

The Legal Strategist

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TEXAS ESOTERIC FACTS

This quarter's topic is the first in a series covering what you legally can not ask applicants in a job interview. It is highly recommended that you avoid asking applicants about personal characteristics that are protected by law, such as race, color, religion, sex, national origin or age. These types of questions may discourage some individuals from applying, may be viewed suspiciously by some applicants, and may be considered evidence of intent to discriminate by the EEOC. If you do not have this information when you decide who to hire, it may be easier for you to defend your business against a hiring discrimination complaint.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

- ◆ Texas boasts the nation's largest herd of whitetail deer.
- ◆ Texas includes 267,339 square miles, or 7.4% of the nation's total area.

FEATURE TOPIC: NO GO INTERVIEW QUESTIONS: PART 1

"Are you a U.S. citizen?" No matter what, it's illegal for a potential employer to ask about your national origin and whether or not you're a U.S. citizen. Because when it comes down to it, it's none of their business. What they can ask is whether or not you are authorized to work in the United States. And if you are, it's illegal for them to discriminate against you based on anything else, such as citizenship or immigration status, according to the U.S. Equal Employment Opportunity Commission.

"How old are you?" The Age Discrimination in Employment Act prevents discrimination against employees ages 40 and above. And because of that, it's completely irrelevant for an interviewer to ask you anything regarding your age or date of birth. The only question that is allowed here is "Are you at least 18 years of age?"—and that's because of labor law restrictions.

"Do you have any medical conditions or disabilities?" Potential employers are not allowed to ask if you have a disability or medical condition, if you take any prescription drugs, or if you've been diagnosed with a mental illness. What they can ask is "Are you able to perform this job with or without reasonable accommodation," and "Do you have any conditions that would keep you from performing this job," according to the Yale University Office of Career Strategy.

"Have you ever been an alcoholic or addicted to drugs?" This question falls under the same category as your disability status. Potential employers cannot ask applicants if they've ever been addicted to alcohol or drugs, or if they've ever been to rehab for these addictions. On the other hand, they are allowed to administer drug tests and ask if you're currently using any illegal drugs.

"What is your religion?" Employers are unable to discriminate against applicants for their religious beliefs, which means asking this question is totally irrelevant. The only question employers are allowed to ask is whether you'd be able to work on the weekend (and even then, the question should only be asked if the job actually requires work on the weekend).

"Is English your native language?" Just like employers are not allowed to ask where you're from, they're also not permitted to ask what your native language is—even if you're applying to a job that requires you to be bilingual. Instead, they can ask which languages you speak and how fluent you are in each.

"Are you married?" Because it's illegal for an employer to make a hiring decision based on your marital status, the subject of marriage should never come up. Instead, employers can ask if you'd be willing to relocate for the job or put in overtime.

"Do you have or are you planning on children?" This question can bring up a ton of loaded emotions and should never be asked. That's especially true since not hiring someone to avoid giving them maternity leave is incredibly illegal. Additionally, employers can't ask what you will do (or already do) for childcare and whether or not you already have children.

"Is your spouse employed and where?" Potential employers cannot ask if and where your spouse is currently employed.

If you would like more information on this or any other topic covered in *The Legal Strategist*, please contact [Scott Barrett](#) to set up a consultation.