

Illegal Interview Questions

There are several laws regarding what questions potential employers may ask you during a job interview. From time to time, you may encounter an illegal question. Hopefully, it is because the interviewer is not a professional recruiter and therefore has not had the requisite training and education rather than his/her attempt to obtain information which may be used to discriminate against you.

Questions concerning any of the following are off limits:

- Age
- Gender
- Race or color
- Birthplace or national origin
- Religion
- Disability
- Marital/family status

What should you do if you are asked an illegal question – whether unintentional or not? CollegeGrad.com and USA Today offered some good advice. Read their suggestions below.

E-Zine

How to Handle Illegal Interview Questions

The interview is going along smoothly. You're psyched that "this may be the one." And then it happens. Out of nowhere. "Are you considering having children?" Or, "How long has your family been in this country?" Or, "Your people place a high value on that, don't they?" Or, "You've done amazingly well for someone in a wheelchair."

On the surface they seem innocent enough. And most of the time, they are truly asked in innocence. Yet the structure and format of the question may be entirely illegal. So you've just been hit with an illegal question. What do you do? How do you respond?

First of all, it's important to understand the difference between an illegal question and a criminally-liable question. Even though a question or comment may have been stated in an illegal form, it does not necessarily mean that a crime has been committed. There is a difference between criminal liability and civil liability. For there to be criminal liability, it typically requires establishing a motive or intent. And most illegal questions are asked in ignorance, not intending malice. Yet there can still be civil recourse, even when there was no criminal motive or intent.

In our politically correct society, we are often ready to cry "foul" at the slightest deviation from the accepted norm. But the reality is that most illegal interview questions are asked in true innocence. Or, better stated, in true ignorance. Ignorance of the law, ignorance of what questions are proper, ignorance of how the information could be used by others in a discriminatory way.

Ironically, most illegal questions are asked when the untrained interviewer is trying to be more friendly and asks a seemingly innocent question about your personal life or family background. Therefore, any attempt by the candidate to "assert their constitutional rights" will merely throw up the defense shields and put an end to mutual consideration. Warning lights go on, sirens sound, and the interviewer begins backing down from what may have been an otherwise very encouraging position.

So what is the proper response? The answer is up to you, but my recommendation is to follow one of two courses of action: answer in brief and move on to a new topic area, or ignore the question altogether and redirect the discussion toward a new topic area. The interviewer may even recognize the personal misstep and appreciate your willingness to put it aside and go on.

Unless the question is blatant--and yes, blatant discrimination does still take place--your best option is to move on to other things. But if it is blatant and offensive, you have every right to terminate the interview and walk out.

While laws vary from state to state, there are some definite taboo areas with regard to interview questions that employers should be avoiding. Following are some of the basic subject areas and questions that if asked during the course of the interview, might be viewed as illegal questions being asked with the intention to discriminate:

- Questions related to location of birthplace, nationality, ancestry, or descent of applicant, applicant's spouse, or parents.
(Example: Pasquale--Is that a Spanish name?)
- Questions related to your sex or marital status.
(Example: Is that your maiden name?)
- Questions related to race or color.
(Example: Are you considered to be part of a minority group?)
- Questions related to religion or religious days observed.
(Example: Does your religion prevent you from working weekends or holidays?)
- Questions related to physical disabilities or handicaps.
(Example: Do you have any use of your legs at all?)
- Questions related to health or medical history.
(Example: Do you have any pre-existing health conditions?)
- Questions related to pregnancy, birth control, and child care.
(Example: Are you planning on having children?)

It should be noted that just because an illegal question has been asked does not necessarily mean a crime has been committed. Just because the question has asked does not establish intent. It is up to a court of law to determine whether the question or any resulting information was used in a discriminatory manner.

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Illegal interview questions

USA Today (Careers and Workplace)

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Various federal, state, and local laws regulate the questions a prospective employer can ask you. An employer's questions — on the job application, in the interview, or during the testing process — must be related to the job for which you are applying. For the employer, the focus must be: "What do I need to know to decide whether or not this person can perform the functions of this job?"

Options for answering an illegal question

You are free to answer the question. If you choose to do so, realize that you are giving information that is not job-related. You could harm your candidacy by giving the "wrong" answer. You can refuse to answer the question. By selecting this option, you'll be within your rights, but you're also running the risk of coming off as uncooperative or confrontational - hardly the words an employer would use to describe the "ideal" candidate.

Your third option is to examine the intent behind the question and respond with an answer as it might apply to the job. For instance, if the interviewer asks, "Are you a U.S. citizen?" or "What country are you from?," you've been asked an illegal question. Instead of answering the question directly, you could respond, "I am authorized to work in the United States." Or, if your interviewer asks, "Who is going to take care of your children when you have to travel?" you might answer, "I can meet the travel and work schedule that this job requires."

Types of questions

Subject: Nationality

Illegal: Are you a U.S. citizen?; Where were you/your parents born?; What is your "native tongue?"

Legal: Are you authorized to work in the United States?; What languages do you read, speak or write fluently? (This question is okay, as long as this ability is relevant to the performance of the job.)

Subject: Age

Illegal: How old are you?; When did you graduate from college?; What is your birthday?

Legal: Are you over the age of 18?

Subject: Marital/Family status

Illegal: What's your marital status?; Who do you live with?; Do you plan to have a family?; When?; How many kids do you have?; What are your child care arrangements?

Legal: Would you be willing to relocate if necessary?; Travel is an important part of the job. Would you be willing to travel as needed by the job (This question is okay, as long as all applicants for the job are asked it.); This job requires overtime occasionally. Would you be able and willing to work overtime as necessary? (Again, this question okay as long as all applicants for the job are asked it.)

Subject: Affiliations

Illegal: To what clubs or social organizations do you belong?

Legal: Do you belong to any professional or trade groups or other organizations that you consider relevant to your ability to perform this job?

Subject: Personal

Illegal: How tall are you?; How much do you weigh?

Legal: Are you able to lift a 50-pound weight and carry it 100 yards, as that is part of the job? (Questions about height and weight are not acceptable unless minimum standards are essential to the safe performance of the job.)

Subject: Disabilities

Illegal: Do you have any disabilities?; Please complete the following medical history.; Have you had any recent or past illnesses or operations? If yes, list and give dates.; What was the date of your last physical exam?; How's your family's health?; When did you lose your eyesight?

Legal: Are you able to perform the essential functions of this job with or without reasonable accommodations? (This question is okay if the interviewer thoroughly described the job.)

(NOTE: As part of the hiring process, after a job offer has been made you will be required to undergo a medical exam. Exam results must be kept strictly confidential, except medical/safety personnel may be informed if emergency medical treatment is required, and supervisors may be informed about necessary job accommodations, based on the exam results.)

Subject: Arrest record

Illegal: Have you ever been arrested?

Legal: Have you ever been convicted of _____? (The crime should be reasonably related to the performance of the job in question.)

Subject: Military

Illegal: If you've been in the military, were you honorably discharged?; In what branch of the Armed Forces did you serve?

Legal: What type of training or education did you receive in the military?