

# Conducting Interviews Legally

## I. THE BASIC EMPLOYMENT LAWS OF HIRING

- Title VII of the Civil Rights Act of 1964. Prohibits discrimination in employment, including hiring, on the basis of *race, color, religion, national origin, and sex (including pregnancy)*.
- Age Discrimination in Employment Act (ADEA). Prohibits discrimination in employment because of *age (40 years or older)*.
- Americans with Disabilities Act (ADA). Prohibits discrimination in employment against *qualified applicants or employees with disabilities* and requires reasonable accommodation of such individuals.
- Equal Pay Act. Prohibits employers from paying *unequal wages* to male and female employees who perform *substantially similar jobs*.

## **II. SHAPE QUESTIONS TO AVOID TOPICS THAT COULD LEAD TO DISCRIMINATION CLAIMS.**

- Remember, although most questions (except disability-related questions) are not per se illegal, but the Equal Employment Opportunity Commission (and most courts) will assume that all questions are asked for a reason and that hiring decisions will be based on the answers.
- Twelve General Topics to Eliminate: Race, National Origin, Disability, Gender, Age, Religion, Union Membership, Military Status, Arrest Record, Financial Status, Legal Off-Duty Activities, EEO-related information (prior claims, non-professional clubs and charities).
- Specifically, as to disability-related questions, you cannot ask a candidate whether he/she has a disability or impairment that would prevent performance of the job. Generally, you cannot ask a candidate whether he/she needs assistance or accommodation to perform the job. However, if a candidate volunteers that he/she has a disability, or that he/she needs an accommodation, you may inquire as to the type of accommodation needed. You may ask all applicants if they can perform the job functions with or without reasonable accommodation, and you may ask them to demonstrate. If an applicant indicates that he/she will need accommodation to complete the job application/interview process, you may inquire as to the accommodation needed and obtain documentation of the disability.

## **INTERVIEW QUESTION DO'S AND DON'T'S**

### **Disabilities**

As a general rule, employers may not ask questions during job interviews that are likely to elicit information about a disability. It is best to begin with a job description that includes the essential functions of the position. Interview questions should focus on how a candidate would perform the job rather than whether the person has a disability. After an employer makes a job offer, it can ask more specific questions about a disability. However, the scope of questioning during the interview process is strictly limited, as these examples illustrate.

#### ***Don't Ask***

- What is the nature of your disability and what limitations does it place on you? (if the disability is obvious)
- Do you have a disability? (particularly if no disability is obvious)
- Do you need a reasonable accommodation to perform this job?
- Have you ever been injured on the job?
- Have you ever filed a workers' compensation claim?
- What medications are you currently taking?
- Have you ever been addicted to drugs or treated for drug or alcohol addiction?

#### ***Okay to Ask***

- How would you go about performing this job?
- Will you be able to perform all of the job assignments for this position in a safe manner?
- Can you meet the attendance requirements of this job?
- Do you have all of the licenses and certifications required for this job?

## **Sex and Family Matters**

Because of a long history of discrimination against women in the workplace, Congress has passed numerous laws that prohibit questions about sex, family status, or pregnancy during the interviewing process. Interviewers should not limit specific questions to male or female candidates only. For example, it is permissible to ask candidates if they are willing to travel for work, but it is illegal to put that question to female applicants only.

### ***Don't Ask***

- Are you married?
- How many children do you have?
- What is your child-care arrangement?
- Are you planning to start a family in the near future?
- Do you have a spouse who would need relocation assistance if you are offered this job?

### ***Okay to Ask***

- Do you anticipate any absences from work on a regular basis?
- Have you ever used a different last name?
- Do you have any responsibilities or commitments that will prevent you from meeting specified work schedules?

## **Age**

While it is legitimate for an employer to consider job candidates' experience, the employer may not consider age unless there is a legal minimum, such as a position serving alcohol. Legal maximum ages, such as the one for commercial airline pilots, are very rare and seldom apply to educational institutions. In addition, be careful not to make stray comments in an interview such as "we are looking for new blood," which may suggest age bias.

### ***Don't Ask***

- What is your date of birth?
- What year did you graduate from high school or college?
- At what age do you plan to retire?

### ***Okay to Ask***

- If you were offered this position, could you establish that you meet the legal age minimum?
- How long do you intend to stay in the position you are seeking?



## **National Origin and Citizenship**

An institution may not discriminate in hiring on the basis of national origin. However, it may ask whether a candidate is legally eligible to work in the United States. If English is not an applicant's first language, the institution may consider whether the individual speaks, understands, and reads English well enough to perform the position's essential functions.

### ***Don't Ask***

- Where were you born?
- What is the origin of your last name?
- What is your native language?
- Are you a U.S. citizen?

### ***Okay to Ask***

- If offered this position, could you provide verification of your right to work in the United States?
- Do you speak languages other than English that might be helpful in performing this job?