

Member's Quarterly

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Feature

Recruiting 101: The Job Interview

Improper questions or discussion lead to discrimination charges

One of the greatest tools in an employer's arsenal during the recruitment process is the job interview. While this may be the golden opportunity to get face to face with a potential hire, it remains important for employers to proceed with caution.

The fundamentals

Employers should be implementing a recruitment process that is fair and objective. These measures should be the basis for all aspects of hiring — from the job posting through to the interview and offer of employment.

When preparing for the interview portion of the hiring process, best practices include:

- Develop standard questions in advance, complete with an answer guide of desired responses. Questions should be based on the essential duties and requirements of the job in question.
- Assemble a multi-person panel to conduct the interviews. More than one individual should conduct the interview to ward off bias and promote objective evaluation of the candidates.
- Ensure that all of the candidates are asked the same questions. Similarly, if there are any written tests to be completed as part of the hiring process, each candidate should receive the same test and be objectively marked.

These best practices help to ensure that a candidate's success in the recruitment process is not dictated by informal or subjective assessment on the part of an interviewer. When decisions are made on informal processes, there is a much higher risk of unconscious bias sneaking into the hiring process.

Inappropriate interview questions

Employers must take special care not to ask questions relating to prohibited grounds as set out in human rights legislation. Questions that must be avoided include those concerning:

- Age
- Ancestry, place of origin and citizenship;
- Race or ethnic origin;
- Creed (including religion and beliefs)
- Sex, sexual orientation, gender identity and/or gender expression;
- Family or marital status;
- Disability; and
- Record of offence.

There is serious risk associated with these types of questions. Specifically, the presence of these improper questions can be enough to infer that a decision to hire was influenced by such a question. In these situations, employers can face a finding of discrimination even if they had no intention of doing so.



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Limited exceptions

There are very limited exceptions to questions that can be asked that would directly or indirectly identify an individual based on a prohibited ground.

Employers are permitted to inquire as to whether a candidate is eligible to work in Canada. The question should be as simple as "Are you legally able to work in Canada?" Direct questions regarding country of origin, ethnicity or citizenship should generally be avoided.

Another exception might be where the hiring practice has a discriminatory effect, but is necessary to screen for essential duties/tasks that are required for the job. For example, if a female security guard is needed in order to perform same-gender body searches, hiring practices that eliminate male applicants may qualify as a bona fide occupational requirement and therefore be permissible.

Finally, questions related to prohibited grounds might be permissible where it is a reasonable requirement for a special interest organization. An example of this might be where the employer serves a particular religious group such that the candidate having the same religious affiliation might be a reasonable and genuine qualification.

What if the candidate brings it up?

Sometimes, a candidate might bring up information when answering a question that volunteers information under protected grounds. For example, a candidate might be discussing their ability to multi-task as a particular strength and reference their husband in the example they provide.

In normal conversations, the fact that someone mentions a spouse might lead to a number of follow up questions: What does your spouse do? How long have you been married? Do you have any children?

While these questions might seem innocent enough, they should not be pursued. After all, the answers to these questions might include additional information pertaining to family status or even sexual orientation, areas which fall under human rights and are thus prohibited.

So, what should you do if these topics inadvertently arise?

Let the candidate finish answering their question and simply move on to the next question on your list. In other words, don't get caught up in the natural temptation to follow up!

Finally, after the interview, be mindful of how human rights-related information that might have inadvertently been disclosed factors into the evaluation of the candidates. This is where the grading scheme associated with each standard question is particularly useful. Omit the information relating to prohibited ground and instead focus on the other elements of the candidate's response that fit into the grading scheme for that question.

Takeaways for Employers

Employers should ensure they are well-prepared for the interview process. The creation of standardized questions in advance minimizes the risk of improper questions, which in turn minimizes the risk of subjective hiring decisions that can lead to allegations of discrimination.

Where an employer might be recruiting for a position that may have specific requirements such that there may be exceptions to what can be asked in the interview process, legal advice is recommended to ensure that it is done properly and with minimal risk.

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