Tips for Handling Inappropriate and Illegal Interview Questions

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An inappropriate question probes for information that is not appropriate for an employer/interviewer to know at the time of the interview, but the intent behind the question may not be necessarily illegal. An illegal question probes for information that the interviewer has no right to know, and it is of course totally inappropriate. The infamous Miranda Rights phrase “Anything you say can be used against you…” applies to job candidates as well as to persons accused of breaking the law, strange as this correlation may sound. Employers are constantly searching for any information that will either make you their ideal finalist, or eliminate you from the competition (think “The Apprentice”).

Job candidates must always exercise a particular level of judiciousness in terms of how and why they believe they need to disclose personal and sensitive information, as well as how to fend off illegal or inappropriate questions. More importantly, candidates must first demonstrate competency and good fit for the job before the issue of disclosure even arises. Then, and only then, should there be consideration given to what disclosures need to be made.

Generally when and how you want to disclose your race, ethnicity, disability, religion, sexual orientation, marital status, nationality and other personal bits should be your decision. But what if you get asked questions probing for sensitive information during an interview? How should you handle them? If disclosing would be important to you, because you are searching for a position that will be receptive to your personal situation, then you owe it to yourself and the future employer to be honest, even though
the questions may not be appropriate or even legal for the interview. However, how you answer sensitive questions will make a big difference in whether a job offer is extended.

A basic rule to keep in mind during interviews is that during the pre-employment stage, the focus of the interview should be on your skills and abilities to perform the required job functions. Common reasons for why inappropriate questions might be asked during an interview include: 1) naiveté of the interviewer, as not all of them have been trained or experienced in serving as educated and law-abiding hiring officials; 2) blatant snoopiness; and/or 3) a strategic and deliberate plan to observe how you react under pressure. Therefore, during the course of an interview screening process you may meet with a parent committee, group of teachers, a group of students, and even new HR officials who may not understand nor appreciate the nuances of appropriate versus inappropriate questions. In all situations the professional way to respond to illegal or inappropriate questions is to be tactful, and to ask clarification questions whenever needed. Try to identify what is really being asked, and then respond to the portion of the question that pertains to the position being sought.

For example, during one of my interviews in a geographically remote location I was asked by a group of students whether I was married. I mulled over three possible choices:

1) I could inform the students that this was an illegal question, and that I didn’t need to answer it (and risk offending them); or

2) I could bluntly and honestly identify my marital status (giving away information that was not a need-to-know at that time); or

3) I could provide a slightly evasive, but honest response (diplomatic); or
4) I could ask a clarifying question (which would give me information about why the question was important, and would also give me time to develop an appropriate response).

I decided to opt for a combination of 3 and 4, and respectfully asked the students why they were asking me this question, realizing that there was something they were trying to ask me but it wasn’t necessarily my marital status. One of them responded that singles did not stay long in the area because it was so far away from bigger cities with other singles. I then responded by elaborating on my demonstrated history of being a committed professional. By asking a clarification question back to the interviewers, I determined the root concern underlying the question, and avoided divulging information that I was unwilling to disclose at that time. A more appropriate question for the students to have asked me might have been “As you know this area is geographically remote, do you see this as a barrier or as an opportunity?”

For some candidates, being an ethnic minority may lead to some awkward interview moments, especially if you clearly look “ethnic.” How would you respond to the illegal interview question asking “what are you?” Consider your appropriate response among the possible following choices:

A) Asking “What do you think;” or

B) Stating “I’m a human being;” or

C) Asking “Why is this important to know?”

Responses A and B will successfully terminate the interview process, leaving the interviewer with the impression that you are sarcastic, boorish, and rude. The last response gives you and the interviewer a chance to think, and to “save face.” In other
words, you will not insult the interviewer, nor will you give an inappropriate response that could lead to a lost career opportunity.

A more appropriate and legal question might have been “Our school has a high number of racially diverse students, in particular Asian American. What specific experiences have you had working with a racially diverse population?” If you are an Asian American, this might be an appropriate time to disclose your ability to personally and professionally identify with the population in the question. If you are not an Asian American, or you just feel uncomfortable self-identifying your ethnic or racial background, you can focus instead on the experiences you have had with racially diverse populations.

If you think it might be helpful to identify with a certain ethnic/racial population or other population, then you need to determine when and how you will unveil this truth. Just because you identify as a person of color or other group does not mean you will or will not get the job. In some cases, being a member of a racial minority group or other population could be helpful, especially if efforts are being made to recruit diverse finalists who will be able to reach out to previously underrepresented populations. In other cases, identifying as a member of a racial minority group or other population could have a backlash effect.

For example, individuals suspected of being non-heterosexuals may be asked leading questions to get them to confirm or deny the suspicions of the interviewers, via a legal question that probes for something that is somewhat relevant to the position. An example of such a leading question in a fairly conservative environment might be “What do you think about same-sex marriage?” In this question, the interviewer is leaving the
door wide open to the candidate to take it any number of directions. Possible responses might include:

A) Stating “I think it is great – I happen to have a same sex partner;” or

B) Responding “Awful, I think it is just awful;” or

C) Responding “Really? I had no idea people of the same sex would want to get married?” or

D) Responding “Certainly I am aware of the controversy surrounding this issue however I don’t believe my personal opinion has ever affected my ability to positively perform my job…”

Response D lets you sell what is most important during a job interview, your job skills and your positive performance history. Your personal opinions, values and lifestyle are of secondary importance at this time. If pressed for a personal (and potentially revealing) opinion, then resort back to the tactic of asking a clarifying question. The clarification could expose information that will help you determine if you can be openly honest, or it could lead to a situation where you will need to (internally) conclude that this position may not be a good fit.

