Interviewing: Legal "Dos and Don'ts"

Employers may not ask questions that could lead an applicant to disclose legally protected information. Asking these questions could lead to claims of discriminatory hiring practices from a disappointed applicant – or even from someone who is hired but later sees a pattern of discrimination going back to their interview.

The guiding principle for interview questions is the employer's legitimate, job-related need to know the answer. Even questions that may be intended simply as a way to get to know a candidate could elicit information that the applicant might view as an indirect way to get protected information that could then be used to decide not to hire them. Some examples of inappropriate questions are:

- **Where are you originally from?** *This question is irrelevant to the job requirements and could elicit information that could lead to claims of discrimination based on citizenship, national origin, or religion. A question about authorization to work in the United States is appropriate.*

- **Do you have children or plan on having children?** *It is always inappropriate for an interviewer to ask about family status, regardless of the applicant's gender, as these questions can lead to claims of gender discrimination. Even comments by an interviewer about their own family could be construed as a means to encourage an applicant to disclose this information, and therefore should be avoided. Even if the interviewer is trying to determine availability and dependability, these questions are not appropriate. An interviewer should simply state the job requirements (ex: Monday through Friday 8:30 AM to 5:00 PM, or occasional work on weekends) and ask the applicant if they are able to meet those requirements.*

- **What year did you graduate from college?** *This question will likely be construed as a way for the interviewer to determine a candidate's age, which is an inappropriate subject that could lead to claims of age discrimination.*

Subject	What May Be Asked	What May NOT Be Asked	If It May NOT Be Asked, Why Not?
Age	Are you over 18 (or 21 for certain jobs)?	How old are you? What is the date of your birth?	This could be viewed as age discrimination.
Birthplace	n/a	Birthplace of applicant. Birthplace of applicant's parents, spouse, or other close relatives.	This could be considered as national origin discrimination.
Citizenship	Are you legally authorized to work in the United States?	Inquiry into an applicant's country of citizenship. Whether an applicant is a naturalized or native-born citizen; the date when the applicant acquired citizenship. Requiring that an applicant produce naturalization papers or first papers. Whether parents or spouse are naturalized or native-born citizens of the United States and date citizenship was acquired.	This could be considered as national origin discrimination.

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Disability	Specific questions related to job duties, e.g., Do you have a driver's license (if required for certain jobs)? Can you lift 50 pounds (if required for certain jobs)?	Do you have a disability? Have you ever been treated for the following diseases (listing diseases)? Has any member of your family ever had any of the following diseases?	This could be considered discrimination against people with disabilities.
Education	Inquiry into the academic, vocational, or professional education of an applicant and the public and private schools the applicant has attended (if required for certain positions).	What year did you graduate from high school or college?	This could be considered age discrimination.
Experience	Inquiry into work experience	n/a	n/a
Gender	n/a	A pre-employment inquiry as to gender verbally or on an application form.	This could be considered gender discrimination.
Language	What languages do you read, write, and/or speak fluently? (If the job requires additional languages.)	How applicant acquired ability to read, write, or speak a foreign language. What is your native language?	This could be considered national origin discrimination.

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Marital Status	n/a	Are you married? Where does your spouse work? What are the ages of your children, if any? What was your maiden name?	This could be considered discrimination based on sexual orientation, gender, or national origin. Additionally, many states prohibit marital status discrimination, making any questions related to that status as further possible evidence of discriminatory hiring practices.
Military Record	What type of education, training and work experience relevant to the job did you receive while in the military?	What type of discharge did you receive?	Military discharge questions could result in obtaining medical disability information, which is protected by the Americans with Disabilities Act (ADA). These questions could also lead to discrimination claims based on legally protected information.
References	Names of appropriate employment references.	n/a	n/a
Race/Ethnicity	n/a	Any questions about race or ethnicity.	This could be considered racial or national origin discrimination.

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Name	Have you ever worked for MIT under a different name? Is any additional information relative to change of name, use of an assumed name, or nickname necessary to enable a check on your work record? If yes, explain.	Original name of an applicant whose name has been changed by court order or otherwise. Maiden name of a married woman. Has applicant ever worked under another name, or address?	This could be considered as gender, sexual orientation, marital status, or national origin discrimination.
National Origin	n/a	Inquiry into applicant's lineage, ancestry, national origin, descent, parentage, or nationality; nationality of parents or spouse; applicant's native language.	This could be considered as national origin discrimination.
Organizations	Are you a member of any professional societies or organizations, etc., related to the job? (Exclude asking about specific organizations that would indicate the race, creed, color, or national origin of its members.)	Inquiry into an applicant's membership in nonprofessional organizations (e.g., clubs, lodges, etc.)	This could be considered as racial or national origin discrimination.
Photograph	n/a	Requirement that an applicant affix a photograph to the employment application at any time before hiring.	This could be considered as racial, national origin, gender, and/or age discrimination.

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Religion	n/a	Inquiry into an applicant's religious denomination, affiliation, church, parish, pastor, or religious holidays observed. Avoid any questions regarding organizations and/or affiliations that would identify religion.	This could be considered as religious discrimination.
Salary/Rate of Pay	What are your salary expectations for this position?	What is your current salary? What does your salary history look like?	This could be viewed as gender discrimination and may violate state law. (This does violate MA state law.) *In general, salary history should not be a factor in setting compensation for a role. Instead, compensation decisions should be based on the value of the position to the organization, competition in the market, and other bona fide business factors.*
Vaccination Status (COVID-19)	MIT requires employees to be vaccinated for COVID-19 or to receive an approved exemption. Are you able to meet this requirement?	Are you vaccinated?	This could be considered religious discrimination or discrimination against those with a medical disability.

In some circumstances, a criminal record or other background check may be done for finalists. Information on MIT's CORI Policy is available on the HR website. Contact your Human Resources Officer or HR Staffing Services for guidance on background checks and for any other questions relating to the interviewing process.