

# Hiring, Firing, & MO Employment Law



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# Critical Conversations Delivering Bad News to Employees

## ALWAYS WITH FAIRNESS AND DIGNITY

### Goals to always keep in mind:

It is possible to have these conversations and still preserve the dignity of the employee. Tough decisions should be supported by elements of fundamental fairness. Critical conversations should never come as a surprise to the employee.

### Planning the meeting:

Planning and preparation can not be overemphasized.

- ◆ Who will be conducting the meeting?
- ◆ Will there be a third party present?
- ◆ What is the reason for the change or decision?
- ◆ When will the meeting be conducted?
- ◆ Where will the meeting be conducted?
- ◆ How should the meeting begin?

If the employee responds with this reaction	Hostile and angry	Defensive and bargaining	Formal and procedural (lawsuit?)	Stoic	Crying/sobbing
The underlying feelings and motivations may be	<ul style="list-style-type: none"> <li>--- Hurt</li> <li>--- Angry</li> <li>--- Disappointed</li> <li>--- Relief</li> </ul>	<ul style="list-style-type: none"> <li>--- Guilty</li> <li>--- Afraid</li> <li>--- Uncertain</li> <li>--- Disbelief</li> </ul>	<ul style="list-style-type: none"> <li>--- Vengeful</li> <li>--- Suppressed</li> <li>--- Controlled</li> </ul>	<ul style="list-style-type: none"> <li>--- Shock</li> <li>--- Disbelief</li> <li>--- Numbness</li> </ul>	<ul style="list-style-type: none"> <li>--- Sadness</li> <li>--- Grief</li> <li>--- Worry</li> </ul>
The manager, in turn, might handle the employee's reaction with these responses	<ul style="list-style-type: none"> <li>• Summarize what you have heard in a tentative style: "It sounds like you are pretty angry about this."</li> <li>• Avoid confronting the anger or becoming defensive.</li> <li>• Remain objective; stick to the <u>facts</u>, and give the employee helpful information.</li> </ul>	<ul style="list-style-type: none"> <li>• Let the employee know you realize this is a difficult time for him or her, as well as for yourself.</li> <li>• Don't get involved in any bargaining discussions.</li> <li>• Offer reassurance about the future.</li> </ul>	<ul style="list-style-type: none"> <li>• Allow the employee freedom to ask any questions <u>as long as they pertain</u> to his or her own case.</li> <li>• Try to avoid side issues and discussion of "political" motivations.</li> <li>• Keep the tone formal.</li> </ul>	<ul style="list-style-type: none"> <li>• Communicate to the employee that you recognize his or her <u>shock</u>, and say the details can be handled later if the employee prefers.</li> </ul>	<ul style="list-style-type: none"> <li>• Give the person an opportunity to cry, if that occurs. Just offer some tissue.</li> <li>• Avoid inane advice like "what are you crying about, it's not that important."</li> <li>• When the person regains composure, press on with the facts.</li> </ul>

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### QUESTIONS AND ANSWERS

#### **What is the goal of a meeting?**

**Answer:** The manager should communicate in a factual and concise manner that an irrevocable decision has been made and the specific reason for that decision. They should clearly express why the person is affected. The employee should also be treated in as dignified a manner as possible.

#### **Should the manager write out the opening statement he or she will make in the meeting and rehearse that statement?**

**Answer:** The opening statement should be written out in paragraph form or at least there should be a written outline of the points the manager wants to make in the meeting. Then the manager should find someone whom they trust and engage in role playing to rehearse the initial opening of the conversation.

#### **How long should the meeting take?**

**Answer:** The meeting should take no longer than fifteen to twenty minutes. The process of informing the employee that a decision has been made and the reasons for that decision should not be a lengthy discussion between the manager and employee. The employee will react and should be allowed a few minutes to verbalize their thoughts and questions.

#### **Should the manager be prepared with documentation to support the change or decision?**

**Answer:** The manager should inform the employee of the decision then go through the occurrences that led to the decision. The manager should take documentation to the meeting, but it is not always necessary to show the documentation in each case unless there is some misunderstanding about why the change is occurring.

#### **Where should the meeting take place?**

**Answer:** In a neutral location that provides privacy. The meeting should not take place on the floor or anywhere the participants can be seen or heard by other people.

