

SO... HOW  
DO YOU FEEL  
ABOUT —

WHAT ARE  
YOUR THOUGHTS  
ON —

HAVE YOU  
EVER BEEN  
INVOLVED IN  
A —

BOSS

TO ASK OR  
NOT TO ASK!

JOB  
INTERVIEW  
QUESTIONS!

by Michael B. Berger, Esq.  
Illustration by staff artist Joey Phelps



**T**his is my third in a series of columns that will focus on the legal issues employers may encounter when hiring and firing employees. My initial column ran in the October 2013 issue of *Cleaner Times* | IWA and addressed the use of criminal background checks. In the December 2013 issue, I discussed an employer's use of social media to investigate prospective employees. In this column, I will review the questions that an employer may legally ask an employee during a job interview.

### The Employee Interview

The job interview is a very important part of the hiring process—for both the hiring employer and the prospective employee. During an interview, the employer will try to determine whether: 1) the candidate can do the job; 2) the candidate will fit in; and 3) whether the candidate is the best applicant for the position. The candidate will attempt to determine whether: 1) he or she wants the job; 2) he or she can do the job; and 3) the job will offer opportunities for future personal and professional growth. If handled properly, the interview is truly a two-way conversation through which the employer and the candidate learn about each other.

As is the case when using criminal background checks and social media searches during the hiring process, an employer must consider applicable laws when conducting job interviews. In particular, employers must be careful not to run afoul of anti-discrimination laws when formulating and asking questions. It is against the law to make hiring decisions based on a "protected class" such as the applicant's age, race, gender, birthplace, marital status, religion, and nationality. Therefore, questions intended to reveal such information about the candidate are improper, illegal, and should be avoided. Instead, questions should focus on whether the applicant has the proper skills to perform the job.

### Which Questions Can You Legally Ask a Job Applicant?

I am going to address a small sampling of potential problem areas and discuss whether it is legal to ask certain questions.

#### Age-Related Inquiries

You cannot ask an applicant for their age, date of birth, or questions designed to elicit an applicant's age (e.g., what year did you graduate high school). You also cannot ask for an applicant's birth certificate.

You can require a minor to submit proof of age in the form of a certificate of age or a work permit. If age is a legal requirement of the job (e.g., working as a bartender serving alcohol), you can ask the applicant if they can furnish proof of age, if hired.

#### Questions about Housing/Residence

Naturally, you can ask for the applicant's address and how long they have lived there. However, you cannot ask whether the applicant owns or rents the home, the names

and/or relationships of people the applicant lives with, or make specific inquiries about foreign addresses that might indicate the applicant's nationality.

#### Questions about Arrests and Convictions

You cannot ask whether an applicant has ever been arrested or whether the applicant has participated in civil demonstrations. You can ask whether the applicant has been convicted for a non-misdemeanor crime that might bear on the applicant's fitness for the particular job.

#### Questions about Applicant's Family

It is illegal to ask whether the applicant is married or has children (or is planning to have children). It is okay to ask a minor for the names and addresses of his or her parents or guardians. It is also okay to ask an applicant for the name of any relatives already working for the prospective employer. After the applicant is formally hired, the employer may ask for the name, relationship, and contact information of the person to contact in the event of an emergency.

#### Questions about Religion

A prospective employer cannot ask the applicant for his or her religion or any other questions that might indicate the applicant's religion. Employers also cannot ask an applicant whether he or she would be willing or able to work on a particular holiday. It is okay to advise the applicant about the normal days and hours of the job to avoid possible conflicts with the applicant's personal or religious convictions.

### Conclusion

The list of legal and illegal interview questions discussed in this article is not meant to be exhaustive. There are a number of other subjects that are potential problem areas, such as questions regarding an applicant's disability, sexual preference, and gender. As I have advised in previous columns, if you are unsure as to what you may ask a job applicant during an interview (or on a job application), please consult (in advance) with your company's attorney. In upcoming articles, I will address legal issues that may arise when firing employees.

*Michael Berger, Esq., is a Partner with Carpenter & Berger, PL. For more information, call (954) 772-0127, e-mail [mberger@carpenterberger.com](mailto:mberger@carpenterberger.com), or visit [www.carpenterberger.com](http://www.carpenterberger.com).*

**Disclaimer:** The information provided in the Law Advisor column should not be considered legal advice. This column is intended only to provide general educational information. You must never rely on the information provided here as legal advice. Only your attorney can evaluate your specific situation and provide you with legal advice. Except as provided below, you may feel free to forward, distribute, and copy the Law Advisor column, as long as you forward, distribute, and copy it without any changes and include all headers and other identifying information. You may not copy it to a website without the author's prior written consent. **cr**