



# Guide to laws and regulations for restaurant owners

## *INTERVIEW QUESTIONS*

There are very few questions that are illegal, in themselves, to ask a prospective employee during a job interview. Employers could face trouble, though, if those interview questions could support a potential discrimination lawsuit.

It is illegal to discriminate against anybody because of: age (if over 40), race, religion, creed, color, sex, sexual orientation, disability, marital status, national origin, ancestry, arrest record, conviction record, membership in any component of the armed forces, labor organization membership, the making of a discrimination complaint, or the use or non-use of lawful products off the employer's premises during non-working hours.

If you ask a question relating to any of the protected bases above, you could be accused of using that information to illegally discriminate. Any question an employer asks should directly relate to a prospective employee's ability to do the job.

### Questions to avoid

- How old are you? What is your date of birth?  
(Potential age discrimination.)
- Have you ever been arrested?  
(Wisconsin law prohibits inquiries about past arrest records with no subsequent conviction.)

### Questions you can ask

- Are you at least 18?  
(Relevant to the job because of child labor restrictions on working hours, alcohol service, operating certain equipment.)
- Do you have a current arrest pending against you?  
(Relevant if the arrest is for an offense substantially related to the prospective job. An employer may delay offering or refusing a job until the arrest is resolved; may advise the applicant to reapply after the arrest is resolved; or may refuse employment.)
- Have you ever been convicted of a crime?  
(Relevant if the conviction is for an offense substantially related to the prospective job. Example: you may not deny a dishwasher employment for a drunk driving conviction. You may have reason to deny a job to a bartender who has been convicted for serving alcohol to underage patrons. If you do ask about

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# **INTERVIEW QUESTIONS** *(CONTINUED)*

### Questions to avoid

- What is your national origin? Are you a citizen of the United States?  
(Potential discrimination on the basis of national origin.)
- Do you have any disabilities? What is your health history? Have you ever filed a worker's compensation claim?  
(Potential discrimination under the federal Americans with Disabilities Act.)
- What is your maiden name? What is your spouse's name? What is your marital status?  
(Potential sex discrimination or discrimination on the basis of marital status.)

### Questions you can ask

convictions, include a disclaimer statement that "a conviction will not necessarily disqualify you from employment. It will be considered only as it may relate to the job you are seeking.)

- Are you legally permitted to work in the United States?  
(Relevant because all employers must verify an employee's legal right to work in the U.S.)
- Can you perform all the duties of the job for which you are applying? Could you perform the duties with some accommodations?  
(Relevant because you are asking about an applicant's ability to do the job.)
- Have you been employed under any other names?  
(Relevant for the purpose of checking past employment references.)
- What is your educational background?  
(Relevant if the information is used to determine if an applicant has the necessary skills for the job. Educational requirements for a particular job should be uniformly applied to all applicants in similar positions.)
- Are you/were you a member of the military?  
(Relevant if the information is used to determine training or experience relevant to the job. However, discrimination against any applicant because of membership in the armed forces is illegal.)

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# ***INTERVIEW QUESTIONS*** (CONTINUED)

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## **Questions to avoid**

- Do you have children? What are your child care arrangements? Are you pregnant?  
(Potential sex discrimination.)
- Do you smoke? Do you drink alcohol?  
(Potential discrimination against people who use lawful substances away from work.)
- What is your credit history?  
(Because census records show minorities are, on average, poorer than whites, could be used to illegally discriminate on the basis of race or ethnic origin.)

## **Questions you can ask**

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# Restaurant owners' frequently asked questions *INTERVIEW QUESTIONS*

**Q:** I just found out a waitress I recently hired is pregnant. Shouldn't she have told me this during the job interview? How do I handle this situation now?

**A:** Your waitress was not obligated to tell you about the pregnancy during the job interview. Also, it would not have been wise to ask about pregnancy during the interview because, if you had denied her a job, she could have brought a sex discrimination lawsuit against you.