#### **What should the manager do if the employee attempts to talk to the manager out of the decision?**

**Answer:** As soon as that starts to happen, the manager should stop the employee and reaffirm that the decision was made after careful consideration and that it is final.

#### **What if the employee becomes angry and starts to yell?**

**Answer:** The manager must stop the employee, reaffirm that the decision is final and there is no point in continuing the meeting if the employee behaves in a nonbusiness like manner. The manager may also ask the employee to leave or escorted the employee from the premises, if possible, in a dignified manner.

#### **A manager should never fire someone in anger and on the spot. But what should a manager do if someone commits an infraction that clearly calls for termination--for example, an employee hits the manager?**

**Answer:** It is true that managers should never fire anyone on-the-spot but, the employee can be suspended pending further investigation of an incident. The employee should be suspended pending further investigation of the incident. The employee should be notified that he is suspended and must leave the premises until further contact from management officials.

#### **What is the most common mistake managers make in these types of meetings? What type of problems can a poorly conducted meeting cause for a company?**

**Answer:** A problem occurs when the manager is not strong and does not firmly stick to communicating the main message that the decision is final. Some managers allow the employee to dominate the session, to do all of the talking. That puts the manager on the defensive and creates a situation where the manager may say something that can later harm the company. In the worst cases, some managers take the employee's side by the end of the meeting. The manager must maintain control of the meeting.

**Guide To Pre-Employment Inquiries**

**“Can I ask the applicant these questions???”**

	<b>ACCEPTABLE</b>	<b>INADVISABLE</b>
<b>1. Arrest Records</b>	None. (For convictions, see No. 4)	Number and kinds of arrest.
<b>2. Availability for work on Weekends, Evenings</b>	If asked of all applicants and it is a business necessity for the person to be available to work weekends and/or evenings.	Any inquiry about religious observance.
<b>3. Citizenship, Birthplace &amp; National Origin</b>	<p>The only legitimate concern here is whether the applicant is eligible to work in the United States, under terms of the Immigration Reform and Control Act of 1986.</p> <p>There is a fair and advisable way to obtain this information. The best approach is to ask: Are you EITHER a US citizen OR an alien authorized to work in the United States?</p> <p>The answer that follows provides all needed information while not disclosing which the applicant is.</p>	Birthplace, national origin, ancestry, or lineage of applicant, applicant’s parents, or applicant’s spouse.
<b>4. Conviction Records</b>	Inquiry into convictions if job related.	Any inquiry about conviction unrelated to job requirements.
<b>5. Creed or Religion</b>	None, except where religion is a bona fide occupational qualification.	Applicant’s religious affiliation, church, parish, or religious holidays observed.
<b>6. Credit Records</b>	None, unless job related.	Inquiries about charge accounts, bank accounts, home ownership, etc.
<b>7. Disability</b>	Whether applicant can perform essential functions of the job.	To ask applicant if he/she is disabled and/or to list disability.
<b>8. Family Status</b>	Whether applicant has responsibilities or commitments which will prevent meeting work schedules, if asked of all applicants regardless of sex.	Marital status, number and age of children, spouse’s job.
<b>9. Height &amp; Weight</b>	None, unless job related.	Any inquiry unrelated to job requirements.
<b>10. Language</b>	Language applicant speaks or writes fluently, if job related.	Language used by applicant or family members at home, or how applicant acquired the ability to read, write, or speak a foreign language.

<b>11. Marital Status</b>	None	Whether applicant is married, single, divorced, separated, engaged or widowed.
<b>12. Military Service</b>	Military experience or training.	Type or condition of discharge.
<b>13. Name</b>	Whether applicant's educational records or past work experience is under a different name.	The original name of an applicant whose name has been legally changed or the national origin of an applicant's name.
<b>14. Organizations</b>	Applicant's membership in professional organizations if job related.	All clubs, social fraternities, societies, lodges, or organizations to which applicant belongs.
<b>15. Photographs</b>	None except after hiring.	Photograph with application or after interview but before hiring.
<b>16. Pregnancy</b>	None.	Any inquiry into pregnancy, medical history of pregnancy or family plans.
<b>17. Race or Color</b>	None.	Applicant's race or color of applicant's skin.
<b>18. References</b>	Name of character references.	Name of applicant's pastor or religious leader.
<b>19. Relative/Friends</b>	Names of applicant's relatives already employed by your organization or a competitor, but you may not give preference if women and minorities are underrepresented in your workforce.	Names of friends working for the company or names of relatives other than those working for the company.
<b>20. Sex</b>	None, except where sex is a bona fide occupational qualification (BFOQ).	Any inquiry except where BFOQ.
<b>21. Workers' Compensation</b>	None.	Past Workers' Compensations claims.

