

Interview questions you should never ask

Finding the right employee for that special position can sometimes be a difficult task. Indeed, in the quest for the perfect employee it is easy for those involved in the recruitment process to lose sight of their statutory obligations under anti-discrimination legislation.

Federal and state anti-discrimination legislation prohibits discrimination in determining who should be offered employment. Further, in Victoria, equal opportunity legislation provides that a person must not request or require another person to supply information that could be used to form the basis of discrimination. Accordingly, information requested on application forms and questions asked in interviews, may be used to form the basis of a discrimination complaint by unsuccessful applicants.

In simple terms discrimination refers to treating a person with an identified attribute or personal characteristic less favourably than a person who does not have the attribute, or creating conditions which indirectly discriminate against those who do not have the particular attribute.

It is unlawful to discriminate against a person because of their:

- sex;
- disability/impairment;
- marital status;
- political and religious belief or activity;
- race;
- status as a parent or carer;
- age;
- physical features;
- pregnancy and potential pregnancy;
- industrial activity;
- Personal association with a person who has any of these attributes.

People conducting interviews should ask questions that are only relevant to the skills, abilities, experience and knowledge required for the position. Examples of questions which generally should **not** be asked in an interview or on an application form include the following:

- How old are you?
- What is your date of birth?
- Do you speak English at home?
- How many sick days did you take last year?
- Are you married? What is your maiden name?
- Do you reside with another person?
- Who cares for the children while you are working?
- Are you gay?

There will be circumstances in which some of the above information will be required in order to determine whether the applicant will be able to perform the job. In these circumstances consider re-phrasing the question in the following manner:

"Do you have any children?
How many children do you have?"

Replace with

"This job requires interstate travel. Are you able to perform overtime and are you able to spend time away from home?"

"Have you been on Work care?
How often do you visit your doctor?"

Replace with

"This job requires heavy lifting/sitting at a computer terminal for long periods of time. Are you able to do this?"

Is there anything in your personal circumstances which may affect your ability to carry out the inherent requirements of the job?"

To ensure that irrelevant and potentially unlawful questions are not asked, carefully identify the main tasks which will be performed and the mix of skills required to perform those tasks. Further, all staff involved in the recruitment process should be fully trained on the relevant provisions contained in the anti-discrimination legislation. This will reduce the likelihood of inappropriate questions being asked and provide a defence to an employer or principal who may otherwise be held to be liable for the actions of its employees or agents who behave in an unlawful manner.

This article is intended to provide general information in summary form on legal issues. The contents do not constitute legal advice and should not be relied upon as such.

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