Now that she's on staff, what do you do? Be careful with your policies toward pregnant employees. As a rule of thumb, treat a pregnancy like a temporary medical disability. Any policy that treats pregnant employees less favorably than other employees with a temporary medical disability, could be considered discriminatory.

If you have a policy of offering temporarily disabled workers some alternative "light" work duty, offer light duty to your waitress when/if she can no longer do her regular duties. If your policy is not to allow anyone to work until they can do their regular job, enforce that with your waitress. The important thing is to be consistent and apply your policy uniformly.

Discuss with the employee any job duties that become difficult for her to do. You must offer to make any reasonable accommodations that would help her do the job. This could take the form of a shortened work week, shifting sidework responsibilities, etc.

If you have safety concerns, you may require your waitress bring a doctor's statement regarding her physical ability to continue working and what duties she can and cannot perform. This assessment may change as the pregnancy progresses.

The bottom line is if your waitress wants to

continue to work, and is able to perform her duties with reasonable accommodations, you must allow her to continue working. Remember to treat her as you would any other temporarily disabled employee.

Another thing of note: check the HERO guide on family and medical leave laws. Depending on your number of employees, and how long your waitress has worked for you, she may qualify for unpaid medical leave.

**Q:** I hired a new manager last week. Since then, I found out through the grapevine, that he has an alcohol problem. How should I handle this? Should I let him go now to avoid any future problems?

**A:** If you were to let him go before experiencing any problems, you could face a potential discrimination lawsuit because alcoholism is considered a protected disability under the Americans with Disabilities act.

So how do you handle this potential problem? Carefully. You may hold anyone with a disability to the same standards as your other employees. Hopefully you have a written policy prohibiting alcohol or illegal drug use on the job. If your new manager violates this policy, follow the disciplinary action you've outlined in the policy. Do not mention to him the rumors you heard about his drinking problem.

If he is not drinking or under the influence on the job, but you still believe alcohol is affecting his job performance (i.e. arriving late for work, calling in sick) treat the situation the way you would any poor performance situation. Tell the employee he is not meeting expectations and what he must do to improve. If the situation does not improve, you may take steps from warnings to termination. The key is to be fair and treat your manager like any other

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## Restaurant owners' frequently asked questions

# **INTERVIEW QUESTIONS** (CONTINUED)

employee.

If your manager tells you his performance problems are due to alcoholism, you must ask him what you can do to help him achieve your performance expectations -- this is a requirement under the ADA for employees with disabilities. You may need to be flexible with scheduling; for example, allow the manager time off during the day to attend AA meetings if he requests it.

**Q:** I have several employees who are often late or miss work because their young kids get sick or a babysitter doesn't arrive. I'm interviewing another woman right now for a job at our restaurant and I really want to avoid this situation. Can I ask if she has children?

**A:** It would not be a good idea. Asking about children is not illegal, per se, but if you ask her if she has children and later deny her a job, (even if that was not your deciding factor) she could claim she was illegally discriminated against based on her sex.

The real issue here is not children, but whether an employee is reliable and punctual. Ask her for multiple references and carefully check them. If her former employers say she has an absenteeism prob-

lem, that could be a legitimate reason for not hiring her.

You could also ask your prospective employee why she is making a job change at this time. She may volunteer information that will give you insight about her family situation and how it may affect her work. (i.e. your business is offering hours that make it easier to be with her children; your restaurant is closer to her family's day care.) If she is changing jobs to make it easier for her to meet family and work obligations, that may give you a different perspective on what former employers say about her.

Remember, your hiring decision should be based on her reliability -- a legitimate job concern -- and not on her family status.

**Q:** How should I put together my job application forms to avoid any possible discrimination claims?

**A:** You can use WRA's. In your HERO manual is a sample job application for restaurants that meets all federal and state regulations. It is located in the "Frequently Used Forms" section in a plastic sheet protector so you will always have a good quality original to photocopy.

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