



Do's and Don'ts When Interviewing Candidates in California

BUSINESS & PEOPLE STRATEGY CONSULTING GROUP

FREE WEBINAR SERIES

Agenda

- A Word of Caution
- The Don'ts (Avoid at All Costs)
- The Do's (Best Practices)

A WORD OF CAUTION

Negligent Hiring

- Negligent hiring and retention doctrine.
- Allows plaintiffs to recover damage in situations in which the employer negligently hired or retained an employee.
- Employer has duty to exercise reasonable care for the safety of member of the general public and their employees by their presence on the job.
- Liability exists when tendencies are known or should have been discovered by a reasonable investigation (*Phillips v. TLC Plumbing, Inc.*)

Relationship to Interviewing

Liabilities and penalties are based upon:

- Existence of the employment relationship (you hired them)
- Incompetence of the employee hired
- Employer's actual or constructive knowledge of the incompetence
- Employer's legal duty to select fit and competent employees
- Employee's act or omission caused the injury/damage
- Employer's negligence in hiring and/or retaining the employee resulted in the injury/damage

THE DON'TS

Overpromising

Avoid exaggerating the employment opportunity in the interview.

Helmer v Bingham Toyota Isuzu

- Interviewing supervisor misrepresented that the candidate would earn substantially more than the candidate's current job.
- Candidate accepted job and after several months the salary was lower than represented and he was fired.
- Sued and was awarded over \$1M (future income and punitive damages).

Inducement to leave secured employment by knowingly making false promises about the terms of future employment.

Inconsistent Interviews

Avoid applying different sets of standards and subsequent questions when interviewing candidates for the same position may increase the chances of inappropriate and discriminatory questions.

Watch Your Words

Avoid words and statements that may contradict the at-will employment relationship and/or imply employment. This includes advertising the job.

- We are hiring a permanent part/full-time position.
- Just do your job and you will grow with the company.
- You'll be here as long as your sales are above budget.
- As long as you keep achieving your goals, you will have a place here.

Inappropriate Questions

- Avoid asking questions that are not job related.
- Asking non-job related questions increases the chances of violating candidate, privacy and labor laws.
- Avoid questions related to protected classes including age, race, ethnicity, disability, marital status, genetics, sexual orientation, veteran status, religion, ancestry, age (over 40), citizenship, family status.

Examples of Questions to Avoid

- Are you a US citizen?
- Do you own your own car/vehicle?
- Are you single/married?
- Do you have a disability that might interfere with this job?
- Do you have children/how many children do you have/how old are your kids?
- How many days were you sick last year?
- How far are you along with your pregnancy/when are you due?
- In what country were you born?
- What does your spouse do for a living?

Examples of Questions to Avoid

- I love that accent. Where are you from?
- Who are you going to vote for in the presidential election?
- Is that a (Jewish, Chinese, French, German, etc.) name?
- Have you ever filed a workers' compensation claim/been injured on the job?
- I noticed you are limping. What happened?
- Have you ever been arrested?
- Do you live alone?
- How much time do you think you will need away from work after you have your baby?
- What year did you graduate from high school/college?

Other Prohibited Inquiries

- Maiden name
- Questions regarding owning or renting (residence)
- Birthplace of candidate or candidate's parents, spouse or relatives
- Religion and days they observe for their religion
- Name/address of relative, spouse or children of adult candidates
- Questions about height/weight
- Request for photo with application/resume
- General health, medical conditions, or mental/physical disabilities (unless job related and consistent with business necessity)
- Military discharge or service dates
- Name, address & relationship of relative to be notified in case of accident or emergency

Be Careful With...

- Questions about hobbies and outside activities that may indicate race, religion, national origin, age or other protected classes.
- Questions about languages spoken unless it is a bona fide job requirement.
- Questions about whether the candidate has made provisions for child care when you know they have children.
- Questions about whether the candidate plans to marry or have children.

