

What employers have no right to ask

Employers use a job interview as a way to work out how suitable you are for a role and an interview is an ideal opportunity for you to discuss your skills and expertise. But what kind of questions are recruiters and hirers allowed to ask?

The purpose of a job interview is to determine whether you are the most appropriate person for a particular role. “The questions you are asked should relate to your ability to perform the inherent requirements of the role,” says Trent Hancock, the Principal Lawyer at employment law firm McDonald Murholme. “Given that a person’s character traits are relevant to their ability to perform many jobs, questions that demonstrate these character traits (e.g. “Provide an example of a time you overcame a problem”) are perfectly permissible. However, questions that seek information beyond what is relevant to the role are not.”

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Questions that employers can’t legally ask

Questions that dig for information beyond what is relevant to the role are not acceptable. Examples of questions that legally cannot be asked are:

- Are you in a same-sex relationship?
- How old are you?
- What’s your ethnic background?
- What religion are you?
- Are you pregnant or planning to start a family?
- Who do you vote for?
- Do you have a physical or mental disability?

“Section 107 of the Equal Opportunity Act 2010 provides that a person must not request or require another person to supply information that could be used by the first

person to form the basis of discrimination against the other person,” says Hancock. “For example, a person should not be asked to supply information around their age, gender, ethnicity or sexuality. The reason questions relating to these factors are unlawful is for the simple fact that these factors are not relevant to an employee’s ability to perform a job.”

An exception to this is in section 108 of the Act and this allows such information to be requested if the information is reasonably required for a non-discriminatory purpose. “For example, if a person was applying for a role at a warehouse that required heavy lifting, it would be lawful for the employer to ask about a physical disability insofar as it affected the interviewee’s ability to perform heavy lifting,” Hancock says.

Hancock adds that it is unlawful at the federal level under the Fair Work Act 2009 to discriminate against a prospective employee on the basis of their race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

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

Regardless of whether a question is illegal or not, when you’re eager for a role, it’s hard to refuse to answer a question. “If an interviewer steps out of line and asks an unlawful question, politely decline to answer the question on the basis that the answer is not relevant to your ability to perform the role,” Hancock says. “Ideally, this response will cause the interviewer to realise their misstep and withdraw the question.”

By sensitively responding to what you think is an unlawful question, it may also encourage the employer to explain why they think the question is relevant to the role. “If it’s genuine and reasonable, it will render the question lawful,” says Hancock.

It is your right to not answer a question on the basis of discrimination, and Hancock says candidates should stand firm if they are being asked unlawful questions. “It is unlawful for employers to discriminate against candidates on the basis of certain attributes, and if they do, the candidate may be able to take legal action against them,” he says.

Success in a job interview comes down to how prepared you are, and that includes knowing the ins and outs of what employers are and are not allowed to ask you.

For more information on workplace discrimination, visit [Fair Work](#).

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