

INTERVIEW QUESTIONS: WHAT NOT TO ASK

There are certain topics during the interview process that are legally off limits, not to mention ethically questionable. Interview questions should be limited to topics that pertain directly to the job requirements and needs, but as small organizations, we often want to get to know applicants better.



This fact sheet highlights the off-limits topics — some of these are heavily frowned upon, and others are illegal. Federal requirements and state requirements vary, but we apply the most stringent terms here.

WHAT NOT TO ASK ABOUT

Status (or perceived status) within protected classes or their impacts. Protected classes include:

- Race
- Religious creed
- Color
- National origin
- Ancestry
- Physical disability (including HIV-positive status) or mental disability
- Medical condition (specifically cancer-related conditions and genetic characteristics)
- Marital status
- Sex (including pregnancy, childbirth, or related medical conditions); pregnancy or intentions to become pregnant (additional information about people's reproductive status, children and caregiving needs is generally frowned upon)
- Gender identity
- Age (legally applies to those 40 years and older, but frowned upon for all ages)
- Sexual orientation

Additional topics to avoid:

- Past salary information or history
- Past workers compensation claims
- Past arrests that did not lead to conviction or other pre-trial activities; minor marijuana convictions more than two years prior
- Physical ability unless it is a direct requirement of the job. (e.g. ability to lift 50 lbs)

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DISABILITY AND ACCOMMODATIONS

Before an offer is made:

An applicant for employment cannot be asked about their disability status or accommodation needs *until an offer is made*. This typically means the employer has provided them with an employment offer letter. Employers should be conscientious of the subtle ways that ableism may impact their decision making throughout the hiring process.

After an offer is made:

At the offer stage, necessary accommodations can be discussed and provided. Accommodations should *not* be considered as part of a compensation package. They are a legal requirement. If an accommodation truly cannot be met, the offer can be withdrawn.

"BAN THE BOX" - CRIMINAL HISTORY

In some states, laws state that an employer cannot ask about past convictions and that a criminal background check cannot take place early in the process, usually before an interview. During interviews you cannot consider any charges that have been expunged nor any juvenile charges. Further steps are needed to take a criminal history into account with a job offer.

What to do if an applicant discusses one of these topics:

Don't panic — it is perfectly reasonable to acknowledge what they shared if they bring it up of their own volition. "Thank you for sharing your story with us," or similar responses are legal and fair. However, you should not ask further detailed questions regarding their status or its perceived impacts, although work related topics can be pursued.

Example:

Applicant: *My experience growing up in a mixed race and mixed faith household has shaped my worldview on these issues.*

Employer:

- ✓ *Can you tell me more about your experience working on these issues?*
- ✗ *Can you tell me more about how your race and faith has impacted you?*

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A NOTE ON EQUAL EMPLOYMENT OPPORTUNITY

Equal Employment Opportunity, or EEO (those common statements on job descriptions) statements, are only a legal requirement of "programs and activities receiving federal financial assistance" e.g. government workers and contractors, as well as most schools and universities. But the laws are understood and perceived to be applicable to most US employers at least in spirit, if not in the letter, of the law.



QUESTIONS OR CONCERNS?

Consult an employment lawyer and refer to further [guidance from the Department of Labor](#) and your state's employment laws.

You can also reach out to Meso Solutions at hello@mesosolutions.co.

ABOUT THE AUTHOR

This resource was created by Lena Tom, Founder and President of Meso Solutions, a hiring firm partnering with organizations focused on social good. For more information about Meso Solutions and its services, visit mesosolutions.co.