

Avoiding Discrimination in the Interviewing Process

Most managers and supervisors are aware that when they are making a hiring decision they cannot discriminate against a job applicant on the basis of race, color, religion, creed, gender, national origin, age, disability, veteran status, or other legally-protected characteristics. Most, however, are unaware that federal and state laws prohibit a company's application and interview process from directly or indirectly asking applicants about those characteristics. The following is a general review of some of the legal pitfalls in the interviewing process.

Age. Do not ask about the applicant's age, either directly or indirectly, regardless of whether you believe that you have a legitimate reason for obtaining the information. Examples of improper questions include:

- How old are you?
- What year did you graduate from high school?
- Requiring applicants to provide birth certificates.

Arrest Records. Interviewers should not ask about an applicant's arrest record. An arrest that does not lead to a conviction (i.e. the person is not found to be guilty in court) should not be used as a basis to reject an applicant. Accordingly, you should not ask an applicant broadly:

- Have you ever been arrested?

Citizenship/National Origin. You may ask whether an employee may lawfully become employed in the United States, but you should not inquire into the specific citizenship of the applicant. Examples of improper questions include:

- Of what country are you a citizen?
- What kind of name is that? Where does your family come from?

Convictions. While you may ask applicants about their convictions, an applicant cannot be denied employment because of a conviction record unless there is a direct relationship between the offense and the job opening.

Credit Record. Unless you can clearly show that the company needs to know about an employee's credit/financial status, these questions should be avoided. For example, you should avoid asking the following:

- Will you permit our company to request a credit report on you?

Disability. Do not ask an applicant about disabilities he/she may have currently or had at one time. You may ask about whether the applicant can perform the essential functions of the job, either with or without a reasonable accommodation, but only after the essential functions of the job have been carefully explained to the applicant. Examples of improper questions include:

- Describe your general health?
- Do you have a disability?
- Have you ever been treated for any of the following diseases ...?
- Do you now or have you ever had a drug or alcohol problem?
- Have you have applied for or received Workers' Compensation or Disability benefits?

Educational Background. Only ask about the applicant's educational background insofar as it is necessary to meet the qualifications for the job. In other words, if you are interviewing an applicant for a job opening that does not require a college degree, you should avoid asking:

- Are you a college graduate?

Family Relationships. Do not ask an applicant about whether he/she is related to other employees of the company. Arguably, such questions

could reflect a hiring preference for friends or relatives of employees which could work to the exclusion of women or minorities. Therefore, you should avoid asking:

- Do you have any family members who have worked or currently work for the company?

Marital Status. You should avoid any direct or indirect inquiry as to the marital status of an applicant. Examples of improper questions include:

- Are you married?
- What is your spouse's name?
- What does your spouse do for a living?
- Will this be a second income in your household?
- Do you plan to become a parent?
- Do you wish to be addressed as Miss or Mrs.?
- Do you have a maiden name?
- Will this job interfere with your family responsibilities?

Union Affiliation. Under the National Labor Relations Act, it is unlawful to discriminate against someone because of their connection with a union. If a prospective employer asks an applicant about his/her union affiliation or connections and then fails to hire the individual, the employer could be sued for an unfair labor practice.

Weekend Work. Since the question may discourage applicants of certain religions, avoid asking applicants about whether they can work on weekends. If, however, you can demonstrate that the company needs its employees to be available for work on Saturday or Sunday due to its legitimate business need, you may ask the question but you should also indicate that the company will make a reasonable effort to accommodate the religious beliefs and practices of its employees. Therefore, unless you can demonstrate a legitimate business necessity for the applicant to work on Saturday or Sunday, you should not ask an applicant broadly:

- Are you available to work weekends?

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