



Navigating the Legal Landmines in the Interview Process

CBIA

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Connecticut's “Ban the Box” & Use of Criminal History



- Employers prohibited from inquiring about prior arrests, criminal charges or convictions on an initial employment application
- Exceptions:
 - Employer required to inquire by applicable state or federal law; or
 - A security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment
- May not **require** disclosure of any arrest, criminal charge or conviction, the records of which have been erased
- May not **refuse to hire an applicant** because of erased records

Connecticut's Pay Equity Law



- May not **inquire or direct a third party to inquire** about a prospective employee's wage history
- Exceptions:
 - Voluntary disclosure by prospective employee
 - Inquiries pursuant to applicable law
- May ask about other elements of compensation (e.g., stock options) but not value

Preserve Employment At-Will



Avoid Implied Making Express or Implied Contracts

- “Do a good job and we will take care of you”
- “Employees are never terminated without cause.”
- “You have job security as long as you get good performance reviews.”
- “You have a job for life if you are committed to performing at a high level”
- “We give raises every year”



Questions Should Be Job-Related



Avoid asking personal questions

Connecticut Law



It is illegal to request or require information from an employee or job applicant relating to:

- Individual's child-bearing age or plans;
- Pregnancy;
- Function of the individual's reproductive system;
- Use of birth control methods;
- Individual familial responsibilities

Improper Questions



- What is your maiden name?
- Are you single?
- Do you wish to be addressed as Ms., Mrs., or Miss.?
- Are you a member of the military reserves?
- What is your native language?
- Is your accent Chinese (or French, Hispanic, etc.)?

Improper Questions



- Where are you from?
- Is that a Brazilian (or Italian, Spanish, etc.) name?
- What are your thoughts about labor unions?
- Are you a member of any clubs or organizations?
- What is your religion?

Permissible Questions



- Are you willing to relocate?
- This job requires overtime? Is that a problem for you?
- What hours can you work?
- Can you work on weekends?
- What hours and days can you work?
- Are you willing to travel?
- What qualifications do you possess for this job?

Permissible Questions



- Have you ever been terminated from prior employment?
- Asking about gaps in employment and short period of employment
- Have you ever worked here before?
- Asking about prior work experiences, job duties, qualifications, certifications, strengths and weaknesses
- Have you signed any agreements that may restrict your ability to work here (e.g., non-compete, non-solicitation)?

Age Discrimination



- Lawful to ask: “Are you 18 or older”
- Do not ask:
 - How old are you or what is your date of birth
 - What year did you graduate from high school
 - Any questions that seeks information about the person’s age—e.g., “When do you plan to retire?” or “How many more years do you plan to work?”
 - Would you be comfortable reporting to a supervisor or manager that is younger than you?

The Americans With Disabilities Act (ADA)



An employer may not ask disability-related questions or conduct a medical examination until after a conditional, real job offer is made



Not okay to ask pre-offer:



Cannot ask any question likely to elicit information about an impairment.

- Do you need an accommodation to perform this job?
- How many sick days did you use last year?
- Have you ever filed a workers' compensation claim?
- What medications are you currently taking?
- Have you ever been addicted to drugs?
- Any family medical issues?

Okay to ask **pre-offer**:



- Can you perform the job with or without a reasonable accommodation?
- Do you need a reasonable accommodation for the hiring process?
- If disability is obvious, may ask whether and what type of accommodation the applicant needs
- Can you meet the attendance and overtime requirements?
- Do you currently use or have you ever used illegal drugs?

Post-offer inquiries and medical examinations



- May ask disability related questions and perform medical examinations provided:
 - All applicants in the same job category are subjected to the examination/inquiry and
 - Medical information is kept confidential
- If rescind a job offer because of a medical test or question, must demonstrate that the reason is job-related and consistent with business necessity

General Legal Tips for Interviewing



- Small talk can lead to big problems
 - Be careful about going down “rabbit holes”
- Questions should be job-related
- Take careful notes—make them **factual**
 - Notes are discoverable
- Ask a series of **standard** questions
- Document your hiring decision
 - Provide objective reasons why the person was selected or not selected
 - Stating, “not a good fit” is a **subjective** opinion
 - Stating, “could not work overtime” or “could not work weekends” is **objective**