

May 1, 2018

INTERVIEW SEASON: Avoiding potentially discriminatory practices

Interview season is upon your administrative team and interview committees. As you search for employees who are compatible with your district, keep in mind that an interviewer should only ask questions that relate to the applicant's ability to perform the job. Not all interviewers – especially those on committees – have the same level of training or understanding of what is appropriate and what is illegal to ask an applicant. So, it is important that any representative of the district conducting interviews understands that an interviewer must not ask questions that, directly or indirectly, solicit information about an applicant's protected class.

What is a "protected class?" Under federal and/or Ohio law, employers may not ask questions related to race, color, religion, sex, military status, national origin, disability, age, ancestry or genetic information.

What can you ask and not ask? Here are some examples.

Protected Class	Legal Questions	Illegal Questions
Race		Asking about complexion or color of skin or race (e.g., "Are you biracial?").
Religion	Asking about the applicant's willingness to work the required work schedule.	Inquiring into the applicant's religious denomination, affiliation, church, parish, pastor or religious holidays observed.
	Asking for general personal and work references not related to any protected class.	Requesting references specifically from clergy or any other persons who might reveal the applicant's protected class status.
Sex	Asking if the applicant has any other obligations that would prevent him/her from working consistently, working overtime, or traveling. (This question might lawfully be asked in the religious affiliation area as well.)	Asking about intentions of marriage or plans to raise a family.
		Inquiring about the applicant's relationship status.
		Asking who will take care of his/her children.
		Asking questions related to gender identity, dress and transition.
Military Status	Asking the applicant's rank and relevant experience.	Asking about the applicant's type of discharge, health, country of service or reserve status.

National Origin	Inquiring about the applicant's place of residence.	Inquiring about the applicant's birthplace.
	Asking about the length of time the applicant has been resident of a state or city.	Inquiring about the applicant's parents, spouse or other close relatives' birthplaces.
	Asking what languages, if any, the applicant writes or speaks fluently, if applicable to the position.	Asking the applicant to identify his/her country of citizenship.
		Asking whether the applicant is a naturalized or native-born citizen or the date citizenship was acquired.
		Inquiring into the applicant's lineage, ancestry, national origin, descent, parentage or nationality.
		Asking how the applicant acquired the ability to read, write or speak a foreign language.
Disability	Asking if the applicant can perform the essential functions of the job.	Asking how many days the applicant was sick in the prior year.
		Asking about the applicant's physical or mental health.
		Asking about the applicant's workers' compensation claim history.
		Asking about the applicant's prior use of Family Medical Leave Act (FMLA) leave.
		Asking about the applicant's current use of prescription drugs.
		Asking how much a person drinks or whether they have been treated for an alcohol or drug problem.
		Asking about the applicant's health or health of family members.
Age		Asking about the applicant's age.
		Asking when the applicant graduated from high school or college.
		Asking how close an applicant is to retirement or whether they have already retired.
Ancestry		Asking about relatives and from where they came.
Genetic Information		Asking about family medical history or testing (e.g., for cancer gene).
Other Areas	Inquiring about organizations of which the applicant is a member, excluding organizations that indicate the person's protected class status.	Asking whether the person is active in the NAACP, Campus Crusade for Christ, etc.
	Asking whether the applicant is willing to relocate, if relocation is necessary.	Asking about the applicant's union activities or views on union matters.

Disclaimer

Please note that the foregoing comments do not represent the only conclusions that may be drawn by competent legal counsel. Readers are cautioned against applying such commentary and related materials in specific factual situations without seeking professional legal assistance.