

Illegal interview questions that employers shouldn't ask you

Watch out for these red flags and learn how to reply if you're asked an illegal question.

Daniel Bortz, Monster contributor

Job interviews can make even the most prepared candidates uncomfortable. But although the hiring manager is in the driver's seat, there's a chance they'll make a wrong turn and ask a question that is off limits—a question that you don't have to answer, and sometimes definitely shouldn't.

"Even trained hiring managers and recruiters sometimes ask illegal questions," says Charles Krugel, an HR attorney in Chicago.

The Civil Rights Act of 1964 "prohibits employment discrimination based on race, color, religion, sex and national origin." As a job seeker, you want to be able to spot red flags that could indicate you're not being treated fairly. These five interview questions are illegal for potential employers to ask you.

"Do you have any physical or mental disabilities?"

Why it's illegal: The Americans with Disability Act (ADA) says it is unlawful for an employer to discriminate against a qualified applicant or employee with a disability. Private employers with 15 or more employees, as well as state and local government employers, must abide by the ADA.

Note that the ADA prohibits employers from asking discriminatory questions before making a job offer; after a job offer has been extended, employers are permitted to ask questions about disabilities as long as they ask the same questions of other applicants offered the same type of job, not just applicants with an obvious disability.

Similar off-limit questions:

"What prescription drugs are you currently taking?"

"Have you ever been treated for mental health problems?"

"When are you planning to have children?"

Why it's illegal: Sex is a federally protected class, which means an employer cannot discriminate against a male or female job applicant.

A hiring manager simply may have concerns about the applicant's ability to perform the job duties (such as travel or work overtime), says Lisa Schmid, employment law attorney at Nilan Johnson Lewis. If that's the case, the interviewer needs to ask the candidate directly about job-related responsibilities (e.g. "This job requires five days of travel per month. Do you have any restrictions that would prevent you from doing that?").

Similar off-limit questions:

"What kind of childcare arrangements do you have in place?"

"What are your plans if you get pregnant?"

“Will you need time off for religious holidays?”

Why it’s illegal: Religious discrimination is prohibited, so employers are barred from basing hiring decisions on a person’s religious beliefs, observances, or practices.

Similar off-limit questions:

“What is your religious affiliation?”

“What church do you belong to?”

“What country are you from?”

Why it’s illegal: National origin is a federally protected class. Consequently, employers cannot base hiring decisions on whether an applicant is from a different country or of a specific ethnicity.

Similar off-limit questions:

“What is your nationality?”

“You have a strong accent. Where are you from?”

“How often are you deployed for Army Reserve training?”

Why it’s illegal: Because military status is a federally protected class, companies cannot make employment decisions based on a job candidate’s past, current, or future military membership or service.

Similar off-limit questions:

“Will you be deployed any time soon?”

“What type of discharge did you receive from the military?”

If you happen to be in a situation where an interviewer asks you an illegal question, how you respond is entirely based on your comfort level. You could simply state, “That doesn’t affect my ability to perform the duties of this job,” and leave it at that. Or, if you feel the potential employer has crossed a line, you have every right to end the interview and leave. Granted, this is a difficult thing to do if you really want or need the job, but on the flipside, would you really want to work for someone who indicates a bias?

This article is not intended as a substitute for professional legal advice. Always seek the professional advice of an attorney regarding any legal questions you may have.