

INTERVIEWING STRATEGIES

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I. Techniques and methodologies

General guideline for all interview questions: can the employer demonstrate a job-related necessity for the question? In other words, will the answer be used to judge the applicant's qualifications, level of skills and overall competence for the job?

Best practice: review the job description and job criteria before interviewing for the position to make sure questions asked are job-related and justified by a legitimate business purpose. Then frame the questions around these criteria. For each applicant interviewing for the same position, we recommend that you ask the same core of questions to avoid a challenge based on unfair criteria or preferential treatment.

We will get into the specific questions to ask/not ask below, but first let's discuss how to ask a question and, with that, let's talk about behavioral interviewing techniques.

The traditional approach to interviewing – asking open-ended questions – will not garner all the information needed to make a smart hiring decision because responses are entirely subjective. However, behavioral-based questions follow the psychological premise that past behavior predicts future performance. Thus, if the applicant reacted or responded certain ways in the past, she will likely do the same in the future.

For example, let's look at a customer service representative. The key skills required are: **energy** (high productivity or activity level), excellent verbal and written **communication skills**, **tolerance for stress**, adaptability to varying situations, positive customer service orientation, and possesses a "team player" attitude:

Energy: Describe a time when you had to work at a fast pace for a long period of time. What kind of work did you do? What did you do to maintain the pace?

Oral Communication Skills: Describe a time when you had difficulty communicating with a customer and what you did to overcome that challenge. What

was the outcome of that adjustment?

Tolerance for Stress: Describe a situation in which you were faced with a large amount of customer requests at one time. How did you handle the situation, and what was the result?

The key to designing behavioral-based interview questions is to look at the business's environment and performance requirements and to ask questions that will reveal whether applicants have worked in similar environments and exhibited preferred behaviors in those situations.

Additionally, general behavioral-based questions – which are not necessarily job-related but which test the applicant's work ethics – are also proper. For example:

“If you saw a co-worker doing something dishonest, what would you do?”

“What would you do if someone in management asked you to do something unethical?”

“Tell me about a time that you have experienced a loss for doing what is right.”

“In what business situations do you feel honesty is inappropriate?”

“If you knew your supervisor was doing something wrong, what would you do?”

Behavioral interviewing does have its challenges, though. Most applicants are not used to giving specific examples of their performance and, therefore, will need some coaching. So when the applicant makes a blanket statement such as “I'm a people person,” ask for a specific example of when working with people was a motivating experience.

Behavioral interview questions certainly do not replace traditional interview questions that serve to clarify specifics about experience, education and background. Rather they enhance the quality of information received during the interview process by providing examples of a person's work-related behavioral patterns. In the long run, effective use of behavioral interviewing techniques can help companies reduce turnover costs and improve their selection process.

II. General areas of inquiry

Effective interviewing is the cornerstone of successful recruitment. We all know that specific interview questions about age, race, national origin, disability, marital status, etc.,

are generally prohibited. But how do you navigate through the acceptable areas of inquiry to make a smart hiring decision?

Recruitments efforts these days will often yield a high number of skilled and over-skilled candidates. The skilled interviewer becomes bored with hearing the same rehearsed answers to the standard questions. The solution? Mix up the old standards to elicit a non-rehearsed response:

DON'T ASK	ASK INSTEAD
Why do you want to work here?	What particular skills or experience male you the best match for this position?
Where do you see yourself in five years?	Where does this position fall in your career path?
What did you like least about your last job?	What aspects of your previous position did you find the most professionally challenging?
What are your greatest weaknesses?	What kinds of professional development or training would make you a more effective worker?

Even if you feel you are getting a canned or prepared response, do not despair. You can always follow up with, “Can you tell more about that?” “Can you provide more details?” or “Can you give me a specific example?” But do not stress the candidate out or rake him over the coals, unless that is the type of environment in which he will be working and you need to make sure he’s got what it takes.

