



☑ EMPLOYER CHECKLIST

What Not to Ask During an Employment Interview

Conducting an effective and lawful employment interview is a skill. The process should begin with a thorough job description which sets forth the specific duties and essential functions of the position for which you are hiring, as well as the required skills, training, and education. Interview questions should be designed to elicit whether the job candidate possesses the qualifications and characteristics to fulfill those duties. The approach should also be consistent: the same questions should be asked of all applicants seeking similar positions. Unleashing an unskilled interviewer on job candidates can spell trouble for the hiring company and create potential liability. Beyond that, inartfully conducting an interview can also leave a job candidate with a bad impression and create potential bad buzz about your company's culture. Either scenario is not ideal. Here are some tips on how to conduct effective and lawful employment interviews:

WHAT YOU SHOULD ASK

- ☐ Focus on the specific duties and essential functions of the position
- ☐ Inquire about the candidate's skills, training, education, and experience
- ☐ Ensure there is a job-related necessity for asking the question

HOW YOU SHOULD ASK IT

- ☐ This job requires you to be able to lift 25 pounds. Can you satisfy this requirement?
- ☐ This job requires frequent overtime. Are you able to regularly work more than 40 hours/week?
- ☐ Our attendance policy requires you not to have more than 3 unexcused absences and to timely report for regularly scheduled shifts. Are you able to meet these requirements?
- ☐ This position requires regular use of Word and Excel. Are you proficient with these programs?
- ☐ This position entails frequent time-sensitive deadlines and making decisions under pressure. Describe how you would manage these job tasks.

WHAT NOT TO ASK

Steer clear from asking questions designed to elicit information about protected classes or categories, such as:

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| ✗ Age | ✗ Ancestry |
| ✗ Race | ✗ Marital Status |
| ✗ Color | ✗ Sexual Orientation |
| ✗ Religion | ✗ Reasons for Military Discharge |
| ✗ National Origin | ✗ Disabilities/Handicaps/Medical Conditions |
| ✗ Gender/Transgender | |
| ✗ Pregnancy/Plans to have children | |

HOW YOU SHOULD NOT ASK IT

While it may seem like common sense to avoid asking questions about the above topics, inexperienced interviewers can easily get involved in "small talk" and quickly find themselves in dangerous territory by asking things like:

- ✗ Where is your accent from?
- ✗ Where did you learn to speak [insert any language]?
- ✗ Where is your name from?
- ✗ What church do you belong to?
- ✗ Can you work on Sundays?
- ✗ I like your braids/dreadlocks/cornrows. Where did you get them done?
- ✗ What country is your family from?
- ✗ How many kids do you have?
- ✗ Do you plan to have kids?
- ✗ How old are your kids?
- ✗ Will childcare be an issue for you?
- ✗ What's your date of birth?
- ✗ What year did you graduate high school?
- ✗ Are you married?
- ✗ When/where were you married?
- ✗ What does your spouse do?
- ✗ What's your maiden name?
- ✗ Do you have a disability that would interfere with your ability to perform the job?
- ✗ How many sick days did you take last year?
- ✗ Have you ever been treated for mental health problems?
- ✗ Have you ever had a job-related injury?

Train your managers who conduct interviews to focus on the tasks the applicant will need to perform for the desired job position. Hone in on the skills, training, educational requirements, and qualifications that will allow the candidate to fulfill those job duties. Ask questions designed to elicit the work traits and behavioral qualities you want in an employee, and avoid the temptation to make "small talk" which could lead to ill-advised or unlawful questions.

If you have any questions or would like guidance on employment law matters, contact Icard Merrill's Employment Law Practice Group:



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