

The Legal Strategist

S. BARRETT P.C.

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THIRD QUARTER 2024

TEXAS ESOTERIC FACTS

This quarter's topic is the second 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

FEATURE TOPIC: NO GO INTERVIEW QUESTIONS: PART 2

When Charles Whitman began his shooting rampage at the University of Texas in 1966, a lot of locals grabbed their rifles and started shooting back. They kept him pinned down until the police could sneak up the tower and kill him.

"How often are you deployed for Army Reserve training?" Due to the fact that military status is federally protected, an employer cannot inquire or make decisions based on a person's past, present, or future service. Interviewers also cannot ask what kind of discharge you received from the military, unless it is to ask whether or not it was an honorable or general discharge.

"Do you have a bank account?" Under the Fair Credit Reporting Act of 1970 and the Consumer Credit Reporting Reform Act of 1996, there are protections that exist to keep your credit history confidential. That means an employer can't ask if you have a bank account or if you've ever declared bankruptcy. However, despite these protections, an employer can still ask for a credit check. Unlike other credit inquiries, this one will not affect your credit score.

"How do you identify?" This may seem innocuous, especially since people's preferred pronouns aren't something hiring managers will always automatically know. However, it can reveal details about a person's gender, sexual orientation, or other statuses, making it against the law.

"Are you a member of a fraternity or sorority?" Employers can't ask about non-professional organizations. If they do, it can be seen as asking about race, gender, age, etc. However, you can ask "Are you in any professional associations/organizations?"

"How much do you weigh?" Unless a potential employer can definitively prove that a certain height or weight is required to perform a job, they are not permitted to inquire about either. They are able to ask if you're able to perform all of the functions of the job without an issue.

"When did you graduate from high school?" This may seem like a strange one, but it's against the rules for a reason. By knowing when you graduated, the hiring manager can estimate your age. A hiring manager can usually only discuss your age if there's a specific job requirement. For example, if you're interviewing for a bartender job, them asking if you're 21 or older isn't out of line.

"Who is your emergency contact?" Do not ask this as part of any pre-employment interview questions as this could be seen as a question about national origin or sexual orientation.

"Have you ever filed a workers compensation claim?" While a hiring manager can ask, in a general way, if you're physically capable of doing the job, they can't ask much else about your health. This includes whether you've had a workers' compensation claim in the past.

"Where do you live?" This seems like a harmless question, one that would be asked out of curiosity, but it could be interpreted as an attempt to figure out if a candidate lives in a part of town where mostly minorities live. It's best to avoid it. If you want to know whether they live nearby because punctuality is important to you and traffic is heavy where you are, then ask candidates if there's any reason they might not arrive to work on time each day.

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.