At the end of the questioning, don’t forget to ask the candidate if she has any questions. Sometimes the questions asked by the candidate will tell you more about the person than their answers to your questions.

III. Specific problem areas of pre-employment inquiry (both on the employment application and in the interview)

Title VII does not regulate inquiries by employers; but does regulate improper use of information gathered. Note that the ADA does regulate inquiries as to disabilities. Both of these laws (and their state-law equivalents) require the employer to employ 15 or more persons. If your organization is smaller, the laws do not apply, but questions which may be deemed discriminatory, which cross the bounds of decency or which are completely irrelevant to screening out applicants should nonetheless be avoided.

Even questions that may appear to be “facially neutral” – non-discriminatory on their face but may have the effect of discriminating – as to education, experience, physical requirements, may be considered unlawful when they screen out a disproportionate number of candidates in a protected class. Here are examples of some areas of questioning which may result in a legal challenge:

ATTENDANCE/CHILD CARE

Asking a candidate what days and hours can/cannot be worked and about other responsibilities that may interfere with job travel (if required) is appropriate. However, asking a female applicant if they have children, how many children they have and about child care arrangements could be viewed as discriminatory.

CITIZENSHIP/COUNTRY OF BIRTH/LANGUAGE

You cannot ask the applicant for her national origin, her maiden name or where her parents are from. These inquiries may give rise to claims of national origin discrimination. Still, you can ask about eligibility to work in the United States and tell an applicant that eligibility to work must be provided if selected for hire, and you can ask if the applicant has ever worked under a difference name.

CREDIT

Asking the candidate whether he owns his home, whether his wages have even been garnished or whether he has ever filed bankruptcy is not allowed. You can discover this information through an authorized credit/background check, but asking during an interview may be deemed to adversely impact certain races.

CRIMINAL HISTORY

Cannot use criminal history to engage in unlawful disparate treatment (excluding an African American applicant with a certain criminal charge on his record while accepting a Caucasian applicant with the same charge). Generally, because Hispanics and African Americans have higher arrest and conviction records, the use of such records to make employment decisions is likely to have a disparate impact on those groups. Therefore, we recommend that you only use criminal history information in a manner that is job-related and consistent with business necessity.

Convictions

May disproportionately impact African Americans

For exclusions based on convictions, the legal standard is recent enough and

sufficiently job-related to be predictive of performance in the position, given the duties and responsibilities of the position

Arrests

Much different than a conviction

Unreliable indicator of guilt for several reasons

- not persuasive evidence that the person engaged in the conduct charged
- presumption of innocence until proven guilty (and charge may be dropped)
- inaccurate record-keeping, clerical errors, identifying information, etc.

DISABLED APPLICANTS

In order to comply with the ADA, an employer cannot ask disability-related questions or require a medical examination before a job offer is made.

In terms of accessibility, make certain that the application form, employment office and interviewing location are accessible.

Questions asked should – as noted earlier – relate to the job functions and the applicant's *abilities* (not disabilities), experiences, knowledge, skills, interests, etc.

You cannot ask the applicant if she has any disabilities, if she has ever been injured on the job or if she has ever filed a workers' compensation claim; these questions could be considered discriminatory against the disabled (or those perceived to be disabled).

EDUCATION/YEAR OF GRADUATION/HIGH SCHOOL DIPLOMA

Some educational requirements are necessary for the job. For example, lawyers need a law degree and need to pass the bar in order to practice. However, if the educational requirement is not needed to successfully perform the job AND has the effect of disproportionately excluding certain protected groups, the requirement may violate Title VII, the ADA or the ADEA.

Recently, the EEOC issued an "informal discussion letter" regarding the high school diploma requirement and the impact on an applicant who, because of a learning disability, could not obtain a diploma. The EEOC first noted that the diploma requirement must be "job related for the position in question and consistent with business necessity." Even then, the employer must consider whether the applicant can perform the essential functions of the job with or without a reasonable accommodation.

