

Employer Beware: The Art of Conducting an Employment Interview

by Jeffrey S. Stewart, Esquire

Hiring a new employee? If so, you want to obtain all the information reasonably possible, but beware, as there are a number of rules all employers should keep in mind when going through the hiring process.



wore, or any other non-job-related information.

During the interview

There are a number of areas to avoid when interviewing an applicant. Some illegal questions include: How old are you? Are you married? Are you pregnant? Are you planning on becoming pregnant soon? Do you have any children? What do you do about child care? Are you a U.S. citizen? What is your religion? Do you belong to a church? What is your heritage? Are you disabled? Have you ever filed for bankruptcy? What memberships do you hold in social, religious, and community groups?

Many times an employer can get the necessary information by simply rephrasing questions. Instead of asking how old the applicant is, simply ask if he or she is at least 18 years old (this is a legal question because it allows an employer to know whether child labor laws apply). Alternatively, it is more useful to have the interviewer ask open-ended questions, such as, "Would you please tell me about yourself?" These are permissible under the law as they allow the applicant to offer information.

Legal questions for an interview include: Are you at least 18 years old? Are you legally eligible to work? Tell me about yourself; Where have you worked before? What duties did you perform at your past job? What special qualifications do you have for this job? Do you have responsibilities or commitments that will prevent you from meeting specified work schedules? If so, please explain; Do you anticipate any absences from work on a regular basis? If so, please explain; and Will you be able to carry out in a safe manner all job assignments necessary for this job?

By avoiding the illegal interview questions, employers can also work to prevent failure-to-hire discrimination cases in which an applicant alleges that he/she was not hired based upon improper factors such as age, sex, or religion. It is always better to prevent avoidable lawsuits by being proactive rather than reactive.



Jeffrey S. Stewart, Esquire, focuses his practice on labor and employment law. Jeff's labor law practice focuses on representing management and has included trying cases before the National Labor Relations Board and the Pennsylvania Labor Relations Board. In addition to representing clients before the PHRC, EEOC and the courts, he counsels clients in such matters as non-compete agreements, sexual harassment investigations, FLSA compliance, unemployment compensation, and drafting employment policies and handbooks. In 2011, Jeff was selected for inclusion in the Employment and Labor section of Super Lawyers – Rising Stars Edition. Jeff earned his J.D. in 2001 from Dickinson School of Law of the Pennsylvania State University and his B.A., magna cum laude, from Syracuse University in 1995. He is a member of the board of directors of the Lehigh Valley Chapter of the Society of Human Resource Management, where he also serves as the Chair of its Legislative Committee.

Most important, you should ensure that you are not asking illegal questions on a job application or during an interview that could lead to a potential discrimination lawsuit. Generally, you may ask an applicant questions that are directly related to the job, its qualifications, and its requirements. You should NOT ask questions that are personal, have nothing to do with the job, and/or are based on protected classifications (age, race, religion, disability, etc.).

Check your application

If you use a form job application, make sure it does not include any illegal questions. Do not assume that simply because you are using an application borrowed from someone else that it is proper. Check it! The most common illegal question on a job application is to ask the date of high school graduation, since that is an indicator of age. Interestingly, you may ask for graduation dates for college or graduate school.

Your application should not ask for an applicant's sex, height, weight, eye color, hair color, high school graduation date, or ask, "Are you a U.S. Citizen?" These things are almost never related to job performance and can be viewed as indicators of certain classes of people and, thus, have been deemed to be discriminatory. Additionally, there are some new limitations in place regarding whether you can ask an applicant about criminal convictions – specifically, the City of Philadelphia passed a law making it illegal for an employer to ask about criminal convictions prior to an interview. While employers in the Lehigh Valley may still ask for that information on a job application (and during an interview), this is an area to keep an eye on, as the law is constantly changing.

Most applications also have a place for the interviewer to make notes about an interview. These are commonly used improperly by people who are not trained to interview. The interviewer should write only job-related information in this section; that is, answers to particular questions, etc. This area should *not* be used for comments about what the applicant looks like, what they

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