Questions Not to Ask During Job Interviews – And How to Rephrase Them So They Don't Discriminate



Avoiding discriminatory questions in job interviews and on job applications.

Asking job applicants personal questions about their disabilities, marital status and other characteristics and circumstances protected by human rights laws is illegal employment discrimination. At the same time, the information these questions are designed to elicit might be legitimate to consider in evaluating whether an applicant is qualified for a job. In many cases, the problem isn't so much the question you ask as how you phrase it. Thus, for example, while you're allowed to ask foreign applicants about their legal qualifications to work in Canada, you can't ask if they're Canadian citizens. Here's what you need to know to draw the proper lines.

The Law of Discriminatory Job Interview Questions

Some job interview and application questions are completely out of bounds. **Example:** "Are you pregnant?" **Explanation:** A direct question about current or planned pregnancy is one you'd only pose to a female applicant; it also suggests that you factor sex, pregnancy and/or family status into hiring decisions, which is a direct form of discrimination. However, there may also be legitimate reasons for employers to ask about pregnancy, such as to determine if they're physically capable of safely performing a job that involves exposure to chemicals that may induce miscarriages.

That's why human rights laws allow employers to engage in practices that may be otherwise discriminatory to carry out legitimate business functions. The name for this concept is the "bona fide occupational requirement" (BFOR) and it applies not just to pregnancy, but all personal characteristics protected by the law including race, national origin, age, religion, physical and mental disability, sexual preference, etc.

When Are Personal Questions a BFOR?

In a discrimination lawsuit, employers have the burden of proving that asking job applicants an otherwise discriminatory question is a BFOR. And that's tough. To make out a BFOR defence, employers must show 3 things:

- **Rationally Connected,** that is, that the discriminatory practice was adopted for a goal that's rationally connected to the functions of the position. In the context of pre-employment inquiries, the question must ask for information that's relevant to the applicant's capacity to do the job.
- **Good Faith Belief:** The discriminatory practice must be adopted in good faith, in the belief that it's necessary to fulfill the goal. In other words, the belief must be sincere and not a pretext. To meet this prong of the test, you must explain why you thought that the personal information you were asking about was rationally connected to the functions of the position, for example, why you concluded that a pregnant woman couldn't do the job.
- **Reasonable Necessity:** The third and hardest prong of the test requires you to prove that the practice is "reasonably necessary" to accomplish the goal and that you couldn't find a less discriminatory way to accomplish the goal without incurring undue hardship.

Example: You determine that pregnant women can't do a job because it involves heavy lifting. Asking applicants if they're pregnant wouldn't be a BFOR if you can make reasonable accommodations that would allow the applicant to do the job, such as assigning the heavy lifting duties to others.

Example: The job requires the employee to work in areas of the plant where there are high levels of exposures to chemicals that can induce miscarriages. Asking about pregnancy wouldn't be a BFOR if the applicant could do the same duties in other parts of the plant or be easily equipped with respiratory equipment that protects her from chemical exposure.

Example: Asking about pregnancy would be a BFOR if the accommodations described in the above examples would be prohibitively expensive and impose undue hardship on the employer.

But you're still not out of the woods. Even if you have a legitimate need for the information, your BFOR defence will fail if you can acquire the information you need to determine an applicant's qualifications for the job without asking a discriminatory question.

Example: Heavy lifting is an essential part of the job and can't be avoided:

- **Wrong:** "Are you pregnant?"
- **Right:** "Do you have any physical conditions, temporary or permanent, that would prevent you from doing heavy lifting?"

Discriminatory Job Interview/Application Questions & How to Rephrase Them

The problem is that it's not always easy to distinguish between legitimate and discriminatory questions in a job interview. For example, while it might sound innocent, asking applicants when they graduated from university is problematic because it elicits information about their age. The best way to draw the lines is to look at guidance from provincial human rights commissions specifically addressing this issue.

