. Your state human rights agency can provide inexpensive information and training, as can the Equal Employment Opportunities Commission (www.eeoc.gov). You can also check with organizations such as the ACLU (www.aclu.org) or local law schools.

It's All In The Intent

During an interview, you can legally re-phrase the previous quiz questions so that they directly relate to specific occupational qualifications:

1. Are you authorized to work in the United States?
2. Have you ever been convicted of a crime? (Must include a statement saying that a conviction will not necessarily disqualify an applicant for employment.)
3. Would you be willing to travel as needed by the job? Would you be able and willing to work overtime as necessary? Would you be willing to relocate if necessary?
4. Same as question 3.
5. Are you over the age of 18? (You may not ask an applicant's age in an interview unless being over the age of 18 is a requirement of the job.)
6. Are you able to perform the essential functions of this job? (Be sure to first thoroughly describe the job.)

A Final Note

If you are really in doubt as to whether a question is "illegal", play it safe. Just don't ask. In today's litigious society, an offhand question can cost you and your company plenty.

Keep Sending Me Your Questions

Each month, my column will focus on a recruitment, employment or retention question or concern facing our property management industry, as submitted by THE APTS readers. Tell me which issues affect your company. What is important to you? Keep your questions coming and email me at brad@msbresources.com.

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