

First Wednesday — A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management



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Starting Off Right – Conducting a Proper Job Interview

The company's initial interview of a job applicant is important for business and legal reasons. Since federal and state anti-discrimination laws apply during the interview and pre-hire phase, certain questions must be avoided. In general, the company cannot directly ask questions of an applicant, or through a reference check, which gather information that cannot be considered in making the hiring decision. These questions must be avoided in written applications, face-to-face interviews and reference checking.

Set out below is a list of questions that cannot be asked, each followed by permissible ways to get the information needed.

1. Cannot ask: age, birthdate, dates of attendance or completion of elementary or high school and questions tending to identify persons over age 40.

Instead, ask "If hired, can you show proof of age?" or "Are you over 18 years of age?" or "If under 18, can you submit a work permit if hired?" It is also permissible to ask for name and place of schools, whether or not graduated (and date of college graduation), subjects studied or researched, and whether applicant has or intends to get certifications or licenses required for any job duties or why applicant lacks necessary certifications or licenses. Can also ask about activities in school, so long as applicant may omit those indicating race, color, religion, national origin, ancestry, disability, marital status, sex or age.

2. Cannot ask for maiden name.

Instead, ask, "Have you ever used another name?" or "Is any additional information concerning a name change, use of an assumed name, or nickname necessary to enable a check on your work and education record? If yes, then explain."

3. Cannot ask, "Do you own or rent your home?"

Instead, ask for current and permanent addresses, and telephone numbers.

4. Cannot ask for birthplace of applicant, applicant's parents, spouse or other relatives. Cannot ask "Are you a U.S. citizen?" or citizenship of applicant's parents, spouse, or other relatives. Cannot require that applicant show naturalization, first papers, or alien card prior to employment.

Instead, ask, "If hired, can you submit verification of your legal right to work in the United States?" or state that such proof is required upon hiring.

5. Cannot ask about nationality, lineage, ancestry, national origin, native language, descent, or parentage of applicant, applicant's parents, or spouse. For example, cannot ask what language the applicant commonly uses or how the applicant learned to read, write or speak a foreign language.

Instead, if using a language other than English is relevant to the job, ask what languages applicant reads, speaks or writes.

6. Cannot ask about applicant's race, complexion or color of skin, eyes or hair.

7. Cannot ask for applicant's height and weight, unless essential to the job. Cannot require that applicant attach a photograph to the application. Cannot request that applicant submit an optional photograph. Cannot require that applicant submit a photograph after interview but before hire. Cannot videotape interviews.

Instead, state that a photograph may be required upon hire.

8. Cannot ask questions that indicate applicant's sex, marital status, number of, or ages of, children or dependents. Cannot ask questions about provisions for childcare. Cannot ask questions about pregnancy, childbearing, or birth control. Cannot ask name and address of relative, spouse, or children of adult

applicant. Cannot ask “With whom do you reside?” or “Do you live with your parents?”

Instead, if applicant is a minor, ask for name and address of parent or guardian. Can also state company policy regarding work assignments of employees who are related.

9. Cannot ask about applicant’s religion, or religious days observed. For example, cannot ask “Does your religion prevent you from working weekends or holidays?”

Instead, tell applicant of the company’s days, hours or shifts to be worked.

10. Cannot ask for a list of organizations, clubs, societies and lodges to which the applicant belongs.

Instead, ask for a list of job-related organizations, clubs, professional societies or other associations to which applicant belongs, allowing the omission of those indicating race, color, religion, national origin, ancestry, disability, marital status, sex or age of members.

11. Cannot ask for arrest record or “Have you ever been arrested?”

Instead, ask, “Have you ever been convicted of a felony?” But this question must be followed by a statement that a conviction will not necessarily disqualify applicant from employment.

12. Cannot ask general questions about military service, such as dates and types of discharge. Cannot ask questions about service in a foreign military.

Instead, ask questions about relevant skills gained during applicant’s United States military service.

13. Cannot ask questions about current or past assets, liabilities, or credit rating, including bankruptcy or garnishment.

Instead, gain authorization for any background checks to be done as part of the hiring process.

14. Cannot ask questions about any refusal or cancellation of bonding.

Instead, state whether bonding is a condition of hire.

15. Cannot ask questions about former employers or acquaintances which elicit information specifying the applicant's race, color, religion, national origin, ancestry, disability, marital status, sex or age.

Instead, ask "Who referred you for a position here?" Can also ask for names of persons willing to provide references for applicant, and years acquainted.

16. Cannot ask for the name and address of a relative to be notified in case of accident or emergency.

Instead, ask for the name and address of a person to be notified in case of accident or emergency.

17. FINAL CATCH-ALL: Cannot ask any questions that express (directly or indirectly) any limitation, specification, or discrimination as to race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation, or any intent to make any such limitation, specification or discrimination.

In summary, the real danger here is if any "discriminatory" information is sought and obtained by whoever makes an adverse hiring decision, it may be difficult to later convince a jury that such information was not the cause of that adverse decision. Courts have found companies liable for denying jobs following interviews that focused on the *verboden* subject areas.

Lastly, if applicants are required to sign an employment application, a copy of the application form must be filed with the Labor Commissioner. One blank form should be sent to:

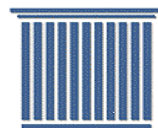
Division of Labor Standards Enforcement
P.O. Box 420603
San Francisco, CA 94142

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