Can't Ask	Can Ask	Comment
What's your previous/maiden name?	What's your current name?	Maiden/previous names may indicate marital status, national origin or ancestry
List "Mr/Ms/Mrs/Miss" on application form		Indicates sex and marital status—it's also illegal to have men and women fill out different forms

Can't Ask	Can Ask	Comment
What's your marital status, e.g., divorced, single, married?		
*Where does your spouse work?*May he/she get transferred?	Describe travel/relocation requirements of job and ask applicants if they can meet them	Info on marital status and dependents required for payroll, etc., can be obtained after job offered
Are you related to anyone who works for the company?	Describe company's anti-nepotism policy & ask applicants if their hiring would create any problems under it	
• Do you have any kids or dependents? • What are your childcare arrangements?	Describe the schedule and overtime requirements of the job and ask applicants if there's any reason they can't abide by them	
*Are you pregnant? *Do you use birth control? *Are you planning to have children?	Describe the physical requirements of the job and ask applicant if there's any reason she can't perform them	You can ask about pregnancy after offering the applicant the job to determine if she needs accommodations
• How old are you? • What's your date of birth? • Can I have a birth certificate?	The law says you must be at least X years' old to work/do this job. Are you?	Asking about age is okay to verify applicants meet minimum age requirements specified in the law
• What country are you from? • Where were you born? • List all previous addresses/military service • What's your Social Insurance Number?	Are you legally entitled to work in Canada?	• Asking about previous Canadian military service is OK if position is one for which law provides preference to veterans • Asking about residency, SIN, etc. OK after job offered
What's your native language?	Do you read, understand, speak and/or write languages necessary to do the job (as specified in ad or job description)?	
Questions about race or colour including colour of skin, hair, etc.		
What is your sexual preference?		
List names, dates and locations of all schools attended	Grade level completed/degrees obtained/courses taken	OK to ask for names of technical, vocational and post-secondary schools unless it would reveal religious affiliation or race
• What's your religion? • What church do you belong to? • Can you work on specific religious holidays? • Can you supply a reference from the clergy?	Describe the work schedule, including any religious holidays that must be worked and ask if there's any reason applicant can't meet this schedule	OK to ask about religion after hiring to determine necessary accommodations
• Do you have any physical/mental disabilities? • Do you have any health problems? • Have you ever been dependent on alcohol or drugs? • Do you drink or use illegal drugs? • Have you ever been treated for emotional problems? • Are you under a doctor's care? • Are you receiving counseling or therapy? • Do you have any allergies? • Have you ever received workers' comp? • What kinds of physical accommodations would you need to do this job?	Describe the physical requirements of the job, as specified in the job ad and job description and ask the applicant if there's any reason he/she can't perform those duties?	Medical questions, tests, evaluations may be appropriate after job is offered to determine need for accommodations
• Have you ever been arrested? • Have you ever been convicted of an offence? • Do you have a criminal record?	Are you bondable—as long bondability is a requirement for the job	Criminal background and other checks might be allowed after the job is offered
What are your political beliefs, party affiliations, etc.?		Except in AB, Fed and ON where political beliefs aren't protected from discrimination

Post-Employment Inquiries

The purpose of these guidelines is to ensure that grounds protected from discrimination don't become a factor in the hiring decision unless absolutely necessary to legitimately evaluate the applicant's qualifications. But if the applicant remains viable after the first round of scrutiny and gets an offer, the hiring process enters into a new phase. During this post-offer phase, you are allowed to ask for information you couldn't ask about on the application and during the job interview, including:

Checks on Applicants with Conditional Job Offers: For certain positions, it may be considered a BFOR to offer the applicant the job conditionally provided they pass

some form of screening. An example would be requiring applicants for extremely safety-sensitive jobs like an airline pilot to pass a drug test or a nursery school teacher to undergo a complete criminal records check.

Checks to Determine If Applicants Require Accommodations: Questions about an applicant’s physical or mental condition that are off-limit during the pre-employment phase of the hiring process may be acceptable once the offer is made to determine what accommodations the applicant may require to do the job.

Personal Information Needed to Process Payroll and Benefits: And, of course, once employment begins, you can obtain the personal information about family status, residency, etc., you need to make income tax, Employment Insurance, Canada Pension Plan and other source deductions from the employee’s pay and/or determine her eligibility to participate in company benefits programs.