

Working

ASK THE EXPERT

A question of legality

In employment interviews, to answer or not to answer - that is the question

By ANDREA GURWITT
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First in an occasional series.
When you go for a job interview, you will answer a lot of questions.

There are certain questions, however, that are illegal or potentially problematic for an employer to ask.

Under New Jersey's Law Against Discrimination, employers are not allowed to intentionally discriminate - meaning, not hire you - on the basis of a slew of categories. These include race, religion, national origin, nationality, age, sex (including pregnancy), marital status, domestic partnership and sexual orientation.

We asked employment lawyer Kirsten Scheurer Branigan, who has a law office in Newark, about which questions are illegal to ask

or may be seen as discriminatory, and what you should do if you're asked these things.

Here are some questions Branigan says are either not permissible to ask a job applicant under state or federal law or could lead to potential violations by the interviewer under those laws:

■ **If you are married, widowed, divorced or separated:** State law forbids an employer to take these into account when deciding whom to hire.

■ **Your maiden name:** It could be considered discriminatory because it is asked only of women, and might be a way of finding out someone's national origin.

■ **Spouse's name:** It could be a roundabout way of finding out if you are married.

■ **If you are pregnant or plan to have children, or if you have children or have arranged for**

child care.

■ **Date of birth or age:** The questions are not illegal, but the state anti-discrimination law and the federal Age Discrimination in Employment Act forbid employers to make age a factor in hiring or not hiring someone. This generally applies to people over 40. It is OK, Branigan says, for an interviewer to ask, "Are you over 18 years of age?"

■ **If you belong to a union:** Under the National Labor Relations Act it is illegal to ask about union membership.

■ **If you are available to work Saturday or Sunday:** It might discourage applicants who observe religious days. Employers may ask about an interviewee's availability to work, especially if it is a seven-day-a-week business, but may

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Kirsten Scheurer Branigan, an employment lawyer in Newark, advises on how to answer those tricky, sometimes illegal questions that job candidates often face in interviews.

Questions

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have to accommodate an employee's religious observances on the weekends.

■ **If you are a U.S. citizen:** Not OK. However, an employer may ask if you are eligible to work in the U.S.

■ **If you are handicapped:** It is illegal to discriminate against someone who is disabled or perceived to be disabled, according to the Americans with Disabilities Act. Both the state Law Against Discrimination and the ADA prohibit job interview questions meant to find out if an applicant is disabled. But an interviewer is allowed to find out if the applicant can do the physical components of the job. It is OK, Branigan says, for an employer to ask, "This job requires lifting boxes weighing up to 50 pounds. Are you able to lift 50 pounds with or without accommodation?"

So, what happens when you're in an interview, and the person across the desk from you ventures into illegal or potentially discriminatory territory by asking you one of these questions?

"It's a delicate balance," Branigan says. "If you don't answer the question or you call the employer out at that stage, you're not going to get the job."

The best approach is to stay away from anything personal, and try to steer the conversation back to safer ground.

The problem is, of course, that to chat is human, a way of smoothing out awkwardness or tension. And when you chat, it tends to get personal. But in a job interview, the personal veers into dangerous territory for both people. If a little light talk is inevitable, keep it within a safe realm, like weather or sports, Branigan says.

Reach Andrea Gurwitt at 973-569-7159 or gurwitt@northjersey.com.