



CIVIL RIGHTS GUIDELINES FOR GRANTEES ON ACCEPTABLE INTERVIEW QUESTIONS

Interview or application questions which are not directly position-related are oftentimes considered direct evidence of discrimination (but there is no problem requesting necessary information **after** the selection process is complete and a job offer has been made).

To avoid possible liability, it is **always** advisable to avoid certain types of questions, because if a manager does not have information available during the selection process, he or she can always legitimately say the selection was not based on that information.

Questions that do not directly address the applicant's ability to perform the essential duties of the position, include the following:

- **questions about marital status** (including preferred forms of address).
- **questions about children** (including ages of children, child care arrangements, pregnancy, or future family planning).
- **questions about the ability to work overtime or to travel, as it relates to dependents or family life** (but a grantee may describe requirements for overtime or travel and ask if the applicant foresees any problem fulfilling the duties).
- **questions about disability or medical conditions** – these can be tricky, so some examples are set forth below:

Non-Disability-Related Questions (OK to ask, if asked of everyone):

Can you perform the essential functions of the job, with or without reasonable accommodation?
Describe/demonstrate how you would perform the job functions.

Do you have a cold? How did you break your leg?

Can you meet the attendance requirements? The travel requirements?

Do you illegally use drugs?

Disability-Related Questions (DO NOT ask at interviews):

Can you perform marginal functions of the job?

Do you have AIDS? Asthma?

Do you have a disability which would interfere with your performing the job?

How many days were you sick last year?

Ever filed for worker's compensation?

Ever treated for alcohol problems? Substance abuse problems?

Ever treated for mental health problems?

What prescription drugs do you take?

Medical Condition or Disability Issues

A grantee may ask about an applicant's ability to meet the essential functions of the position, with or without reasonable accommodation, or to fulfill bona fide medical qualification requirements. Essential functions are the minimum abilities necessary for safe and efficient performing of the duties of the position.

Care must be exercised, however, in asking such questions because, **unless** an accommodation constitutes an undue financial or administrative burden or fundamentally alters the nature of the program or activity (and these are very high standards to meet), the need for -- or cost of -- an accommodation **may not** influence a selection decision.

Only if the disability endangers the health and safety of others **or if** performing the essential functions endangers the health and safety of the applicant is it acceptable to exclude a disabled applicant.

Persons with contagious diseases (e.g., tuberculosis) which are in remission may not be passed over for selection based on their disability if they can perform the essential functions of the position.

Further, all HIV-positive persons are persons with disabilities, and not selecting an applicant solely on the basis of this illness is discrimination.

Medical Examinations

Nothing prohibits a grantee from conditioning an offer of service on the results of a medical examination conducted prior to the person's entrance on duty, **provided that all entering persons are subjected to such an examination regardless of disability** and the results of such an examination are used only in accordance with these guidelines.

Records Maintenance

Medical information on an applicant or service member must be collected and maintained as confidential medical records. The only authorized disclosures are to:

- selecting officials (if eligible under a special appointing authority) or officials responsible for affirmative action;
- supervisors and managers (regarding any restrictions on the duties or needed accommodations);
- first aid and safety personnel (if the condition might require emergency treatment); and
- Government officials investigating compliance with laws, regulations, and instructions relevant to equal opportunity and affirmative action for individuals with disabilities.

Statistics generated from information obtained may also be used to manage, evaluate, and report on equal opportunity and affirmative action programs.

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