The point is this: consider whether the requirements for a job are actual necessities or mere preferences. Preferences should be eliminated so as to avoid legal challenges.

Similarly, year of graduation is off-limits, which may also give rise to an age discrimination claim, as is (of course) date of birth.

MARITAL STATUS

Asking for a title – such as Miss, Mrs. or Ms. – and/or asking whether the applicant is married and, if so, spouse's name, may give rise to a claim for marital discrimination which is actionable under Florida law.

MILITARY DISCHARGE

While it is not illegal to ask about military discharge, we recommend that such inquiries are avoided. Employers should never question the reason for the discharge or ask to see discharge papers. This information is protected by USERRA.

However, you can ask about the dates of service, duties performed, rank during service and at the time of discharge, compensation, training received and type of education, training and work experience received in the military.

ORGANIZATIONS

You can ask the applicant if he is a member of any organizations that he considers relevant to his ability to perform the job, but you cannot ask the applicant to list all clubs, societies, organizations, etc., to which he belongs. This could lead to claims of race, religious or national origin discrimination.

RACE/GENDER

Should not be asked... but really why would this ever be needed on an application? If needed for affirmative action purposes, keep information separate from the application. This will ensure that the information is not used in the selection process.

RELIGION

Religious inquiries may be asked if related to a bona fide occupational qualification. Otherwise, asking about the candidate's religion, name of church, which holidays are observed, etc., are off-limits.

SOCIAL SECURITY NUMBER

Again, this information is not necessary on an application, which may be viewed by others who do not have a “need to know” this information. This information may be requested in connection with conducting a background check, completing the W-4 or enrollment in a benefits plan. If requested, make sure to protect secrecy of the information.

SOCIAL MEDIA ACCESS

We could go into a whole discussion of the use of social media as a recruitment tool (which we did last year), but instead let’s focus on asking applicants for access to their Facebook page or sending a “friend” request to gain access.

Surely you have all heard the big buzz about lawmakers calling for the Justice Department to investigate whether employers who require job applicants to hand over their confidential passwords for Facebook and other social networking sites are violating federal law. The theory is that employers would gain access to protected information that would be impermissible to ask about or consider in hiring decisions – like religious affiliation, sexual orientation, marital status, children, etc. (Facebook also chimed in to note that giving out your password violates Facebook’s Terms of Service with its users).

And let’s face it – pardon the pun – weary HR officers who are bombarded with thousands of applications for one position and bizarre behavior by applicants (like the guy who sent his resume along with a shoe, to get his “foot in the door”) would often like to take the easy way out.

The problem is that you will not likely gather any information relevant to the applicant’s abilities but will gather information that clearly would be off-limits during an interview.

For our purposes, and not for the discussion about social media as a recruitment tool, let’s agree that these inquiries are not recommended.

UNEMPLOYMENT

While no federal law directly prohibits discrimination against unemployed individuals, the practice might be considered illegal if it can be shown to have a disparate impact on protected groups. Employers also should consider the short-sightedness of excluding unemployed applicants. In today’s economy, many well-qualified and hard-working individuals are unemployed through no fault of their own. It’s probably safe to say that the current unemployed applicant pool is the best-qualified unemployed applicant pool in recent history.

A number of states have proposed and passed laws that would make create liability against employers who consider only currently employed applicants for open positions (and which exclude the unemployed from applying). In addition, the Equal Employment Opportunity Commissions (EEOC) has taken up the issues and is expected to closely scrutinize such ads and policies.

Public image is another factor to consider. An advertisement excluding the unemployed looks bad in the current economic climate. It wouldn't be difficult to imagine a local newspaper or TV station picking up such a story.

IV. Documenting the interview

Do not take interview notes on applications or resumés. Handwritten notes can be used to support a claim for discrimination or may be seen as an effort to sabotage the applicant. While notes are relevant to the interview process (especially when you are interviewing numerous candidates), we recommend that you take notes on a separate interview evaluation sheet (and of course create a sheet for each candidate).