

# Could A Simple Interview Question Lead to a New York or New Jersey Employment Lawsuit?

by Christina M. Michelson on August 22, 2012

When hiring a new employee for your New York or New Jersey business, the interview process plays a key role. It allows the employer to meet face to face with each candidate and determine if they would be a good fit for the organization.

While the interview is often an employer's best opportunity to learn about a job applicant's abilities, there are certain questions that could lead to legal trouble. In fact, a large percentage of discrimination complaints arise from the interviewing process.

The rule of thumb to remember (and make sure all hiring managers understand) is that all inquiries should be job-related. In other words, you should have a business necessity for asking every interview question and be able to provide business justification for each question.

Below are several areas of inquiry that are generally not business-related and, therefore, could lead to a lawsuit:

- Are you married? Divorced?
- How old are you?
- Do you have children? If so, how many and how old are they?
- What are your daycare plans?
- Do you suffer from an illness or disability?
- Do you regularly take any prescription drugs?
- Have you ever undergone treatment for drug addiction or alcoholism?
- What is your nationality, race, or religious background?

These questions are generally viewed by the Equal Employment Opportunity Commission ("EEOC") and the courts as inappropriate in the application process; however, they are not entirely off limits under federal and state labor laws. Rather, the employer must be able to show that the question relates to a bona fide occupational qualification and establish that there is a "business necessity" for the inquiry. This means that the characteristic that the applicant is questioned about is needed for the performance of the particular job. Further, it should be noted that the EEOC prohibits employers from making pre-employment inquiries about disability.

The EEOC guidelines prohibit the use of all pre-employment inquiries that disproportionately impact members of minority groups that are not valid predictors of successful job performance or that cannot be justified by "business necessity." Thus, it is

important that hiring managers are properly trained and do not have a discriminatory intent when they inquire into an applicant's marital status or racial background because such questions can still lead to unnecessary legal issues. Therefore, it is important to make sure that all hiring managers are well trained and provided with clear guidelines regarding the interview process.

*If you have any questions about alternative dispute resolution or would like to discuss this topic, please contact me, Christina Michelson, or the Scarinci Hollenbeck attorney with whom you work.*