THE DO'S

Training

Having untrained employees and supervisors conduct interviews increases the odds of:

Negligent hiring

Poor hiring decisions

Poor performance

...and of course

Lawsuits for discrimination and other potential unlawful behavior associated with interviewing and hiring.

BEST PRACTICE: Have a well defined hiring and interviewing process that includes training anyone involved in the interviewing and decision making process.

Be Prepared

Nothing says unprofessional more than:

Being late to your interview.

Not reviewing the resume/application prior to the interview.

Not reviewing the job description prior to the interview.

Interruptions and distractions during the interview.

Being intimidating, overly serious, or dominating.

BEST PRACTICE: Review the job description and resume/application prior to the interview. Have your questions prepared and notebook/pen on your desk.

Consistent Interviews

- Create a list of question and stick to them.
- Be sure all questions are strictly job-related
- When multiple individuals are interviewing the candidates, be sure they are trained and use a consistent approach.

- **BEST PRACTICE:** To avoid asking the same individual the same questions with each interviewer, break the questions up and have each interviewer focus on a subset of the questions. These may be competency, behavior, or skills related.

Appropriate Questions

- Only ask questions that are related to the job.
- Stick to your list of questions.
- Using behavioral, competency and Socratic questioning techniques to expand upon questions is acceptable.

- **BEST PRACTICE:** When a candidate shifts away from the topic or asks personal questions, avoid engaging the conversation and pull the interview back in to the questions.

Asking the Right Questions

What is your birth date/age?

- Are you over 18 years of age/if under 18 can you provide a work permit when employed?

Are you a US citizen?

- Once hired, can you submit verification of your legal right to work in the US?

Do you have any physical or mental disabilities that will affect your ability to do the job?

- Can you perform the essential functions of the job with or without reasonable accommodation?

Does your religion prevent you from working weekends or holidays?

- These are the regular days, hours, shifts that are required for the job.

What type of discharge did you receive from your military service?

- What relevant skills did you acquire during your service?

Have you ever been arrested?

- Have you been convicted of a crime in the past 7 years other than misdemeanor marijuana possession over 2 years old?

Other Permissible Questions

Do you have transportation to get to work?

Are you willing and able to travel for work?

What qualifications do you possess for this job?

Can you describe your relationship with your previous supervisor?

Can you work overtime/weekends if necessary?

What is your current place of residence?

Why are you leaving your current job?

Why did you apply for this job?

Do you have any relatives who work for this company?

What type of environment do you work best in?

What is the name and address of a person to be notified in case of an accident or emergency?

Have you ever used another name?

OTHER CONSIDERATIONS

Taking Notes

An interviewer made a notation on the application of candidate who applied to work at the jewelry counter of the department store. He noted “no jew” to reflect that the candidate had no experience selling jewelry. It resulted in religious discrimination charges against the store.

The moral of the story...

- Notations on applications and resumes can subject employers to discrimination claims.
- Only take complete and legible notes.
- Avoid any notes, references, or codes related to any protected classes, physical characteristics and subjective information.

Expect to be Interviewed

- A good interview should consist of both parties interviewing each other.
- Provide candidates with the opportunity to ask questions.
- Be prepared to discuss such topics as the role, expectations, your personal experience at the company, and culture.
- When you don't have an answer...don't fake it.

You Both Need Each Other

- The premise of an interview is that the company needs someone for a role and the candidate is seeking to fill that role...thus both are looking for something from the interaction.
- Some individuals have excellent interviewing skills while others may not be as polished...this doesn't mean that either is necessarily better or worse for the position.
- Be friendly, courteous, and open...cold, intimidating, and overly serious interviewing is serves no purpose but to satisfy the interviewer.

Employment Applications

Be sure to review your employment applications to ensure that there are no questions that relate to protected classes such as (commonly seen on applications):

- Dates of education/graduation
- Date of birth
- Private/protected information (i.e., SSN)
- Questions about arrests or non-compliant convictions verbiage
- Questions about previous workplace injuries/work comp claims
- Contact information for relative

QUESTIONS

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