

# Illegal Interview Questions

Prospective employers can only go so far.

By Evan Harvey

When you're called in for an interview, it seems like the balance of power is tipped against you. You are put on the defensive--defending your career choices, your education, and your goals. Employers have something you want, so you try your best to be honest and forthcoming. But should you have to answer everything they ask?

Various laws directly prohibit some questions and you should be under no obligation to answer them. Whether ignorant or devious, employers still ask them. Such restrictions are there for a reason--to keep employers from unfairly eliminating your job candidacy. Anticipating these forbidden topics keeps you alert during the interview process and may even improve your chances of landing the job. Illegal questions seem to fall into four broad categories: disabilities and physical skills; personal history; race, creed, or color; and family and relationship issues. Some of the questions listed below may indeed be asked *after* an employment offer is made, or *after* you accept, but never before.

## 1. Disabilities & Physical Skills

Employers are not allowed to ask you about any disabilities or test your physical skill level, other than in a very specific context. If your disability logically interferes with a capacity to perform the job, then they may legally inquire. If job performance would not be hindered, then it's an unfair and illegal topic of discussion. This falls under the jurisprudence of the Equal Employment Opportunity Commission (EEOC) and the Americans with Disabilities Act (ADA). "The ADA prohibits discrimination based on relationship or association," according to government documents, "in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities." In other words, employers may be targeting you as part of a larger group and not based on individual skills. And though your physical ability to do certain jobs may be tested, questions about height, weight, or other physical characteristics are not permitted. Furthermore, it is the employer's responsibility to show how any disability or low skill level might impact job performance.

Prohibited Questions:

- a) How tall are you?
- b) What color are your eyes?
- c) Do you work out regularly?
- d) Is it true that you have the HIV virus?
- e) Did you get any workers' comp from your last job?

## 2. Personal History

You are protected from revealing certain private, personal facts about your life. Questions about age, gender, financial status, and criminal history are generally prohibited--with certain exceptions. Your birth date, proving that you are 18 years of age or older, may be requested if they decide to hire you. Before that point, however, employers can only ask if you are able to furnish such proof. Gender should never be a matter of concern for interviewers, and neither should your financial status. Employers may request a credit report under the standards of the Fair Credit Reporting Act, but that's about it. Disclosures of criminal history are problematic. If you have a history of conviction, especially felonious conviction, you may be asked to explain. Employers can also ask about the status of your sentence or parole if it possibly conflicts with work requirements. But a history of arrest or detention without formal charges is protected information, and need not be discussed.

Prohibited Questions:

- How old are you?
- When was the last time you were thrown in jail?
- Are you really a woman?
- Do you rent or own your home?
- Have you ever declared bankruptcy?

### 3. Race, Creed, or Color

In general, you should never be confronted with questions about your ethnic or spiritual heritage during an interview. In the past, this was the predominant source of prejudicial hiring practices; gender-based discrimination now seems to be more pervasive.

But institutional racism really does exist in some places. Offhand queries may conceal a hidden agenda to keep certain candidates out of the organization. Whether these questions seem harmless or not, no decision should be predicated on the color of your skin. A polite refusal to answer is both your right and privilege in such cases.

Keep in mind, however, that the law *does* allow some leeway on religious questions if the hiring organization is religiously affiliated. Someone being considered for stewardship of a Catholic charity, for example, might be asked about his or her faith, worship history, or religious charitable work.

Prohibited Questions:

- Where are your parents from?
- Do you consider yourself a minority?
- Is English your first language?
- I can't tell if you're Korean or Chinese. Which is it?
- Do you follow all of the Pope's instructions?

### 4. Family & Relationship Issues

Most interviewers will shy away from direct questions about your sexual orientation, marital or parental status. The examples below are perhaps too obvious, too ill concealed. But clever interviewers will try to elicit responses to these questions in other ways, perhaps without even intending to be deceptive.

You are bound by one general rule: If nothing in your life logically prevents you from doing your job well, then they can't ask about it. If you're a working mom, some interviewers may subconsciously sabotage your candidacy because you seem "over-committed" to them. Alternative sexual lifestyles may threaten them. Perceived promiscuity may lessen your cache when it comes time to make a decision.

Prohibited Questions:

- Do you have dependable childcare in place?
- How many times have you been married?
- We were just wondering: Are you gay?
- Are you in a committed relationship right now?
- How does your husband feel about you working here?

Of course, there are many more issues to cover. I encourage you to discuss this matter with legal counsel or visit the EEOC Web site. Without knowledge, you are left defenseless during the interview and, quite frankly, jobless afterwards.

**Evan Harvey** is the managing editor of CareerBuilder. His work has been featured in *Career News*, *Staffing Success*, and on MSN.com.