

## Legal or Illegal Interview Questions

Check 'YES' or 'NO' if the question is legal.

QUESTION	YES	NO
<p>Have you ever worked under another name?</p> <p><b>You are correct...</b></p> <p>This is a legal inquiry worded as such. You may require information about assumed or changed names to complete a background investigation. However, if the question is asked in an attempt to determine current or past marital status, you may be on thin ice.</p>	X	
<p>Where were you born?</p> <p><b>You are correct...</b></p> <p>Many managers ask this question just to be friendly and to find out a little bit about the candidate's personal history. The problem is that the question potentially inquires about national origin which is protected by Title VII. The answer to the question is not relevant to the hiring process and can wait until after the candidate is hired.</p>		X
<p>Have you ever been fired from a job?</p> <p><b>You are correct...</b></p> <p>This is a legal inquiry. Whether or not an individual has been fired from a job has no relationship with a protected category to which the candidate may belong. Some people may feel that the question is inappropriate on a personal level, but it is legally safe</p>	X	
<p>What religious holidays do you observe?</p> <p><b>You are correct...</b></p> <p>As stated, this question solicits information regarding a candidate's religious affiliation which is protected by Title VII and EO-11246. If the question is asked to determine whether a candidate will be able to work as per the published work schedule, the question should be rephrased to something like: "We work a swing shift that requires everyone to work every fourth weekend. Would this type of shift work create any problems for you?" Ability to work published hours is a BFOQ. However, many court cases have stated that an employer has an obligation to make a reasonable accommodation to an individual's religious beliefs. For more information or to discuss this topic further, please contact you Human Resources Representative.</p>		X
<p>Are you a citizen of the United States?</p> <p><b>You are incorrect...</b></p> <p>As stated, this question solicits information regarding a candidate's national origin which is protected by Title VII and EO-11246. If the question is asked to determine whether a candidate has the legal right to work in the U.S., it should be rephrased to: "If you are hired, will you be able to produce proof of your legal right to work in the United States?" If this question is asked, it must be asked of all candidates. If it is asked of only those candidates who appear not to be U.S. citizens, that act alone could be taken as discriminatory.</p>	X	
<p>Have you ever been arrested for committing a crime?</p> <p><b>You are correct...</b></p> <p>An employer may not make inquiries into a candidate's arrest record. Courts have found that since a higher percentage of minorities have arrest records than non-minorities, using arrest records as a hiring criteria results in adverse impact. Employers may use criminal conviction as a hiring criteria; however, disqualifications based on criminal conviction should still be shown to have a relationship to the job requirements.</p>		X

