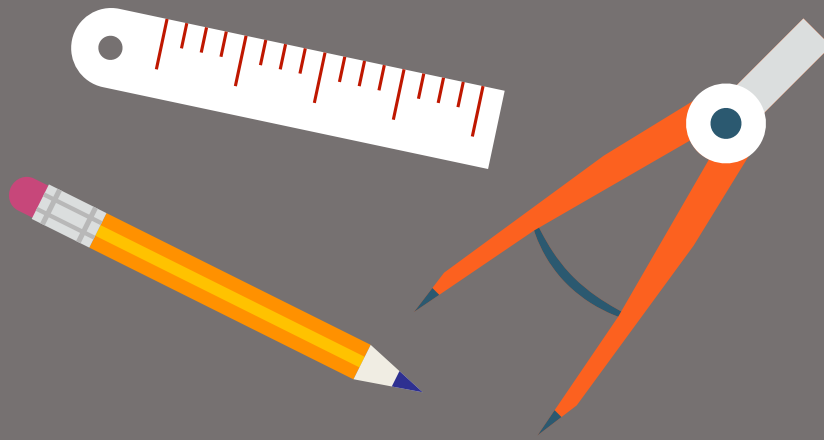


# Keep Your Interviews Legal



PRACTICAL TOOLS

# Keep Your Interviews Legal



Legal pitfalls abound in the hiring and interviewing area. Often, a triple threat is lurking.

1. You and your company can get sued – and be forced to pay significant damages and/or be forced to hire undesirable employees – for asking illegal questions during job interviews that can be used by plaintiffs to prove that you illegally discriminated in the hiring process.
2. Once the Equal Employment Opportunity Commission (EEOC) has determined that you did use illegal discriminatory practices in your hiring procedures, the feds may determine that you can't be trusted to do any hiring on your own. After scouring your hiring files for past years to search for additional misdeeds, they may then want to "supervise" and "monitor" your hiring for years to make sure you don't do it again.
3. If you don't adequately screen applicants to weed out potential troublemakers, you may actually be hiring "plaintiffs," people who make a career out of getting hired by companies and then suing them for alleged discrimination or any other supposed wrongdoing.

## Why a structured approach is the best approach

Using the structured approach outlined in ResourcefulManager Interviewing Framework can help protect you and your company from legal entanglements.

After all, if you have a system that's professionally prepared – and you stick to it – that tends to prove that you treat all applicants the same, regardless of their background. You don't single out anyone for any (potentially illegal) discriminatory reason. A structured approach proves you approach each applicant in the same manner.

To stay out of any further trouble, here's what hiring managers need to know:

- Make sure all applicants fill out an application form that asks applicants to certify to the truth of whatever information they provide. Make sure the form states that your company is an Equal Opportunity Employer and mark the form "For Office Use Only," which is your company's promise that you won't circulate the document for other uses. Have them acknowledge that employment at your company is "at will" and that employment eligibility will be verified through the I-9 process.

Then don't make any notations or markings on the form. Don't deface it or make any additions on the paper – keep any notes separate.

- Checking an applicant's background on social media may be a good idea, but it also entails risk.

If someone's Facebook page is open and not password-protected, it's not illegal to look at it. But if you happen to run across information that could become an illegal factor in your decision-making (for example, the applicant told her Facebook friends that she and her husband are trying to have a baby), you could be found guilty of illegal discrimination for refusing to hire an otherwise qualified applicant.

Some companies have solved this problem by "outsourcing" social media checks, in other words, engaging a third-party to conduct background checks including whatever information is available on social media, but to report back only on those things having a direct bearing on a candidate's ability do the job.

Here are the factors that would be illegal for you to base a hiring decision on – so don't ask about them during a job interview:

**Age** – don't ask about their date of birth and thinly-veiled questions getting at the same thing, such as what year they graduated from high school.

**Race** – in some cases it may be obvious. In any event, don't ask.

**Gender** – once again, it may be obvious. If you ask about it, you may be showing bias.

**Sexual orientation** – it may not be illegal to ask about this in all 50 states yet, but it's getting close. So stay clear.

**National origin** – don't ask about the origin of a person's name.

**Family health** – it's illegal discrimination to refuse to hire someone just because cancer runs in their family and you don't want to saddle your company's health insurance program with another employee who presents a risk for running up costs. You also can't refuse to hire someone with a sick spouse because you fear the person may be absent too much to care for the spouse.

**Marital status** – you can't refuse to hire a man or a woman because they are married and might have family responsibilities that take them away from work.

**Children or plans to have children** – you can't refuse to hire anyone because you fear they'll have to take time off to have a baby.

**Union membership at past jobs** – union membership is a so-called "protected activity" which employees have a right to engage in. This cannot be held against them in any way.

## Some gray areas to be concerned with

Here are other areas, not directly related to federal bias law and protection, to be cautious about.

### Questions about arrests or conviction records

If you're interviewing someone for a position in finance where the person would have to handle money, questions about a previous conviction for embezzlement would clearly be relevant and legal.

However, interrogating someone over an arrest for possession of a small amount of marijuana when the person was 18 and in college and the charges were dropped is probably not relevant for the position for which you are considering the applicant.

If you want to eliminate people for having criminal or arrest records, you must be able to show the direct relevance for the position the applicant would occupy. These questions must be job-related and consistent with business necessity.

Similarly, questions about DUIs when the person will not be required to drive on the job for the company are also hard to justify.

### Questions about medical history

It's risky to ask how much time an applicant spent away from work on workers' compensation insurance.

You may consider it a fair question that could show if the employee is injury-prone, or "likes to game the system" by getting paid for not working. But if you don't hire the (otherwise qualified) person, the authorities may view it as a case of you retaliating against (or punishing) the person for exercising his or her rights.

As such, it may be deemed to be illegal discrimination.

## Credit checks

This is the latest area that can get employers into trouble.

Many employers had been doing credit checks routinely on most if not all applicants, and then passing over those candidates with bad credit.

What possible relevance could credit problems, which can be due to many circumstances beyond the applicant's control (divorce, illness, identity theft, etc.), to the person's ability to do the job?

To make matters worse for employers, credit checks could easily lead to a claim of discrimination.

If you want to continue checking into credit history, it's essential to have a really solid business reason. Maybe it would pass muster if you're hiring someone for the Credit & Collections department, but for all other positions, you're probably just asking for trouble.