



Ready Reference G-8 Legal vs Illegal Questions

Intention of Illegal Questions

Discrimination in the workplace has been greatly reduced because of protective legislation and changing attitudes in society. Most illegal questions posed in interviews today are innocently asked in an effort to get better acquainted with the candidate or to elicit responses that imply specific information necessary for an employer to determine a candidate's suitability for a position. However, the use of illegal questions is still an unprofessional and unlawful practice, even if an employer does not intend for the questions to be used in a discriminatory manner. You should protect yourself against the possibility of discrimination by being aware of the nature of possible illegal questions.

What Is an Illegal Question?

Title VII, the Americans with Disabilities Act, and other federal and state legislative acts forbid employers from discriminating against any person on the basis of sex, age, race, national origin, religion, or disability. Therefore, an illegal interview question is any question pertaining to any of these areas that could be considered discriminatory and is completely unrelated to any requirement of the position. Providing the information requested by an employer through an illegal question is not unlawful, but you are under no obligation to answer. In addition, the information you volunteer might be used against you.

Examples of Illegal Questions

- Are you married?
- What was your maiden name?
- With whom do you live?
- How many children do you have?
- How old are your children?
- If you have children, what type of day care arrangements have you made?
- Do you plan to have children?
- What does your spouse do?
- Were you or your parents born in this country?
- How old are you?
- How tall are you?
- How much do you weigh?

- Do you have any physical disabilities?
- What religion do you practice?
- Where do you attend church?
- Where do you bank?
- Have you ever filed for bankruptcy?
- Have you ever been arrested?
- To what social, community, or religious groups do you belong?
- What is your military service status?
- If you are a veteran, what type of discharge did you receive?
- Have you ever received treatment from a psychologist?
- Have you had any major illnesses?
- Have you ever been hospitalized?
- Have you ever been treated for drug or alcohol addiction?
- Have you ever filed for worker's compensation?

Related Legal Questions

As previously mentioned, employers who ask illegal questions are trying to obtain information to help determine if the candidate is the best fit for the position. Many times, the information could be obtained by simply asking direct, legal questions that relate to information sought from improper or illegal ones. The following questions are legal ways to find out some of the same information as related to the requirements of the position.

- Tell me about yourself.
- How would you like to be addressed?
- Would our requirement of weekend time commitments be a problem?
- Would you be flexible to relocation?
- What is your stance on overnight travel?
- Are you a citizen of the United States or a resident alien with the right to work in the U.S.?
- In what foreign languages are you fluent? (If applicable to the position)
- Are you over the age of 18?
- Would your past employers or educational references know you by any other name?

Responding to Illegal Questions

When responding to any interview question, whether legal or illegal, you should always project a positive response. You don't want to risk ruining an interview by over-reacting because a well-intentioned interviewer erred by asking an inappropriate question. Remember, your objective is to secure the job offer. Later, you can decide if you want to accept the position.

How do you formulate a positive response? The technique you use to often depends on your interpretation of the question's intention. You may simply choose to answer the question, if you don't believe the interviewer has a discriminatory purpose in mind. If you are unsure of the interviewer's intention, you may want to politely and innocently ask how the information is relevant to the position. Often times it is best to give the interviewer the benefit of the doubt until his or her motives are clear. If you do detect discriminatory intentions, respectfully inform the interviewer that you believe the question may be discriminatory and that you prefer not to answer it. Whatever your decision, you should avoid being confrontational and should attempt to move the conversation toward your skills and qualifications.

Taking Action Against Illegal Practices

No one should be treated unethically or in an illegal manner. In instances where a discriminatory pattern is clearly developing in an interview, realize that there are actions you may take to protect your rights. If you become a victim of a discriminatory situation, create documentation by discreetly making detailed notes of the specific questions that are being asked during the interview, or by making notes of the exact questions immediately after the interview. Upon the conclusion of the interview, you may want to express your concerns to an administrator within the organization, such as the director of human resources. If the information obtained from the documented illegal questions results in a possible discriminatory practice (i.e., no second interview, no job offer, etc.), you may file a federal complaint with the Equal Employment Opportunity Commission and a state complaint with the State Attorney General's office.