Discrimination and Job Interviews

Federal and state laws prohibit most employers from discriminating among employees and job applicants on the basis of race, national origin, religion, sex or disability. The federal Age Discrimination in Employment Act protects workers 40 years of age and older from being discriminated against by employers. In addition to these protections, some state laws also prohibit discrimination on the basis of marital status or sexual orientation.

Who Anti-discrimination Laws Apply To

Questions Employers Should Not Ask

Responding to Inappropriate Questions

Questions an Employer Can Ask

Employment References

Resources

Who Anti-discrimination Laws Apply To

Generally, the federal anti-discrimination laws apply to employers with 15 or more workers, but state laws often apply to much smaller companies. These laws limit the kinds of questions an employer may ask of a job applicant, and generally permit employers to seek only the information that will help them determine an applicant's ability to do the job for which he applied.

Questions Employers Should Not Ask

Employers should avoid asking questions pertaining to a job applicant's personal life. For example, they should not ask any questions about the applicant's marital status or plans for marriage, the applicant's age or date of birth, or whether the applicant's spouse will approve of the applicant working for your organization.

Employers should also avoid asking about the kind of work an applicant's spouse may be engaged in. They should not ask about the number of children an applicant has or any plans the applicant has for starting a family, or if the applicant has elderly parents to whom he or she provides care. Other questions that should be avoided include anything related to the applicant's place of birth, national origin, religious and political affiliations.

Responding to Inappropriate Questions

If a potential employer asks you any of these questions on a job application or during a job interview, you have a couple of choices in regard to offering a response.

First, you may simply refuse to answer the offending questions. However, if you refuse to answer, you may want to remind the interviewer that questions of this nature are prohibited by law unless they are somehow relevant to the job application process.

In some very limited situations, employers can practice what would otherwise be illegal discrimination when it is based on what is known as a "bona fide occupational qualification," or BFOQ. An example of a BFOQ is a requirement that applicant's for the director of a church sponsored summer camp be a member of the sponsoring church's religion. In most cases, however, the interviewer will be hard pressed to provide a legitimate reason for asking an applicant to provide this type of information.

If you like, you may decide to answer the questions even though they are legally prohibited. In this case, if you do not receive a job offer and you can show that your answers were used to eliminate you from consideration, you may be able to file a discrimination complaint against the prospective employer.
Questions an Employer Can Ask

Generally, employers can ask the following questions:

- The applicant's name and any other names he or she has worked under.
- The applicant's address.
- If the applicant is a U.S. citizen (but not if the applicant is a naturalized citizen, since this could lead to charges of discrimination on the basis of national origin).
- If the applicant is eligible to work in the United States (employers must verify eligibility by obtaining a newly hired employee's Social Security number, a visa issued to a foreign national by the U.S or a birth certificate).
- If the applicant has ever been convicted of a crime (but not if they have ever been arrested).
- The applicant's educational background, provided that it is relevant to the job being applied for.
- The applicant's job history, including the names and addresses of former employers, the kinds of jobs previously held, the terms of previous employment, wages earned and the reasons for leaving previous jobs.
- Personal or employer references.

Employment References

While it is perfectly legal to ask for references from previous employers, employers cannot contact previous employers without getting the applicant's permission to do so. In addition, because of concerns about being sued for defamation or violating a former employee's right to privacy, getting a meaningful reference from a past employer is becoming increasingly difficult.

In most cases, references will be limited to providing information about when the applicant worked for the previous employer, the job or jobs he held while employed there, and how much money the applicant was earning at the time he left. Some states have recently enacted laws that would shield employers from liability if they give a truthful account of a previous employer's work record. Other states have such legislation under consideration.

Resources

- U.S. Equal Employment Opportunity Commission - Discrimination by Type: www.eeoc.gov/laws/types

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