

## Guide to Interview Questions – What You Can and Can't Ask

The Americans with Disabilities Act (ADA) prohibits pre-offer questions about the existence, nature, or severity of a disability, directly or indirectly. This includes questions asked during interviews as well as pre-printed questions on application forms. Employers, however, may ask narrowly-tailored questions about an applicant's:

- ability to perform essential job functions (with or without reasonable accommodation);
- previous job experience;
- skills required to perform the job;
- educational background; and
- required certifications/licenses.

Employers may also ask applicants to describe or demonstrate how they would perform job tasks during the application and interview process.

The Equal Employment Opportunity Commission (EEOC) has given the following examples of questions they consider disability related, and thus **improper**:

- Do you have AIDS?
- Do you have asthma?
- Do you have a disability that would interfere with your ability to perform this job?
- How many days were you sick last year?
- How often will your condition require you to miss work?
- Have you ever filed for workers' compensation?
- Have you ever been injured on the job?
- How much alcohol do you drink each week?
- Have you ever been treated for mental health problems?
- What prescription drugs are you currently taking?

These questions are improper under the ADA because they seek specific information that may lead an employer to conclude that an individual has a disability. This is true even if the applicant answers each of the questions in the negative.

Although these questions are prohibited, many can be reworded to address an employer's real concern about an applicant's ability to perform the job while steering clear of the disability issue. For instance, asking an applicant how many days he or she was sick from work last year is impermissible, because frequent absences for sickness may indicate that an individual has AIDS, cancer, or another disability. However, an employer has the right to know whether an applicant can meet the attendance requirements of the job for which he or she is applying and may ask how many days in general the applicant missed from work last year. Although the difference may be subtle, the second question is proper because it provides details about ability to fulfill essential functions of the job while not pursuing information specifically related to a disability.

Another tricky area involves inquiries about an applicant's ability to perform basic life activities. According to the EEOC, questions such as "Can you stand?" or "Can you walk?" frequently have no bearing on an applicant's ability to perform a job. Instead of asking these types of broad questions, employer should focus on the applicants *ability* to perform *essential functions* of the job. Instead of asking if an employer can walk, the employer could ask: "This job requires you to move files from one floor to another. Can you perform that task with or without reasonable accommodation?"

The following are examples of impermissible pre-offer questions and alternative permissible questions.

<u>Impermissible Question</u>	<u>Permissible Question</u>
Do you have any impairments that would keep you from doing this job?	Please look at the attached job description. Can you perform these essential tasks, with or without reasonable accommodation?
What prescription drugs are you currently taking?	
Can you see, walk, or stand?	<ul style="list-style-type: none"> <li>• Tell me about your skills and how they will allow you to perform this job.</li> <li>• This job requires you to <u>move</u> 45 pound boxes from area to another. Are you able to do that with or without reasonable accommodation?</li> <li>• This planning and zoning position requires the use of maps and plats - please show me the relevant project boundaries.</li> <li>• Let me show you our emergency dispatch center – can you describe to me how you can do this job without being able see/hear?</li> <li>• This job requires you touse a keyboard and computer screen. Please describe or demonstrate how you would perform that task.</li> <li>• Are there resources you can direct us to that will help us better understand our accommodation options?</li> </ul>
Do you ever expect to be able to walk again?	
Do you need a prosthesis to work?	
I don't think a blind person could possibly do this job; why do you think you could?	
How did you lose your hand?	
Does that oxygen tank you carry around mean you will need a lot of breaks?	This job requires you to work 3 to 4 hours at a time without taking a break. Are you able to do that with or without reasonable accommodation?
Do you have any health issues that may cause you to miss work?	Can you meet the attendance requirements of this job?
Have you ever filed for workers' compensation?	Have you ever received a commendation or disciplinary action for workplace safety?
Have you ever been injured on the job?	
How many days were you sick last year?	How many days were you absent from work last year?

Have you used illegal drugs in the past? <sup>1</sup>	Are you currently using illegal drugs?
How much alcohol do you drink each week?	<ul style="list-style-type: none"> <li>• What were your responsibilities at your previous job, and how did you meet those responsibilities?</li> <li>• Have you ever been disciplined for tardiness?</li> </ul>
Have you ever been treated for alcohol problems?	<ul style="list-style-type: none"> <li>• Did your previous employer ever take any disciplinary action against you? Why?</li> <li>• Have you ever come to work intoxicated?</li> <li>• Have you ever consumed alcohol at work?</li> </ul>
Do you have any obligation to provide special care to a family member?	This job requires sometimes working late without a lot of warning. Can you do that?
Have you ever been treated for mental health problems?	<ul style="list-style-type: none"> <li>• Why did you leave your previous employment?</li> <li>• Have you ever been really angry with your supervisor? Why? How did you resolve it?</li> <li>• Tell me how you have handled very stressful situations at work.</li> <li>• Please draft an essay on _____. I will be back to pick up your work product in ten minutes.</li> </ul>
Do you have AIDS?	If you are offered this job, the offer will be contingent on you passing a medical review.
Do you have epilepsy or are you subject to seizures?	This position requires you to obtain a commercial driver's license; can you meet the requirements to be properly licensed?

The rules of the game change once a “conditional” offer of employment is made to an applicant. Employers may condition employment on passing a medical exam, for instance. After an offer is made, an employer may ask disability-related questions and inquire about medical exams, if (but only if):

1. all new employees in the same job category are subjected to the same examination/questions, regardless of disability; and
2. the information obtained is kept confidential in accordance with ADA.

---

<sup>1</sup> Certain criminal justice positions allow more leeway into asking about past unlawful behavior and mental stability history.