

## Handling illegal interview questions

By Jane Turzillo  
Editor

Maria Perez is interviewing this morning for her dream job as a paralegal, and she is ready. The 24-year-old single mother has spent the last two years attaining her associate's degree and is eager to start paying back her school loans. The job lead came from a working paralegal she met at National Association of Legal Assistants meetings. Maria is tastefully dressed in a navy blue suit with matching pumps and a few pieces of well-chosen jewelry.

The interviewer has asked many of the same questions Maria practiced with her school placement counselor. "Tell me about yourself." "What are your strengths and weaknesses?" "Tell me about a time you used initiative and hard work to complete a project at school."

Maria has answered all his questions smoothly. She feels confident and senses that he likes her. He seems very nice, and she thinks he would be a great boss.

But then he leans back in his seat and says, "Perez...that's Hispanic, isn't it? Is that your maiden name?" and "If I hire you, will you have any problems with child care if you have to work overtime?"

Stunned by the inappropriate questions, Maria was at a loss as to how to reply. She was uncertain why the interviewer asked questions that could be considered discriminatory, or what they had to do with the position.

What constitutes the discrimination? Is it asking the question, or is it hiring based on the answer?

"Both are illegal but the second is harder to prove," says Julia B. Sherlock, director of career services at Central Michigan University. "Federal and State laws such as the Americans With Disabilities Act (ADA) and the Civil Rights Act of 1964 (Title VII), amended in 1991, etc., make it illegal for an interviewer to ask you any questions regarding your age, weight, height, religion, national origin, sex, marital status, social organization memberships or any other personal information."

Smart interviewers avoid questions that could be construed as discriminatory. But some interviewers ask questions out of ignorance. Maybe they are trying to be friendly, or maybe they do have an agenda. If a question is not directly relevant to the position, it's probably inappropriate.

**"...illegal for an interviewer to ask you any questions regarding your age, weight, height, religion, national origin, sex, marital status, social organization memberships or any other personal information."**

*Julia B. Sherlock  
Director of Career Services  
Central Michigan University*

According to Jane E. Rindsberg, who currently teaches Employment Law at Roger Williams University School of Law and previously practiced in the employment area at Jones, Day, Reavis & Pogue, there is no set list of impermissible questions. "As a rule of thumb, the best thing that employers who are interviewing job applicants can do to avoid potential discrimination problems is to ask questions focused specifically on job-related and performance-related information—for example, the applicant's experience and proficiency with the tasks listed in the relevant job description." In addition, she says employers should steer clear of questions that might yield such information indirectly, unless that information is related to the applicant's ability to perform the essential functions of the position.

So what should Maria - or any applicant - do when faced with illegal questions?

She could point out that the inquiries are not appropriate for job interview questions and tell the interviewer that she is not comfortable answering them. But then she runs the risk of coming off as uncooperative, and she probably won't get the job.

Maria is free to simply answer the questions, but she should keep in mind that she might give him the wrong answers, and that could come back to haunt her.

Sherlock says, "You can try to analyze the reason behind the question and then maybe address that. For example, 'Do you have children?' Maybe the interviewer is wondering if you do have young children, would that prevent you from frequent travel? Or you can inject humor to ease out of the situation."

Maria wanted the job, so she decided to answer his questions, but kept her answers brief. She told the interviewer that she was a United States citizen and had no problem working overtime.

Rindsberg says, "If a job applicant is asked an impermissible interview question, a tactful deflection of the question will sometimes work. If it doesn't or doesn't seem appropriate, how to respond is ultimately as much a strategic decision as a legal one."

"I think people can get a good feel for the sincerity of the interviewer or that lack thereof," Sherlock says. "The best thing to do is trust your gut and be as honest and forthright as possible. If the question is making you uncomfortable, maybe you should heed that as a possible sign that this employer is not a good fit for you."

**"If a job applicant is asked an impermissible interview question, a tactful deflection of the question will sometimes work."**

*Jane E. Rindsberg, ESQ  
Roger Williams University  
School of Law.*

If an interviewer asks an inappropriate question and does not hire the applicant, the applicant may be hard pressed to prove discrimination. However, employers cannot successfully defend discrimination lawsuits by arguing they did not know the questions they asked were improper. In short, ignorance of the law is no excuse, says Rindsberg.