<p>Do you have any physical or emotional problems which might limit your ability to do this job?</p> <p><b>You are correct...</b></p> <p>As we saw earlier in "ADA and Essential Functions," an employer may not make inquiries into a candidate's physical or mental condition. If this is an issue, it is best addressed by stating the physical or emotional requirements of the job and then asking the candidate to site examples of how they have handled similar requirements in the past. For example: "This position requires someone who can work in a continuous, high stress environment. Describe for me a high stress environment you have worked in. What were the causes of the stress? How did you handle it?"</p>		X
<p>Where and when did you receive your high school diploma?</p> <p><b>You are correct...</b></p> <p>The first part of this question is appropriate; the second is not. Having a high school diploma may be a BFOQ. From where it was conferred may not have any relevance to the job, but it also does not solicit protected information. When it was conferred is another matter. If the average age of a high school graduate is 18 years and this candidate received his/her diploma 24 years ago, simple math would tell us that this candidate is approximately 42 years old. Since a 42 year old is protected under ADEA, this question could be interpreted as being discriminatory.</p>		X
<p>What mode of transportation do you intend to use to get to work?</p> <p><b>You are correct...</b></p> <p>Although this appears to be a completely innocuous question, one appellate court found that it was discriminatory. The question was asked while pre-screening candidates by phone. The court found that because a much higher percentage of minorities used public transportation than non-minorities, using the fact that a candidate would ride the bus to work as a disqualifying factor resulted in adverse impact. This question is used here as an extreme example to point out how important it is to focus on the requirements of the job. If the issue is can the candidate get to work on time, consistently, ask the question like this: "Our work hours are 7:00 to 4:00. We expect all of our employees to be at the job site, ready to start work at 7:00 consistently, everyday. We do not tolerate tardiness or absenteeism. Is there any reason you would not be able to make it to work on time, everyday?"</p>		X
<p>What is your marital status?</p> <p><b>You are correct...</b></p> <p>Whether a candidate is married, single, or divorced has no relevance to any job requirements. If the issues are punctuality, ability to travel, ability to relocate, or what have you, the questions must be asked specifically in relation to the job requirements and must be asked of all candidates. Ask this question of a female candidate, and you're fishing for a law suit. Often, interviewers will ask questions like, "Are you married?" out of friendliness or politeness. We'll say it again, all of your questions in an interview, even the "just being friendly" ones must focus on <i>bona fide</i> occupational qualifications.</p>		X
<p>What foreign languages can you read, write, and/or speak?</p> <p><b>This one's tricky...</b></p> <p>As stated, this question borders on inappropriate. If you are looking for people who speak other languages and what the languages are is not important, then the question is probably appropriate. However, there are not a lot of jobs like that. This question could be interpreted as seeking information regarding a person's national origin which is protected under Title VII. If the job requires an individual who speaks a specific language or languages, state the languages that are required and ask the candidate if he/she reads, writes, and/or speaks those specific languages.</p>		X

<p>What political or religious organizations are you a member of?</p> <p><b>You are correct...</b></p> <p>As has been stated before, religious affiliation is protected under Title VII. The fact that many political organizations have religious affiliations, the first part of the question is also dangerous. Finally, it is hard to conceive that political or religious affiliation would have any real job relevance (except if your organization is a political or religious organization). Questions of this nature are not good choices.</p>		X
<p>How many children to you have?</p> <p><b>You are correct...</b></p> <p>This question doesn't have any real job relevance. If the issue is ability to show up for work on time, consistently, then the question should be rephrased to something like: "What was your attendance record on your last job?" and should be asked of all candidates, both male and female.</p>		X
<p>If your spouse is transferred to another city, would you move with him/her?</p> <p><b>You are correct...</b></p> <p>This questions appears to have job relevance if your issue is finding a long-term employee. However, if it is asked only of female candidates, then you are guilty of sexual discrimination. Additionally, the question demeans women because it assumes that the husband is in a superior role. If the issue is long-term employment (an issue that is becoming less and less relevant these days), rephrase the question to focus specifically on the issue.</p>		X
<p>How much travel do you feel would be excessive?</p> <p><b>You are correct...</b></p> <p>Any question that is asked of only female candidates could be interpreted as discriminatory. However, if this question is asked of all candidates, then there's nothing wrong with it. If travel is a part of the job, the candidate's answer will tell you whether he/she will be comfortable with the level of travel the job requires.</p>		X
<p>How many days of work did you miss last year to stay home with sick children?</p> <p><b>You are correct...</b></p> <p>Again, any question asked only of female candidates can be interpreted as discriminatory. The issue here is not staying home with children but absenteeism. If that is an issue, rephrase the question to focus on the issue and ask it of all candidates, both male and female.</p>		X
<p>Are you socially active, or do you tend to prefer more solitary activities?</p> <p><b>You are correct...</b></p> <p>If this question is asked of only female candidates, it can not only be viewed as discriminatory, but it could also be used to lay the foundation for a sexual harassment complaint later on. If the issue is the candidate's gregariousness, ask the candidate specifically about what activities and hobbies they involve themselves in when they're not working. If asked of all candidates, the rephrased version will be pretty much innocuous.</p>		X