

Are You Pregnant? And Other Off-Limits Interview Questions

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by Sara Wilkinson | You probably wouldn't ask someone that question — *are you pregnant?* — during a job interview or on an employment application, right? (Anyone who said “yes” should contact me immediately.) But what other, not-so-obvious (or just plain rude) questions are you not allowed to ask a candidate during a job interview or on an application for employment? Here are a few more frequently asked but (mostly) off-limits questions:

- *Do you own a car?*
- *How much did you make at your last job?*
- *What year did you graduate from college?*
- *What is your ethnicity?*
- *Have you ever been arrested?*
- *Are you married?*
- *Have you ever been injured on the job?*

Title VII and the ADA

Why can't a prospective employer ask these questions? Because of a little something called Title VII of the Civil Rights Act, and its friend the Americans with Disabilities Act.

Some of these questions can be seen as potentially discriminatory based on protected characteristics under Title VII. For example, asking when someone graduated from college may indicate their age, which is a protected characteristic. Asking about on-the-job injuries can be perceived as discriminating against someone with a disability, in violation of the ADA. No one wants to be the one who gets their company slapped with a claim that it has violated either of those laws, so what questions can you ask as alternatives to the first three listed above?

- *Do you have a reliable means of transportation to and from work?*
- *The salary range for this position is \$X-\$Y. Is that something you are comfortable with?*
- *Do you have a college degree?*

As for the rest of the questions, there is nothing that you are allowed to ask when it comes to ethnicity and marital status (again, Title VII). Also, there are a number of cities and states that have banned questions regarding arrests, so those should not be included on employment applications or during the interview process. (In some instances, those questions can be asked after a conditional offer of employment has been made.)

Job-Related Need to Know

There are a multitude of nuances in this area of the law, but what employers need to keep in mind when crafting questions for interviews or employment applications is whether the employer has a clear job-related need to know the information that the question is meant to elicit.

For example, is the question related to the candidate's qualifications for the position, their educational or professional background, the skills needed to perform the job or their competency related to the position that they applied for? If the question is not being asked for one of those reasons and you cannot articulate a clear, job-related reason for the question or answer, don't ask it.

As lawyers, we don't often advocate for ignorance, but sometimes it really is bliss. *For a review of your employment application or assistance with developing a list of acceptable interview questions, please contact Sara Wilkinson.*