## How to Write a Job Posting:

Let's get right down to work here, with job posting tips on creating a job advertisement that gets noticed on [job boards](#).

### **1. Use a killer job title.**

This is the most important part of your job posting when you're posting to boards. When you write your title, include the name of the position and the top one to three things that will make the job attractive to an applicant.

### **2. Add an emotive introduction.**

This is a single paragraph that gives three to five details applicants will find most exciting about the job. It is similar to the lede that newspapers use to hook you into reading the full article.

### **3. Tell your company story.**

Information about your company that applicants want to know. How many years you've been in business, how long employees stay (if this shows that people stick with you), interesting clients or projects, equipment that applicants will be excited about, awards, accolades, and work culture facts that will interest them.

### **4. Really sell the position.**

Rather than the typical laundry list of bullet points, only include requirements that are essential to this job. Try to limit yourself to one to three things. Then provide information on work hours, pay, interesting coworkers, education opportunities, benefits or perks, and anything else applicants will find interesting.

### **5. Push your location.**

Moving is an obstacle to anyone considering your job that doesn't live in your region. If you want to attract people from other places, sell applicants on the location. Give them details about schools, activities, crime rates, things to do, etc. If your location is an easy commute from many key hiring areas then make sure to spell out the actual commute time. A candidate will always be keen on a role that can cut their commute by 30 minutes.

### **6. Repeat why they should apply.**

This section is a quick bullet-pointed recap of the top five to six reasons someone should apply to your job. If you have a long job post this will make sure that your key points are front-of-mind when the candidate is hovering over the apply button.

### **7. Spell out the application process.**

Detail everything from when they first apply to when they get hired. Candidates won't be left in the dark about "what happens next". This is especially important if you have a role that is a one interview hire. Candidates that are immediately available will jump on roles like this as they can get a job in days vs weeks.

### **8. Have other people read it.**

Treat this job post writing exercise just as you would any other important piece of company marketing. Get multiple people to read it and provide you with honest feedback. Make sure you have fixed any errors before you post the job to hundreds of job boards.

### **9. Improve your email responses.**

Look at all the emails that you send to candidates at each step of the hiring process. Pick them apart and ensure they are clear, personal, and continue to sell the candidate on the role at every step. A poor first response to a candidate application will undo all the good work you did in the job post getting them to apply

## QUESTIONS TO AVOID DURING AN INTERVIEW

Illegal interview questions, while not illegal in the strictest sense of the word, have so much potential to make your company liable in a discrimination lawsuit, that they might as well be illegal. These are the questions to strictly avoid.

**Unless clearly job related, the following is an example of questions that should be avoided:**

- What is your maiden name?
- Do you own or rent your home?
- What is your age?
- What is your date of birth?
- The dates of attendance or completion of elementary or high school.
- Questions that tend to identify an applicant's age as over 40.
- Birthplace of the applicant or of the applicant's parents, spouse, or other relative.
- Are you a U.S. citizen?" or "What is your citizenship or that of your parents, spouse, or other relative."
- Questions as to race, nationality, lineage, ancestry, national origin, descent, or parentage of applicant or applicant's spouse.
- What is your mother's tongue?" or "What is the language you speak at home?"
- How the applicant acquired the ability to read, write, or speak a foreign language.
- Questions that indicate the applicant's marital status.
- Questions about the number or ages of children or dependents.
- Questions regarding provisions for childcare.
- Questions regarding pregnancy, childbearing, or birth control.
- Questions such as, "With whom do you reside?" or "Do you live with your parents?"
- Questions as to the applicant's complexion, or color of skin, eyes, or hair.
- Questions as to the applicant's height and weight.
- Requiring an applicant to affix a photograph to the application.
- Requiring a photograph after the interview, but before employment is offered.
- Questions regarding an applicant's general medical condition, state of health, or illness.
- Questions regarding the medical condition or health of an applicant's family or associates.
- Questions regarding AIDS, HIV, and related conditions.
- Have you ever made a workers' compensation claim?"
- Questions regarding receipt of workers' compensation benefits.
- Do you have any mental or physical disabilities or handicaps?"
- Questions regarding arrest record, such as "Have you ever been arrested?" unless they are in a security-related position. It's okay to ask if they have been convicted of a felony.
- Questions regarding service in foreign military.
- Questions regarding the applicant's current or past assets, liabilities, or credit rating, including prior bankruptcies, unless job related.
- Questions regarding ownership of a car.