Should you ever voluntarily disclose information that would be illegal for an interviewer to ask? It depends on how important it is to you that the employer be knowledgeable of, and/or willing to accommodate your specific needs. If you have a disability or lifestyle that requires no worksite accommodations, then disclosure may never be required. If on the other hand you do require assurances that your employer is aware of your needs, and will be able to provide whatever accommodations you will require, then the earlier you self-disclose the better. The employer can then plan ahead as
some accommodations may be costly, may require work schedule adjustments, and/or staff orientations to familiarize the new co-workers about your situation.

In most interview situations, employers provide you the opportunity to disclose personal information, and if you don’t disclose anything at that time, that is your decision. However, if the employer recalls after you have been hired that you were provided an opportunity to provide personal but critical information, and you didn’t, the employer may lose trust in you. Usually the opportunity to self-disclose anything sensitive comes toward the end of the interview process, when the interviewers will ask you if you have anything additional you would like to say about yourself, and/or if you have any questions to ask of them. This is the golden moment when you are able to ask those thoughtfully prepared questions that will provide you the information needed to determine if this job is right for you.

For example, if an employer asks you a leading question related to whether you have children, you have several choices:

1) Be coy (and act like you have something to hide); or

2) Be honest, upfront, and disclose (while demonstrating thoughtful concern for the employer’s needs) – “Yes, I do have children, and am pleased to share with you the fact that I have an excellent daycare arrangement, and if any child is sick, I have a wonderful neighbor who will help me out …;” or

3) Be honest, upfront and disclose – “No, I don’t have any children, however as my recommendations attest, I have an excellent reputation with…;” or

4) Inquire why the question is being asked (and appear coy like in option #1).
In option 2, you are able to reassure the employer that you have child care arrangements under control, and that you have taken care of any concerns that an employer might have regarding your reliability. In option 3, you are reassuring the employer that despite not being a parent, you have experiences that qualify you for the position, and are not misleading the employer into believing you are a parent. By utilizing options 1 and 4, you may be cheating yourself of the opportunity to disclose anything that you believe the employer may need to know about you, that could potentially come back to haunt you.

In the event you are expecting a child, this might be the time to disclose. Granted, the employer has no right to know this information during the interview process, yet the fact that you are expecting will become quite evident. And, if after disclosing your status you are hired anyway, you can feel comfortable that your employer was fully knowledgeable of your situation. Disclosing a pregnancy during the interview phase may best be done by asking questions that will help you determine the availability of childcare support you could expect from the employer as well as the community. Should you ask questions that lead the interviewers into suspecting you may be expecting or are “fishing” for a good place to eventually expand your family, a good strategy for you to practice would be to lace into your questions remarks that would reassure the interviewers of your recognition of your responsibility to the employer and co-workers.

In the event you are not hired, you may never know whether it was because you disclosed you were expecting, or whether a “more qualified” candidate was selected. Take this rejection in stride. Just because you thought you were perfect for the job, does not necessarily mean you were perfect in the eyes of the employer.
In the event you are not a U.S. citizen, you will need to be honest about your visa status. To be anything but honest could lead your potential employer into a legal immigration mess. While an interviewer can’t legally ask “What’s your nationality?” An interviewer has the legal right to ask “If offered a position with us, will you be able to provide us the appropriate documentation verifying your visa or nationality status and your ability to work in the United States?”

Now, put yourself in the shoes of a future employer. What should your employer want, or need to know, about you? What list of pros or cons might an employer (mentally) develop, when informed that you have a certain type of disability, sexual orientation, racial background or other bit of sensitive knowledge? Ask yourself whether the self-identification could wait: 1) until after a personal interview has been conducted; 2) until after the job offer has been accepted; or 3) maybe never be revealed at all?

While you have a right to your privacy, sooner or later (and sometimes it is better sooner) your employer has rights to your self-disclosure if it means your employer will eventually be responsible for providing you an accommodation due to a disability and/or maternity needs and/or if the disclosure could lead to an awkward, embarrassing or even illegal situation for the employer. If you have concerns about being accepted by the employer and/or the environment, then you need to do extensive advance research of the places where you are submitting applications, and have prepared thoughtful questions to ask at the interviews that will provide you the desired information. By doing your homework in advance of an interview, you may be able to view an employee handbook or other information that would let you know what the employers’ benefits, values, and other policies are that could influence your ability to be a compatible match.
As stated in the beginning of this article, self-disclosure is your personal decision. You can choose to never disclose anything personal, or you could unload everything on your mind. Depending on whom the interviewers are the disclosures could either be not enough, or too much. If you don’t say something personal about yourself, then employers will tend to view you with suspicion, wondering what it is you are trying to hide. On the other hand, if you disclose too much, you can come across as very needy and high maintenance. In both cases, you probably will not get the job.

Early disclosures could mean the difference between an excellent match or a tenuous employment situation. Most employers, if they know what challenges will face them if they hire you, will prepare themselves to advocate on your behalf. Unexpected surprises are never welcome. And the surprise that is least welcome is anything that negatively affects your ability to perform the expected work. Along with disclosures needs to come your assurances that you are able to perform the required job duties, albeit with some adjustments. You have an obligation to be reasonable, and to work collaboratively with your employer to develop a plan that will work effectively for both of you. This then becomes known as the win-win approach.

In conclusion, how should you respond to inappropriate or illegal questions? My suggestion is to always be honest, tactful and discreet. Reveal only what is essential for the time. Perhaps at some point it may be necessary to disclose highly sensitive information, but when that time comes, you should be prepared for how you will provide the information. Disclosures have their risks, but done properly, they also have immense benefits for your peace of mind. Best wishes for a thoughtful job search.