



HR Tip of the Week

Posted on March 25, 2024 | [Hiring and onboarding](#)

10 Interview Questions to Avoid



Interviews are critical for finding the right candidate for a job, but they must be conducted carefully in order to stay within the bounds of federal, state and local laws. Employers should avoid interview questions that are expressly prohibited by law, such as inquiries that may directly or indirectly reveal an applicant is a member of a protected group. Here are ten examples of questions to avoid, along with some suggested alternatives.

Avoid #1: How much did you earn in your previous job?

Nearly 20 states and several local jurisdictions have enacted laws with restrictions on pay history inquiries. While these laws vary, they typically prohibit employers from:

- Asking about current or former salary on application forms and in interviews.
- Seeking salary history information about an applicant, with limited exceptions.





- Asking for or providing salary history information during reference checks, with limited exceptions.

The idea behind these laws is that applicants' pay history may reflect discriminatory pay practices of a previous employer and result in lower wages in the new job, if the information is used to set pay. Check applicable laws before asking these types of questions.

Alternative: These laws generally allow you to provide the candidate with the starting salary (or salary range) for the position and ask whether it would be acceptable if the candidate were offered the position. You may also want to tell the candidate not to reveal what they earned in their previous job when discussing a proposed salary. Keep in mind several jurisdictions require employers to disclose the salary range for the position.

Avoid #2: Do you have religious obligations that would prevent you from working Friday evenings, Saturdays or Sundays? Do you wear that head scarf for religious reasons?

Employers are prohibited from discriminating against individuals on the basis of religion. This law applies to religious beliefs (both traditional as well as non-traditional) and religious practices, such as attending religious services, praying or wearing religious attire. Generally, you should avoid questions that elicit information about religious beliefs and practices.

Alternative: If you want to confirm an applicant is able to work the hours required for the job, state the regular days, hours or shifts for the job, and ask whether the candidate can work such a schedule. Keep in mind you may be required to [reasonably accommodate](#) an employee's religious beliefs or practices, such as allowing an employee to voluntarily swap shifts with a co-worker so they can attend religious services.

Interviewers should also be familiar with the company's dress code (or any other policy that might call for a religious accommodation) and be ready to ask applicants if they can comply, with or without a reasonable accommodation. This question can spark a discussion over possible accommodations. If you do ask this question, be consistent and ask it of all applicants.

Avoid #3: How old are you? We went to the same high school ... what year did you graduate? Do you plan to retire soon?

Under federal law, employers are prohibited from discriminating against applicants and employees who are age 40 and older. Many states also prohibit age discrimination, some protecting even younger workers. The answers to the questions above could elicit, or could be used to estimate, the applicant's age.





Avoid #4: Do you smoke? Do you drink alcohol? Are you a marijuana user?

Several states prohibit discrimination against individuals who use tobacco products or engage in lawful activity while off-duty. Some states also have express employment protections for individuals who use marijuana while off-duty. Given these employment protections, avoid asking questions about whether an applicant smokes or drinks. These questions may also prompt the candidate to reveal the existence of a disability.

Alternative: Regardless of the state, employers have the right to prohibit the use of, possession of, and impairment by alcohol, marijuana, and tobacco in the workplace, during work hours, and on company property. During the interview, you may communicate your drug and alcohol policy as long as you do so consistently for all similarly situated applicants.

Avoid #5: You have a beautiful name ... what is the origin of it? Where is your accent from? Where were you born? Where did you grow up?

Federal and many state laws prohibit employers from discriminating against applicants and employees on the basis of national origin (based on where the individual was born or because of their ethnicity or accent). Avoid these questions since they may reveal information about an applicant's national origin.

Alternative: None. However, you are permitted to ask if the applicant is authorized to work in the United States, as long as you ask this question of all candidates.

Avoid #6: Are you pregnant? Do you have or plan to have children? Are you married? Who's responsible for your children's care?

Federal law and many state laws prohibit employers from discriminating against individuals because of pregnancy. Some states also expressly prohibit employers from discriminating against applicants because of their marital and/or family status. Asking these types of questions may also have a disproportionate impact on female applicants. Laws granting employees leave for caregiving purposes may also provide protections. Avoid interview questions about an applicant's pregnancy, intentions regarding pregnancy, caregiver responsibilities, or family and marital status.





applicants (that is, not just female applicants).

Avoid #7: Do you have a disability? How many sick days did you use last year? Will you need a reasonable accommodation on the job?

The Americans with Disabilities Act (ADA) and similar state laws generally prohibit employers from asking questions during interviews that are likely to reveal the existence of a disability.

Alternative: Under limited circumstances, the ADA allows employers to engage in a dialogue regarding whether a qualified candidate would need a reasonable accommodation to perform the essential functions of the job. For more information on this, see [Question #15 from guidance issued by Equal Employment Opportunity Commission \(EEOC\)](#).

Avoid #8: Do you have military obligations that would require you to miss work? Do you have military duties on weekends?

Under [the Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#), employers are prohibited from discriminating against applicants and employees due to past, present or future membership in the uniformed services. Avoid questions about an applicant's military obligations.

Alternative: If applicants voluntarily disclose that they served in the military, such as on their resume, you may ask questions regarding relevant job-related skills acquired during their service.

Avoid #9: Have you ever been arrested or convicted of a crime?

Questions about arrests are generally off limits. Several state and local laws also limit the use of conviction records by prospective employers. For example, [some laws expressly prohibit questions about criminal histories](#) until after the employer makes a conditional job offer. Check applicable laws and consult legal counsel before asking about criminal history.

Alternative: Even where criminal history inquiries are permitted, they must be used in a nondiscriminatory way. Employers should evaluate how the specific criminal conduct relates to the duties of a particular position, according to the [EEOC](#). This generally requires an individualized assessment that looks at the facts and circumstances surrounding the offense, the number of offenses for which the individual was convicted, rehabilitation efforts, and employment or character references.





What about a worker's compensation claim?

Under federal and many state laws, employers are prohibited from retaliating against individuals because they opposed unlawful sexual harassment or other forms of discrimination, or participated in a workplace investigation. Many states also prohibit discrimination against individuals because of their workers' compensation history. Questions regarding workers' compensation might also reveal the existence of a disability in violation of the ADA.

Alternative: None. You should avoid asking these questions during an interview.

Conclusion

Avoid questions that are expressly prohibited by law or may directly or indirectly reveal an applicant is a member of a protected group. If an applicant voluntarily offers information about their protected status, redirect the interview to elicit job-related information that can help assess whether the candidate is qualified for the job, and do not use that protected information when making employment decisions. Train supervisors and others who conduct interviews to ask questions in accordance with the law and company policies.

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