

“Oops, I Said It Again.”

Things You Should Not Ask in an Employment Interview

by John Diffenderfer, SPHR

IN THE COURSE of my work as a human resources consultant, I have often been asked, “What questions are illegal to ask during an employment interview?” With federal and state laws being what they are, it is prudent for all employers, including churches, to be concerned about conducting employment interviews properly. The various employment laws promote fairness in all facets of the employment relationship, from employee selection and hiring to termination of employment. As we focus on the employment interview, we find that the problem is not so much which questions may be illegal according to statute but what questions might be interpreted as having been asked with discriminatory motives.

FOCUS ON WHAT YOU NEED TO KNOW

The first step in avoiding improper questions is to focus on the necessary questions: what you need to know to determine if the applicant is qualified for the job. Give this matter some careful thought as you prepare to begin the interview process.

JOB DESCRIPTION

The duties and requirements stated in the job description serve as a primary source of questions about an applicant’s qualifications for a given job. If there is already a job description, review it for current applicability and revise it if necessary. If there is no job description, write one.

As you review the job description, carefully consider each duty and job qualification to be sure they are accurate and realistic.

STRUCTURED INTERVIEW

A review of the current job description

will help you understand what skills and abilities an employee needs to be successful in the job. This understanding will enable you to develop a list of questions you need to ask the job applicant. A structured interview is an orderly list of questions based on information you need to know about the applicant’s job-related skills and abilities. Using a structured interview will not only help you focus on the necessary questions but will also ensure that you ask the same questions of every applicant. This will promote fairness in the consideration of all applicants.

BEWARE OF “CHEMISTRY TESTS”

Most employers are anxious to hire new employees that “fit in” with the work group, and this is a valid goal; however, problems may arise when interview questions go beyond those that are needed to determine the applicant’s qualifications for the job, and begin to focus on personal aspects of the applicant’s life. Well-meaning interviewers defend such questions by saying, “I just want to see how the person will fit into our group,” or “I just want to be sure that the ‘chemistry’ is right.” The Equal Employment Opportunity Commission (EEOC) has found that members of protected class groups have often been denied employment because the interviewer felt that the “chemistry” was not right or that for some reason the applicant would not “fit in” with the work group. The EEOC has interpreted these as reasons employers use for rejecting applicants whose race or ethnic background is different from the predominant make-up of the employer’s work group.

So, be careful. You can and should hire people who are qualified and can “fit in” without asking the applicant improper questions.

QUESTIONS THAT ARE BETTER LEFT “UNASKED”

As stated earlier, an interviewer’s focus should not so much be on which questions are “illegal” but rather on avoiding questions that may be deemed to derive from discriminatory motives. There are definitely some questions which you should avoid, including, but not limited to, the following:

- What is your birth date? (exception – for child workers, in order to comply with legal age minimums)
- Questions regarding hair, eye or skin color
- What nationality are you?
- Where were you born? (For compliance with federal immigration laws, you may ask, “Do you have the right to live and work in the United States?”)
- Have you ever been arrested? (Because minority group members are arrested but not convicted of crimes more often than non-minorities, this question could be considered discriminatory under federal and state laws. It may also be discriminatory for an employer to have a policy which prohibits consideration of applicants with prior criminal convictions. Perhaps the best approach is to consider each applicant on a case-by-case basis, reviewing (1) the type of job being filled, (2) the nature of the applicant’s offense, (3) the elapsed time since the offense, and (4) how the offense relates to the job in question. This is an issue that has received some attention lately from some state and local governments. It would be wise to check your own state and local laws if

Summary

- It is illegal to ask certain questions during an employment interview; various employment laws promote fairness in the employee selection.
- Focusing on the necessary questions will help to prepare for the interview process. A review of the current job description will help to define the skills and abilities an employee needs to be successful in the job.
- In an effort to ensure that the new employee will “fit in,” well-meaning interviewers sometime focus on personal aspects of an applicant’s life and ask questions which might be discriminatory. Some questions which are better left “unasked” are included here.
- When an “oops” occurs—when an interviewer asks a question which should not have been asked, it is best to move on to the next question, without commenting on the error in judgment.
- Taking time to prepare for the interview can help avoid serious mistakes and ensure a more effective selection process.

Author

John Diffenderfer, SPHR, is a Houston-based human resources consultant who provides services to churches and other Christian organizations. Contact him via email at diffenderfer@juno.com.



functions of this job with or without a reasonable accommodation for a disability?”)

- Have you ever been injured on the job?
- Have you ever received Workers Compensation benefits?

As stated earlier, this list is not all-inclusive. It should, however, give you a good feel for the types of questions you should avoid. When in doubt, do not ask.

RECOVERING FROM “OOPS!”

If you slip and ask a question you know you should not have asked, do not call attention to it by saying something like, “I’m sorry. I was not supposed to ask that.” This may raise a red flag for the applicant and imply that they might have a basis to challenge an adverse hiring decision. It is best to move gracefully on to the next question.

FINAL THOUGHTS

In any conversations we have with others, most of us try to avoid saying things that are not appropriate. An employment interview is no different. Taking time to prepare thoughtfully for the interview can help you avoid serious mistakes and thereby ensure a more effective selection process. 

you suspect this could become an issue in your organization.)

- What is your marital status?
- Do you have adequate child care?
- Are you pregnant? (This question could lead to a violation of the Pregnancy Discrimination Act.)
- With whom do you live?
- What is your height and weight?
- What religion are you? (An exception to this is that a church or other religious organization may choose to hire only members of its denomination, so long as they do so consistently.)
- Do you have any disabilities? (Such questions violate the Americans with Disabilities Act. An employer may ask, “Can you perform the essential

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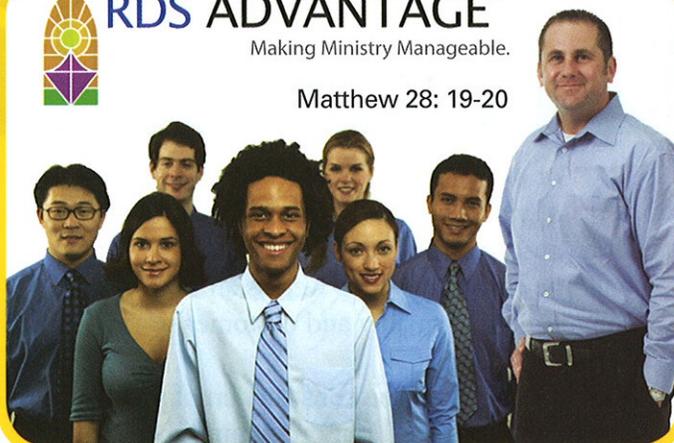
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