
General Information

Applications and job interviews are typically used to gather information about a potential employee's skills and qualifications. Used correctly, they can be effective tools to distinguish between qualified and unqualified candidates.

However, because of the questions asked and the way the information may be used, job applications and interviews could also have the effect of intentionally or unintentionally denying employment opportunities to individuals based on their race, color, religion, sex, national origin, age, disability, marital status, pregnancy, status with regard to public assistance, or participation in lawful activity off the employer's premises during non-working hours which is not in direct conflict with the essential business-related functions of the employer.

To help ensure that the hiring process is free of unlawful discrimination, employers need to be knowledgeable about which areas of questioning are illegal or of concern.

Questions That Are Unlawful

Under the Americans with Disabilities Act (ADA), it is unlawful for an employer to ask an applicant any medical related questions which may reveal a disability. This applies to questions on the employment application and those asked during the interview process.

Questions which may reveal a disability include those related to weight, height, physical or mental disabilities, hospitalization record, as well as inquiries regarding Workforce Safety & Insurance claims.

At the application or interview stage, an employer may ask: "Can you perform the essential functions of this job with or without a reasonable accommodation?" If the applicant indicates, "Yes, I can with a reasonable

When used properly, applications and interviews are excellent tools to successfully match employers and employees. However, even well-meaning employers can encounter discrimination charges due to the questions they ask. This brochure is designed to educate employees and employers about the hiring process.

accommodation," you may then ask what accommodation may be required. In addition, if the disability is not obvious, you may ask for medical documentation verifying the need for a reasonable accommodation.

An employer may ask reasonable accommodation questions if: (A) the employer reasonably believes an applicant will need a reasonable accommodation because of an obvious disability; (B) an applicant has voluntarily disclosed that he/she needs a reasonable accommodation to perform the job; or (C) the employer reasonably believes an applicant will need a reasonable accommodation because of a hidden disability which has been voluntarily disclosed by the applicant.

Finally, only ask reasonable accommodation questions that are related to essential job functions as opposed to non-essential job functions.

Don't Ask Irrelevant Questions

Medically related questions which may reveal a disability are the only questions that employers are specifically prohibited from asking applicants. However, other questions can be problematic. Asking questions that are not relevant to the job are not in themselves illegal, but the use of information gained from the question in the selection process may intentionally or unintentionally discriminate against a protected category or individual.

In seeking information from job applicants, employers should ask themselves:

- 1 Is this information really needed to judge an applicant's competence or qualifications for the job in question?

- 2 Will the answer to this question, if used in making a selection, have the effect of unlawfully screening out members of a protected category?

Any question that is asked will be assumed to be some basis of the employer's selection criteria and should be a valid predictor of successful job performance. If you do not have a justifiable and legally valid reason for asking a question, it may be viewed as evidence of employment discrimination.

Questions That Should be Avoided

As a general rule, questions regarding the following should be avoided unless they relate to a bona fide occupational qualification (b.f.o.q.).

Age or Date of Birth

Questions that could reveal a person's age (including school graduation dates) should not be asked.

If state or federal law requires that age 18 is the minimum age for a certain occupation, rather than ask an applicant's specific age or birth date, simply ask: "Are you at least 18 years of age?"

Sex or Gender

Do not ask an applicant's sex or gender.

Race, Birthplace, and National Origin

Do not ask: "What is your citizenship, your parents' citizenship, or your birthplace?" Instead, ask: "Can you show that you are eligible to work in the United States?"

Marital Status, Dependents, and Child Care Arrangements

Do not ask: "What is your marital status? How many children do you have? Who will care for your children while you are at work?"

Also, don't ask: "What was your original name if your name has been changed?"

Arrest Record

Do not ask: "Have you ever been arrested?" An arrest does not mean that someone has actually committed a crime. Instead, ask: "Have you ever been convicted of a felony?"

Height and Weight

Do not ask unless standards are essential to the performance of the job.

Religion

Do not ask. Applicants who indicate the need for days off for religious reasons may not be discriminated against on that basis unless the company can demonstrate that the request for time off cannot be met without undue hardship.

Public Assistance

Do not ask an applicant about the receipt of public assistance. Be cautious that even simple questions such as, "Where do you live?" or "What part of town are you from?" can, in some instances, reveal that the person is receiving public assistance.

Lawful Activity

Any lawful activity that an applicant engages in off the employer's premises during non-working hours which is not in direct conflict with the essential business-related function of the employer should not be used as a basis to disqualify an applicant when making hiring decisions.

The question, "Do you have a second income?" or even inquiries into a person's interests or hobbies may reveal activity that the employer disagrees with, but that is not against the law. A decision not to employ in either of these situations could be a violation of the North Dakota Human Rights Act.

Be Consistent

In addition to eliminating inquiries into the listed areas, employers can reduce their risk of being found liable in a discrimination charge by being consistent throughout the application and interview process.

Employers should distribute the same job application to all applicants. Generic employment application forms can be obtained from Job Service North Dakota. It may also be helpful for the employer to determine ahead of time how many applicants will be interviewed and on what bases the applicants will be chosen for an interview.

Employers are advised to conduct the interviews in a consistent manner by asking each applicant the same interview questions.

Additionally, it is recommended that more than one person conduct the interview with the applicant.

Employment Applications and Interviews

Important Information for Employers & Employees

Have Additional Questions?
Need assistance with this information?
Contact us at:

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