



The Guardian



Helping to Protect You from Employment Law Claims

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SUMMER 2009

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WHAT NOT TO ASK IN AN INTERVIEW

Most likely, everyone who reads this article has conducted interviews of potential applicants on a number of occasions. We all know that the numerous federal anti-discrimination laws impact your handling and possible termination of employees. However, many people don't realize that these same anti-discrimination laws limit the types of questions you may ask during an interview.

Generally stated, all applicants for the same position should be asked the same questions based on legitimate job requirements which are directed at the job duties in question and the applicant's qualifications. With very limited exceptions, you should not ask any interview questions that touch on any of the following: Age, Religion, Citizenship, National Origin, Race, Color, Marital Status, Gender, Disabilities, Children, Child Care, Birth Place and Ancestry.

The following list provides examples of some of the questions that you should not ask during an interview:

- Are you married? Divorced?
- Do you have children?
- What church do you attend?
- Do you suffer from an illness or disability?
- Have you ever been treated by a psychiatrist or psychologist?
- How many days of work did you miss last year because of an illness?
- Have you ever been treated for drug addiction or alcoholism?
- Do you intend to start a family?
- Are you comfortable supervising men?
- Are you likely to take time off under Family and Medical Leave Act?
- Where did you get your accent?
- How do you feel about working for someone half your age?
- Have you ever been arrested?
- (You can ask about convictions in the last 7 years)
- Does your spouse work?
- Do you own or rent your home?
- Do you belong to any social or political groups?
- Have you ever been hospitalized?
- Have you had any major illnesses recently?
- Are you taking any prescribed drugs?
- Do you plan to get married?
- What are your day care plans?
- What would you do if your husband was transferred?
- Where were you born?
- How does your husband feel about you working?
- Do you plan to return to your native country?
- How old are you?
- (There is an exception for the purpose of complying with child labor laws)

Asking these types of questions may be evidence of discrimination. Remember: Keep your questions directed at the job duties in question and the applicant's qualifications.

BUT DID YOU KNOW?

Congress recently passed the Lilly Ledbetter Fair Pay Act, which makes it easier for employees to claim discrimination in an employer's payment practices. Under the Act, an unlawful employment practice occurs when: 1) A discriminatory compensation decision is adopted; 2) an employee becomes subject to this decision; or 3) an employee is affected by its application, including each time compensation is paid.

The Act allows employees to recover back pay for up to two years before the filing of a discrimination charge and applies not only to charges filed under Title VII, but also to charges filed under the Age Discrimination Employment Act and the Americans with Disabilities Act. Now is a good time to review your compensation practices and make sure that they are equitable to all of your male and female employees.

DISCLAIMER: *The Guardian* is **not** intended to be, and should not be construed as, legal advice on any subject. Please address any specific legal issues or questions you have to an attorney.

If you would like to have someone added to our mailing list or want your name removed, please contact Bridget at 928-445-0122