- Questions regarding length of residence at a particular address.
- Requiring a list of all organizations, clubs, societies, or lodges to which applicant belongs.
- Questions to the applicant's former employers or references, or acquaintances of references, which elicit information specifying the applicant's race, color, religious creed, national origin, ancestry, disability, mental disability, physical disability, medical condition, marital status, age, sex, or other prohibited basis of discrimination.
- Questions regarding religious obligations that would prevent an individual from being available to work on Friday evenings, Saturdays, Sundays, or holidays.
- Questions seeking the names and addresses of relatives (as opposed to persons) to be notified in case of accident or emergency.
- Asking a female candidate whether her family will object to her working at night.
- Asking a female candidate whether she has any reason to believe she might require any leave for medical reasons during the next calendar year.
- Asking an older candidate whether they feel they can keep up with the younger employees in the department.
- Asking an applicant the origin of their name.
- How do you expect to do this job when you are blind?
- Discriminatory remarks such as, "I'll bet you're a good dancer," or, "I don't know how you people eat that kind of food. It makes me burp," or, "Are you trying to be superwoman?"
- How did you lose your leg?
- Have you ever had cancer, high blood pressure, heart problems?
- Have you ever injured your back?
- How strong is your back?
- Have you ever taken a leave of absence for health reasons?"
- Are your parents healthy?
- What did your parents die of?
- What is the prognosis for your disease?
- Is your skin condition caused by a disease?
- How do you manage in the bathroom?
- Do you have any physical or mental disability or handicap that will require reasonable accommodation?
- Have you ever abused alcohol?
- Is anyone in your family disabled?

### **Remember, you may ask:**

- • "What felt unfair to you at this job (and every other job)?"
- • "Are you able to meet the attendance requirements of the job?"
- • "Do you have a reliable method of transportation?"
- • "Are you able to perform the physical and mental aspects of the job with or without accommodation?"
- • "Are you able to work overtime if required?"



## **Interview Questions**

### **1) Why did you leave your last job?**

This is a question that should always be asked. Watch for answers that involve a disagreement or inability to work with specific individuals or managers. If they tell you it's personal, ask them again. It's your responsibility to know the answer to this question.

### **2) Tell me about your proudest moment?**

This will give you a hint of what is important to the applicant and give him/her an opportunity to share a significant event with you.

### **3) Describe your ideal supervisor/manager?**

Again, this will give you a hint of the value that applicant places on various management tasks and styles. What you are really asking is can you work with me?

### **4) Describe the worst supervisor/manager you've ever had?**

What you are asking is - are WE compatible? Watch for applicants who will criticize other companies or supervisors, especially if accusing them of illegal activities or behavior.

### **5) What is your greatest weakness?**

Great question for getting applicants to open up, many times the job applicant will give you evidence of how they can NOT do the job. Beware of potential employees who indicate a problem with getting to work on time, or who tell you they are accident prone.

### **6) What are your strengths?**

Again, great questions for getting applicants to open up and share information, good indicator of future growth potential.

### **7) Describe a difficult coworker you've had to work with?**

You are looking for turf wars, troublesome employees and any red flags they care to raise. Look for employees who had a conflict (we all do) but used a positive approach to work through it.

### 8) What do you know about our company?

Great questions to see if they just applied for the job in the paper or if they actually know who we are.

### 9) Why have you changed jobs so frequently?

Watch for issues like “they didn’t like me, my boss wasn’t fair,” “I had to - get up too early, work too hard, etc”.

### 10) What motivates you?

Now just set back and listen, are we able to offer this employee the types of stimulation they need to stay motivated?

### 11) How do you think your present/last boss would describe you?

Set back and listen, is this the person who will best fit your needs?

