

Table 8-5 PERMITTED AND PROHIBITED INTERVIEW QUESTIONS UNDER THE ADA (PRE-OFFER STAGE)	
QUESTION	ACCEPTABLE
Can you perform the job?	Yes. An employer may ask whether applicants can perform any or all job functions, including whether applicants can perform job functions “with or without reasonable accommodation.”
Describe or demonstrate how you would perform the job, with or without reasonable accommodations.	Yes. An employer may ask applicants to describe how they would perform any or all job functions, as long as all applicants in the job category are asked to do this. Employers should remember that if an applicant says that he or she will need a reasonable accommodation to do a job demonstration, the employer must either provide a reasonable accommodation that does not create an undue hardship upon it, or allow the applicant to simply describe how he or she would perform the job function.
Describe or demonstrate how you would perform the job, with or without reasonable accommodations [if other applicants are not asked to do so].	Yes. When an employer reasonably believes that an applicant will not be able to perform a job function because of a known disability, the employer may ask that particular applicant to describe or demonstrate how he or she would perform the function. An applicant’s disability would be a “known disability” either because it is obvious (for example, the applicant uses a wheelchair), or because the applicant has voluntarily disclosed that s/he has a hidden disability.
An employer asks applicants if they will need reasonable accommodations for the hiring process.	Yes. An employer may tell applicants what the hiring process involves (for example, an interview, timed written test, or job demonstration), and may ask applicants whether they will need a reasonable accommodation for this process.
An employer asks applicants if they will need reasonable accommodations to perform the functions of the job.	No. In general, an employer may not ask questions on an application or in an interview about whether an applicant will need reasonable accommodation for a job. This is because these questions are likely to elicit whether the applicant has a disability (generally, only people who have disabilities will need reasonable accommodations).
An applicant with no known disability is being interviewed for a job. He has not asked for any reasonable accommodation, either for the application process or for the job. The employer asks him, “Will you need reasonable accommodation to perform this job?”	No. In general, an employer may not ask questions on an application or in an interview about whether an applicant will need reasonable accommodation for a job. This is because these questions are likely to elicit whether the applicant has a disability (generally, only people who have disabilities will need reasonable accommodations).
An employer reasonably believes that an applicant will need reasonable accommodation to perform the functions of the job. The employer asks the applicant if he or she needs reasonable accommodations and what type of reasonable accommodations would be needed to perform the functions of the job.	The employer could ask these questions if: (1) the employer reasonably believes the applicant will need reasonable accommodation because of an obvious disability; (2) the employer reasonably believes the applicant will need reasonable accommodation because of a hidden disability that the applicant has voluntarily disclosed to the employer; or (3) an applicant has voluntarily disclosed to the employer that he or she needs reasonable accommodation to perform the job.
An employer asks if an applicant can meet the employer’s attendance requirements.	Yes. An employer may state its attendance requirements and ask whether an applicant can meet them. An employer also may ask about an applicant’s prior attendance record (for example, how many days the applicant was absent from his/her last job). These questions are not likely to elicit information about a disability because there may be many reasons unrelated to disability why someone cannot meet attendance requirements or was frequently absent from a previous job (for example, an applicant may have had daycare problems).
An employer asks an applicant, “How many Mondays or Fridays were you absent last year on leave other than approved vacation leave?”	Yes. This question is not likely to elicit information about a disability.
An employer asks an applicant, “How many days were you sick last year?”	No. This question relates directly to the severity of an individual’s impairments, and so it is likely to elicit information about a disability.
An employer asks an applicant about licenses or certifications required for a job.	Yes. An employer may ask an applicant at the pre-offer stage whether he or she has certifications or licenses required for job duties. An employer also may ask an applicant whether he or she intends to get a particular job-related certification or license, or why he or she does not have the certification or license. These questions are not likely to elicit information about an applicant’s disability because there may be a number of reasons unrelated to disability why someone does not have—or does not intend to get—a certification or license.
An employer asks an applicant about prior arrests or convictions.	Yes. Questions about an applicant’s arrest or conviction records are not likely to elicit information about disability because there are many reasons unrelated to disability why someone may have an arrest or conviction record. However, questions about arrests or convictions in some cases may violate Title VII of the Civil Rights Act of 1964.
An employer asks an applicant if he or she has any impairments.	Yes, if the particular question is not likely to elicit information about whether the applicant has a disability. Not all impairments are disabilities; an impairment is a disability only if it substantially limits a major life activity.
An employer asks an applicant with a broken leg how she broke her leg.	Yes. Since a broken leg normally is a temporary condition which does not rise to the level of a disability, this question is not likely to disclose whether the applicant has a disability.
An employer asks an applicant with a broken leg: “Do you expect the leg to heal normally?” or “Do you break bones easily?”	No. This question may disclose whether the applicant has a disability.
An employer asks an applicant if he can perform major life activities, such as standing, lifting, walking, etc.	No. Questions about whether an applicant can perform major life activities are almost always disability-related because they are likely to elicit information about a disability. For example, if an applicant cannot stand or walk, it is likely to be a result of a disability. So, these questions are prohibited at the pre-offer stage unless they are specifically about the ability to perform job functions.
An employer asks an applicant about her workers compensation history.	No. An employer may not ask applicants about job-related injuries or workers compensation history. These questions relate directly to the severity of an applicant’s impairments. Therefore, these questions are likely to elicit information about disability.
An employer asks applicants if they are taking illegal drugs.	Yes. An individual who currently uses illegal drugs is not protected under the ADA (when the employer acts on the basis of the drug use).
An employer asks applicants about legal drug use.	No. If the question is likely to elicit information about disability. Employers should know that many questions about current or prior lawful drug use are likely to elicit information about a disability, and are therefore impermissible at the pre-offer stage. For example, questions like, “What medications are you currently taking?” or “Have you ever taken AZT?” certainly elicit information about whether an applicant has a disability. However, some innocuous questions about lawful drug use are not likely to elicit information about disability.
An employer ask applicants about their prior illegal drug use.	Yes, provided that the particular question is not likely to elicit information about a disability. It is important to remember that past addiction to illegal drugs or controlled substances is a covered disability under the ADA (as long as the person is not a current illegal drug user), but past casual use is not a covered disability. Therefore, the question is fine as long as it does not go to past drug addiction. An employer may ask, “Have you ever used illegal drugs?” “When is the last time you used illegal drugs?” or “Have you used illegal drugs in the last six months?” These questions are not likely to tell the employer anything about whether the applicant was addicted to drugs. However, questions that ask how much the applicant used drugs in the past are likely to elicit information about whether the applicant was a past drug addict. These questions are therefore impermissible at the pre-offer stage. At the pre-offer stage, an employer may not ask an applicant questions such as, “How often did you use illegal drugs in the past?” “Have you ever been addicted to drugs?” “Have you ever been treated for drug addiction?” or “Have you ever been treated for drug abuse?”
An employer asks applicants about their consumption of alcoholic beverages.	Yes, unless the particular question is likely to elicit information about alcoholism, which is a disability. An employer may ask an applicant whether he or she drinks alcohol, or whether he or she has been arrested for driving under the influence because these questions do not reveal whether someone has alcoholism. However, questions asking how much alcohol an applicant drinks or whether he or she has participated in an alcohol rehabilitation program are likely to elicit information about whether the applicant has alcoholism.