

Pre-Employment Interviews

By Stephen H. Jordan, Esquire

Job interviews are a nerve-wracking experience for most applicants and many employers. It is important, however, that applicants distinguish between appropriate and inappropriate questions which are posed to them and employers avoid asking questions which could be discriminatory or illegal.

An employer can ask about an applicant's education but should be cautious about asking about dates of attendance or graduation since that can indicate an applicant's age. Questions about child care arrangements which are directed only to female applicants may constitute sex discrimination. Hiring policies for men and women with pre-school aged children should be the same. Further, employers should not pose questions to elicit information about an applicant's arrest record as those kinds of questions can have a disproportionate impact based on race or ethnicity.

Questions which disclose a person's race, color, sex, religion, age or national origin are illegal. An employer cannot try to obtain information by asking about the nationality of the applicant's parents or the maiden name of a wife or mother. An applicant can be asked if he or she used another name but only for the purpose of checking prior work history. The employer can ask if the applicant fluently speaks, writes or reads another language only if the job requires the use of a language other than English.

Employers are prohibited from asking questions about an applicant's religious background. Questions regarding a person's ability to work on weekends could be deemed unlawful since this could elicit information regarding a person's religious observances. One recommendation is to ask about an employee's ability to work weekend hours, except when absent for religious observances, if any.

Generally, employers should ask questions that provide information about the applicant's ability to do the job. If a job is physically demanding, an employer can ask the applicant if he or she can perform specific job functions. Unless the applicant volunteers information regarding a disability, questions about it are not permitted under the Americans with Disabilities Act (ADA). Medical examinations can be conducted only after the job is offered to ensure that a disability is not considered prior to making the offer. An employer is permitted to test an applicant for current illegal drug use.

Employers should avoid veering into inappropriate areas in job interviews. A good rule of thumb is to err on the side of caution.

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