

Legal Interviewing: Best Practices for Hiring Success

Presented by: Mailyn Jeffries, SPHR
Human Resources Director - Greene County, MO



Introduction

Hiring the best candidate for every job is a goal all employers share. A critical part of the hiring process is the personal interview. While you, as an interviewer, would like to have all the information you can obtain from a candidate, you must avoid asking any question that may be considered discriminatory or not job related.

The costs for an employer to defend itself against a claim of illegal discrimination are significant. This presentation provides hiring managers with the information they need to know about how to conduct lawful interviews.

Agenda

- Federal/State laws
- What to ask and not to ask
- Volunteered information
- Consistency
- Interview Scenarios

Federal Laws

Title VII of the Civil Rights Act of 1964

- Race
- Sex (includes pregnancy, sexual orientation, and gender identity)
- Color
- Nation of origin
- Religion

Age Discrimination in Employment Act (ADEA)

Americans with Disabilities Act (ADA)

Immigration Reform and Control Act (IRCA)

- Citizenship
- Nation of origin

Federal Laws (cont.)

Genetic Information Nondiscrimination Act (GINA)

- Genetic information

National Labor Relations Act (NLRA)

- Union membership


Uniformed Services Employment and Reemployment Rights Act (USERRA)

- Membership or service in the uniformed services

State and Local Laws

- State of MO employment laws are reflective of federal laws.
- Missouri Human Rights Act

Areas of Discrimination

-  **Employment**
-  **Housing**
-  **Public Accommodations**

Types of Discrimination

-  **Age Discrimination**
-  **Disability Discrimination**
-  **Familial Status Discrimination**
-  **National Origin/Ancestry Discrimination**
-  **Race and Color Discrimination**
-  **Religious Discrimination**
-  **Sex/Sexual Harassment Discrimination**
-  **Other Types of Discrimination**

What to Ask and Not to Ask - Age

Age:

Instead of:

- When did you graduate?
- When do you intend to retire?

Ask:

- Do you meet the minimum age requirements for the job?
- Can you supply transcripts of your education?
- Where does this position fall along your career path?

What to Ask and Not to Ask - Disability

Disability:

Instead of:

- Do you have a disability?
- Have you ever filed a workers' compensation claim?
- Do you have a history of drug or alcohol abuse?

Ask:

- Can you perform the duties listed in the job description, with or without reasonable accommodation?

If a worker has an obvious disability or reveals a hidden disability, you may ask the applicant to describe or demonstrate how he or she would perform job duties.

Employers must provide reasonable accommodation to candidates who have disabilities.

What to Ask and Not to Ask - Race

Race:

Questions about race during an interview are prohibited.

What to Ask and Not to Ask - Religion

Religion:

Employers may ask questions and receive information about religion only when a bona fide occupation qualification exists, such as when hiring a clergy person for a religious establishment.

What to Ask and Not to Ask – Sex/Marital Status

Sex/marital status:

Instead of:

- Are you married?
- When do you plan to start a family?
- Do you have children?

Ask:

- Are you available to travel as required by the job description?
- Can you work overtime with little or no notice?
- Can you work evenings and weekends?

What to Ask and Not to Ask – National Origin/Citizenship

National origin/citizenship:

Instead of:

- Are you a citizen of the U.S.?
- What country are you from?
- Where is your accent from?
- What nationality is your last name?
- When does your visa expire?

Ask:

- If you are hired, are you able to provide documentation to prove that you are eligible to work in the U.S.?

What to Ask and Not to Ask – Military Service

Military:

Instead of:

- Please provide the status of your military discharge.
- Will you miss work to perform military service?

Ask:

- What experience did you gain in the uniformed service that is relevant to the job you would be doing?

What to Ask and Not to Ask – Arrests and Convictions

The U.S. Equal Employment Opportunity Commission (EEOC) guidance on employer use of criminal background checks requires employers to conduct an individualized assessment of an employee or applicant's criminal history to determine if the person's criminal background is job-related. Blanket policies or practices of excluding individuals with criminal records are not permitted.

While the EEOC guidance does not prohibit employers from considering criminal information during the hiring process, it does require employers to take steps to prevent discrimination under Title VII of the Civil Rights Act of 1964.

Volunteered Information

Even when you ask only legal questions during an interview, you may receive information you would prefer not to know from applicants who make such a disclosure voluntarily.

For example, an applicant may disclose that she is pregnant and will need time off for childbirth if she is hired.

The best way to handle this situation is not to pursue it and not make any note of it. Just as you should ask only job-related questions, you must disregard any information the applicant voluntarily discloses that is not related to the job.

Consistency

To be sure that you obtain the same information from all candidates for a position, it is important to prepare and consistently use the same questions for each interview and follow a structured interview process.

Doing this will help ensure that you treat all candidates equally and fairly and help you avoid any complaints of illegal discrimination.

Other Best Practice Tips

- Step 1 – always compare candidates against job description minimum qualifications
- Consider phone screens
- Block time for interviews = efficiency
- Choose low traffic and quiet setting
- Always inform candidate of next step and time frame
- Always make a job offer “contingent” or “conditional”

Interview Scenarios

Interview Scenarios

- Keep all questions job related
- Redirect candidate when necessary
 - “In one-word”, “briefly describe”
- Must be assertive, can require interrupting the candidate
 - Remind candidate you have a limited amount of time
- Avoid personal information and do not pursue it

Thank You!