

Appropriate/Inappropriate Areas of Inquiry

Interviewing candidates and checking references are critical steps in the hiring process. In an effort to provide guidance to members of search committees, interviewers, and those involved in reference checks, the following suggestions and information are provided:

Age

Avoid questions or inquiries into age. The Age Discrimination Act prohibits discrimination against applicants age 40 and over on the basis of age. This means that anyone over the age of 40 is protected by this law. As a general rule, there are no acceptable inquiries regarding age.

Disabilities

Under the Americans with Disabilities Act (the ADA), an employer is prohibited from asking about an applicant's disabilities, either directly or indirectly. For example, an employer cannot ask about an applicant's medical history, whether an applicant is disabled, or about the nature of any obvious disabilities. Prior to the ADA, employers often asked applicants whether they had any "physical or mental disabilities that would substantially limit the ability to perform the essential functions of the job". This is no longer allowed under the ADA; however, you may still ask whether an applicant has the ability to perform the essential functions of the job (with no reference to physical or mental impairments or disabilities).

The University no longer includes "handicap" or "disability" status on its Affirmative Action Self-Identification form for data purposes. Please check with OED if you have any questions about whether you are distributing the most up-to-date version of the form.

The ADA also limits pre-hire medical exams. With certain types of jobs, an employer can require a medical exam after an applicant has been hired. This issue will come up very rarely in the hiring of exempt staff and faculty at the University; however, if it does, the hiring department should contact HR before instituting such a requirement.

The ADA requires that employers "reasonably accommodate" applicants with disabilities unless the reasonable accommodation would cause an undue hardship to the business. For example, an interviewer might have to provide a guide to a blind applicant who has been invited to interview.

Note: The ADA covers many issues that may arise during the course of employment of an individual with disabilities; it would be impossible to cover all of the potential issues here. Departments with questions should contact the University's ADA Coordinator at the Human Resources office (HR) at 974-2456.

Gender

Making employment decisions based on a candidate's gender is illegal (with very few bona fide exceptions) under Title VII and the Pregnancy Discrimination Act. Many inappropriate areas of inquiry relate to gender issues:

Availability for weekend or evening work

You may ask whether the candidate is available for weekend or evening work so long as both male and female candidates are asked and there is a true business need for the information (i.e., performing the job requires weekend and evening hours). Be careful to avoid inquiries into religious practices that might occur during these times.

Children/Marital Status/Family

Avoid inquiries relating to pregnancy, future childbearing plans, or the number or ages of the candidate's children. In the past, some employers have had policies of hiring men but not women who have preschool age children based on an assumption that the woman would be responsible for the care of the children (thus resulting in more absences).

Avoid questions about marital status or a spouse's job. You may ask in general terms whether an applicant has any commitments or responsibilities that would preclude the applicant from regularly meeting work schedules.

Race/Ethnicity/Color

Avoid all questions of this nature. Federal and state civil rights laws and University non-discrimination policies make it unlawful to discriminate on the basis of race/ethnicity/color.

Religion

Avoid all questions of this nature. Civil rights laws make it unlawful to discriminate against an applicant on the basis of religious denomination, beliefs, and practices.

National Origin

As mentioned under “Citizenship”, avoid questions about an applicant’s national origin. It violates civil rights laws to discriminate against an applicant because of his or her lineage, ancestry, descent, country of birth or national origin. If the job legitimately requires the ability to read, write or speak a foreign language or English, it is permissible to inquire whether the applicant has these skills.

Citizenship

This can be a very confusing area. On one hand, an employer is required by federal law to hire only those who are legally allowed to work in the United States. On the other hand, federal civil rights laws prohibit any discrimination on the basis of national origin (i.e., you can’t decide NOT to hire someone only because he/she comes from another country). To be safe, you may ask whether an applicant is lawfully authorized to work in the U.S. Avoid all other questions regarding citizenship until after an offer of employment is made. At that point, if the offer is accepted, you are then required to request proof that the employee is legally able to work in the U.S.

Other Common Areas of Concern

Discrimination Complaints (filed with previous employers)

Avoid questions about this possibility. Civil rights laws prohibit retaliation against an applicant because he or she has filed a discrimination charge, or testified, assisted, or participated in a discrimination investigation or proceeding. Do not confuse this prohibition with whether it is proper or improper to consider true information from a previous employer about someone with a record of engaging in discrimination.

Education

Obviously, it is proper to ascertain whether an applicant has the proper educational credentials for the position. You may verify types and dates of degrees earned.

Employment History

You may consider where applicants have worked, length of prior employment, specific jobs held, and actual tasks, skills, and responsibilities performed in previous employment. You may also consider the applicant’s record in regard to punctuality and attendance, as well as work quality and quantity. You may consider why the applicant no longer works for the previous employer and whether the termination was voluntary. You may also ask applicants to explain periods of unemployment.

Photographs

Avoid any requirement that a photograph accompany an employment application.

Workers' Compensation Claims: Avoid all questions on this topic.

Reference Checks

Many search committees on campus find that it is most useful to limit reference checks to those candidates identified as being in the "Principal" pool, or in both the "Principal" and "Alternate" pools. When the committee is at the point of checking references, it is a good idea to consider what information the group deems important to receive from the references. Questions should be consistently asked of the references for the different candidates.

Often, a candidate or a candidate's reference will voluntarily provide information that may be inappropriate. If this happens, the interviewer or the person checking the reference should include only that information received that is appropriate to consider in determining whether a candidate is qualified for the position.