Legal alternatives to illegal interview questions

Asking improper interview questions can lead to discrimination or wrongful-discharge lawsuits. So how do you get the information you need without putting your company at risk?

Protect yourself and your organization from legal trouble by carefully planning your interview questions. Start by conducting a job analysis to objectively identify the core competencies required for the position. Then, develop a list of behavior-based interview questions to identify those competencies. When broaching sensitive issues such as age, marital status or disabilities, consider the following legal alternatives to illegal interview questions:

Root Concern	Questions	
Legal ability to work	*Do not ask*	» *Are you a U.S. citizen?*
	Ask instead	» *Are you authorized to work in the U.S.?*
		While you can't ask about citizenship, you can ask whether or not the candidate is authorized for work--and legally able to work for your company.
Work availability	*Do not ask*	» *What religion are you?*
	Ask instead	» *Are you able to work with our required schedule?*
		At all costs, refrain from asking any questions about religion. To find out whether or not a candidate's religious practices may interfere with his ability to work when you need him to, just ask directly when he's able to work.
Long-term commitment	*Do not ask*	» *How many years do you plan to work before retiring?*
	Do not ask	» *If you get pregnant, will you come back after maternity leave?*
	Ask instead	» *What are your long-term career goals?*
		Although you may be concerned about hiring an older worker (just to have him retire in a year or two), or a young woman who plans to get pregnant in the next year, you can't legally dismiss applicants for these reasons. As an alternative, ask candidates about their career plans for the future--you can effectively gauge long-term commitment level without discriminating.

Root Concern	Questions
Work availability	**Do not ask** » *Do you have children? How old are they?*
	Ask instead » *Are you able to travel or work overtime on short notice?*
	Again, if what you really want to know is whether family obligations will interfere with work availability, be direct.
Flexibility, ability to meet new challenges	**Do not ask** » *How do you feel about managing men/women?*
	Ask instead » *Can you describe a situation where you've had to take on new tasks or roles?*
	Both questions will help you gauge a candidate's adaptability, but only the second is acceptable.
Ability to perform on-the-job	**Do not ask** » *Do you smoke or drink?*
	Ask instead » *Have you ever been disciplined for violating company policies forbidding the use of alcohol or tobacco products?*
	You probably want to avoid hiring someone with a chronic drinking problem, or who will take cigarette breaks every hour. In addition to being disruptive, these habits may affect your company's insurance rates. Instead of asking directly, find out if they've had trouble with company health policies in the past.
Physical ability to perform a job	**Do not ask** » *Do you have any disabilities?*
	Ask instead » *Are you able to perform the specific duties of this position, with or without reasonable accommodations?*
	Physical or mental disabilities may adversely impact a candidate's ability to perform a job. However, it is illegal to ask about disabilities. To avoid discriminating, focus questions on the candidate's ability to carry out job responsibilities.

Sources:

HR World Editors. http://www.hrworld.com/features/30-interview-questions-111507/ July 2010.

Poskey, Mike. Interview for Success and Avoid the Legal Pitfalls. ZERORISK HR, Inc. Retrieved from http://www.zeroriskhr.com/articles/interviewforsuccess.aspx July 2010.