

The illegal interview questions employers can't ask you

Before you head to an interview, it's important to be aware of the questions that recruiters and employers shouldn't be asking you.

Employers use job interviews as a way to work out how suitable you are for a role – and the interview is an ideal opportunity to discuss your skills and expertise.

But there are limits. The questions you are asked in an interview should be about your ability to do the job.

“Every interview is different, but you will most likely face questions about your previous training, education and work experience,” says Jaenine Badenhurst, Associate Lawyer with [Dyhrberg Drayton Employment Law](#). “You may also be asked questions to test your skills and about your personality and work ethic.”

The questions employers can't legally ask you

Questions that dig for information that's not relevant to how suitable you are for a role may be unacceptable, if they are discriminatory. For example, the following questions may not help the interviewer to determine whether you can do the job well, and instead can be focussed on illegal grounds not to offer you employment:

- Are you married?
- Who do you vote for?
- How old are you?
- What's your current employment status?
- What religion are you?
- Are you pregnant or planning on starting a family?

Plus, if an employer asks about your sexual orientation, gender identity, relationship status, religion, nationality, ethnic origin, political opinions, employment status, age or family status, then they might be discriminating against you.

However, there are some exceptions where discrimination is permitted. “You don't need to tell an employer how old you are where age is not relevant to your ability to do a job, but there are some limited exceptions where age will be relevant to the requirements of the role,” Badenhurst says. A person must be of a certain age to enter a casino or a bar, and it might be necessary to ask for the candidate's age to make sure they can fulfil the role.”

Badenhorst notes that questions around disabilities can be discriminatory if they don't relate to your ability to do the job. "Exceptions will apply if certain physical abilities are essential for the role," she says. An example might be that an employee needs to have good eyesight in order to operate a vehicle or machinery due to health and safety requirements.

"Can you tell me X about your existing or previous employer?"

Employees usually owe a "duty of confidentiality" to their existing/previous employers. "If a prospective employer asks a question about trade secrets, client lists or intellectual property, then you should not answer because you may be in breach of your duty of confidentiality or intellectual property obligations," Badenhorst says.

In short, if the interviewer is asking for inside details on your current employer that aren't necessarily to do with your job, these questions could be inappropriate.

"Do you have 'clean slated' convictions?"

It is an offence for an employer to require, or request, that a candidate reveal their convictions which are protected by the clean slate laws, says Badenhorst.

"[The Criminal Records \(Clean Slate\) Act](#) allows people to conceal convictions that did not result in a sentence of imprisonment," she says. "The Act applies to a person who has been conviction free for seven years. The law 'hides' rather than wipes the convictions, so full criminal records will still be available for police investigations, court proceedings, firearms licensing, and for sensitive types of employment (usually working with vulnerable people and children). It is still lawful for employers to ask someone to consent to their criminal record being disclosed. Where the Act applies, no convictions will be revealed to the employer."

It may also be necessary for your employer to ask about your criminal record if that could prevent you from travelling overseas, and that is a likely part of your job. The clean slate laws do not apply to other countries.

What you can do if you're asked a question that you think is illegal

At some point, you could face a situation in an interview where you have a right to not answer a question. In some cases, you might have a duty not to answer.

Whether a question is illegal or not, when you're eager for a role, it can be hard to refuse to answer a question.

"A good strategy could be to respond with a question about how the question is relevant to the role", says Badenhorst. This might be, 'I'm interested to know how that relates to the role. Can you tell me a little more?'

“If the interviewer can’t provide a legitimate explanation, they may feel obliged to move on quickly to another question.”

If you think you’ve been discriminated against because of how you answered a question, or because you declined to answer a question, Badenhorst says you could lay a complaint with the [Human Rights Commission in New Zealand](#) or under the [Employment Relations Act](#) if you are an employee. “Ultimately, if you feel uncomfortable answering a question because it is discriminatory, or you are bound by confidentiality you should decline to answer,” she advises.

Declining a question might be as simple as, ‘I don’t think it’s appropriate for me to answer that, is there another element of the role or my skills we could discuss?’

Ultimately, what an employer asks you in an interview should relate to the job and how suitable you are for it. It can be uncomfortable to refuse or avoid a question, but knowing what’s off limits and having a simple response at the ready can help you to feel more confident and in control.

For more information about workplace discrimination, visit [Employment New Zealand](#).

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- [The best questions to ask at the end of your interview](#)
- [The elephant in the room: when to talk salary in an interview](#)