# Sample Interview Questions

## Basic Interview Questions:

- What are your weaknesses?
- Why do you want this job?
- Where would you like to be in your career five years from now?
- What's your ideal company?
- What attracted you to this company?
- Why should we hire you?
- What did you like least about your last job?
- When were you most satisfied in your job?
- What can you do for us that other candidates can't?
- What were the responsibilities of your last position?
- Why are you leaving your present job?
- What do you know about this industry?
- What do you know about our company?
- Are you willing to relocate?
- Do you have any questions for me?
- **Behavioral Interview Questions:**
- What was the last project you headed up, and what was its outcome?
- Give me an example of a time that you felt you went above and beyond the call of duty at work.
- Can you describe a time when your work was criticized?
- Have you ever been on a team where someone was not pulling their weight? How did you handle it?
- Tell me about a time when you had to give someone difficult feedback. How did you handle it?
- What is your greatest failure, and what did you learn from it?
- What irritates you about other people, and how do you deal with it?
- If your supervisor asked you to do something that you disagreed with, what would you do?
- What was the most difficult period in your life, and how did you deal with it?
- Give me an example of a time you did something wrong. How did you handle it?
- What irritates you about other people, and how do you deal with it?
- Tell me about a time where you had to deal with conflict on the job.

- If you were at a business lunch and you ordered a rare steak and they brought it to you well done, what would you do?
- If you found out your company was doing something against the law, like fraud, what would you do?
- What assignment was too difficult for you, and how did you resolve the issue?
- What's the most difficult decision you've made in the last two years and how did you come to that decision?
- Describe how you would handle a situation if you were required to finish multiple tasks by the end of the day, and there was no conceivable way that you could finish them.

## **Salary Questions:**

- What salary are you seeking?
- What's your salary history?
- If I were to give you this salary you requested but let you write your job description for the next year, what would it say?

## **Career Development Questions:**

- What are you looking for in terms of career development?
- How do you want to improve yourself in the next year?
- What kind of goals would you have in mind if you got this job?
- If I were to ask your last supervisor to provide you additional training or exposure, what would she suggest?

## **Getting Started Questions:**

- How would you go about establishing your credibility quickly with the team?
- How long will it take for you to make a significant contribution?
- What do you see yourself doing within the first 30 days of this job?
- If selected for this position, can you describe your strategy for the first 90 days?

## More About You:

How would you describe your work style?

What would be your ideal working environment?

What do you look for in terms of culture -- structured or entrepreneurial?

Give examples of ideas you've had or implemented.

What techniques and tools do you use to keep yourself organized?

If you had to choose one, would you consider yourself a big-picture person or a detail-oriented person?

Tell me about your proudest achievement.

Who was your favorite manager and why?

What do you think of your previous boss?

Was there a person in your career who really made a difference?

What kind of personality do you work best with and why?

What are you most proud of?

What do you like to do?

What are your lifelong dreams?

What do you ultimately want to become?

What is your personal mission statement?

What are three positive things your last boss would say about you?

What negative thing would your last boss say about you?

What three character traits would your friends use to describe you?

What are three positive character traits you don't have?

If you were interviewing someone for this position, what traits would you look for?

List five words that describe your character.

Who has impacted you most in your career and how?

What is your greatest fear?

What is your biggest regret and why?

- What's the most important thing you learned in school?
- Why did you choose your major?
- What will you miss about your present/last job?
- What is your greatest achievement outside of work?
- What are the qualities of a good leader? A bad leader?
- Do you think a leader should be feared or liked?
- How do you feel about taking no for an answer?
- How would you feel about working for someone who knows less than you?
- How do you think I rate as an interviewer?
- Tell me one thing about yourself you wouldn't want me to know.
- Tell me the difference between good and exceptional.
- What kind of car do you drive?
- There's no right or wrong answer, but if you could be anywhere in the world right now, where would you be?
- What's the last book you read?
- What magazines do you subscribe to?
- What's the best movie you've seen in the last year?
- What would you do if you won the lottery?
- Who are your heroes?
- What do you like to do for fun?
- What do you do in your spare time?
- What is your favorite memory from childhood?

## **Brainteaser Questions:**

- How many times do a clock's hands overlap in a day?
- How would you weigh a plane without scales?
- Tell me 10 ways to use a pencil other than writing.
- Sell me this pencil.
- If you were an animal, which one would you want to be?
- Why is there fuzz on a tennis ball?
- If you could choose one superhero power, what would it be and why?
- If you could get rid of any one of the US states, which one would you get rid of and why?
- With your eyes closed, tell me step-by-step how to tie my shoes.