

## Major Laws and Regulations that Affect the Selection Process

### AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

- Prohibits discrimination against persons 40 years of age and over.
- Promotes the hiring, promotion, and other terms and conditions of employment of older people.
- Requires hiring decisions based on abilities rather than age.

#### May Ask:

- Are you at least 18 years of age?
- If applicant is over age 21 only if it is job related
- After hiring, verifying age with a birth certificate or other ID and asking age on insurance forms are proper inquiries.

#### May Not Ask:

- What is your date of birth?
- How old are you?
- What are the ages of your children?
- When did you attend high school?
- When did you graduate from high school?

### AMERICANS WITH DISABILITIES ACT – Title I and V (ADA)

- Requires facilities to be accessible to the disabled.
- Prohibits employment discrimination on the basis of disability.
- Prohibits pre-employment medical inquiries and examinations.
- Prohibits an organization from excluding a qualified person if he or she can perform the "essential functions" of the job either unaided or with "reasonable accommodation."

#### May Ask:

- Are you capable of performing the position's essential job functions with or without accommodation?
- Can you meet the attendance requirements of this job?
- Can you demonstrate how you would perform the following job-related functions? (The applicant is given a common job-related task to perform.)
- Questions about an applicant's current use of illegal drugs are proper.
- If an applicant voluntarily discloses that he or she has a disability, an employer may ask two follow-up questions: Whether he or she needs a reasonable accommodation, and if so, what type? The employer must keep any information an applicant discloses about his or her medical condition confidential.
- After hiring, the employer may ask questions about medical history on insurance forms.

## May Not Ask:

- Do you have a disability?
- Do you have any previous major medical problems?
- How many days were you sick last year? Questions asking about an applicant's legitimate use of sick leave are also improper. (This question is likely to elicit information about a disability.)
- What prescription drugs are you currently taking?
- Nature of severity of disability / How does your condition affect your abilities?
- Recent or past surgeries and dates
- Past medical problems
- Do you have any handicaps?/What caused your handicap?/What is the prognosis of your handicap?
- What is your medical history?/Have you ever had a serious illness?
- Do you take any drugs? (Because it does not distinguish between illegal and legal drug use, this question may cause applicants to disclose their lawful use of prescription drugs.)
- Have you ever been in rehab?/Have you ever been addicted to drugs or been treated for drug addiction?
- Have you ever been an alcoholic?/How much alcohol do you drink?/Do you have a drinking problem?
- Do you have AIDS?
- Have you been diagnosed with any mental illnesses?
- Are you receiving any psychiatric treatment?
- Have you ever received worker's compensation or been on disability leave?
- Have you had any recent or past illnesses or operations? If yes, list them and give dates when these occurred.
- What was the date of your last physical exam?
- How is your family's health?
- When did you lose your eyesight (or hearing, leg, etc.)? How?
- Do you need an accommodation to perform the job? (This question can only be asked after a job offer has been made.)
- Have you ever taken a test that revealed hearing loss?
- Do you use any assistive devices for a hearing impairment (such as a hearing aid) or have you in the past?
- Do you have any hearing loss due to an on-the-job accident or injury?

## **IMMIGRATION REFORM AND CONTROL ACT (IRCA)**

- Prevents employment of undocumented immigrants.
- Requires employers to ensure applicants are legally employable in the United States.
- Requires employees to complete an Employment Eligibility Verification Form (I-9 Form).
- Employers often violate the act by asking for identification only from people of color; or applicants with obvious cultural, language, speech, or accent differences.

## May Ask:

- Are you legally employable in the United States?
- Are you able to speak/write English fluently?
- What languages other than English do you speak?

May Not Ask:

- What kind of last name is Smith?
- Where were you born? Were your parents born there?
- What is your lineage or national origin?
- What is your spouse's nationality?
- Are you a citizen of a country other than the United States?
- What is your native tongue? How well do you speak English?
- What is your maiden name?

**PREGNANCY DISCRIMINATION ACT OF 1978**

- Prohibits discrimination based on pregnancy.
- Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same as non-pregnant employees for all employment-related purposes, including fringe benefits.

May Not Ask:

- When do you plan to have children?
- How many children do you have?
- What are the ages of your children?
- What is your maiden name?
- Are you pregnant?

**TITLE VII OF THE CIVIL RIGHTS ACT**

Prohibits discrimination in hiring, compensation, and terms, conditions, or privileges of employment based on race, religion, color, sex, or national origin.

May Ask:

- You may ask applicants to volunteer racial information -- when it is not seen by the individual or office involved in the hiring decision.
- What professional organizations do you belong to?
- Are you available to work weekends? (If job related).
- Have you used any other name(s) on employment or education records?
- For purposes of checking your work record and credentials, have you ever changed your name or assumed another name?
- Whether applicant has a legal right to be employed in the US; Are you eligible to work in the United States?
- Ability to speak/write English fluently only if it is job related
- Other languages spoken if it is job related
- If you are not a U.S. citizen, do you have the legal right to remain permanently in the United States?
- What is your visa status? (If no to the previous question.)
- Are you able to provide proof of employment eligibility upon hire?
- What languages do you speak, read, or write fluently? (Only if relevant to the job.)
- Photos may be requested after hiring for identification purposes.

- Whether applicant is able to work on the days/times required by the job
- Can you work on Saturdays/Sundays? (Only if relevant to the job.)
- Can you work overtime?
- Is there any reason you can't start at 7:30 a.m.?
- Can you meet specified work schedules or do you have activities or commitments that may prevent you from meeting attendance requirements?
- Would you be willing to relocate if necessary?
- Will you be able and willing to travel as needed for this job?
- What are the names of relatives already employed by the University?
- Do you foresee any long-term absences in the future?
- Employers may ask for the name, address, and phone number of the employee's emergency contact person.

May Not Ask:

- You may not ask applicants to supply a photo in the application process.
- What race are you?
- Tell me all the clubs you belong to.
- What place of worship do you attend?
- Do you wish to be addressed as Mrs., Miss, or MS.?
- What is your spouse's name?
- Where is your spouse employed?
- Ethnic association of surname
- Birthplace of applicant or applicant's parents
- Nationality, lineage, national origin
- Nationality of applicant's spouse. Is your spouse Caucasian/Hispanic/African American/Asian, etc?
- Whether applicant is citizen of another country
- You sound like you have an accent; where are you from?
- What is your nationality?
- What is your heritage?
- Are you an American citizen?/Are you a citizen of the United States?
- Are you, your parents, or your spouse naturalized or native-born U.S. citizens?/Where are your parents from?
- What is your native tongue?
- How did you acquire the ability to speak, read, or write a foreign language?
- How did you acquire familiarity with a foreign country?
- What language is spoken in your home?
- Any questions asking specifically about the nationality, racial, or religious affiliation of a school are also improper.
- What is your skin color?
- Are you a member of a minority group?
- What color are your eyes and/or hair?
- Do you go to church?/Do you attend church regularly?
- Are you religious?/What is your religious affiliation?
- Do you take time off from work for religious purposes?/What religious holidays will you be taking off from work?

- Health-care coverage through spouse
- Do you have small children? What are your child care arrangements?
- Are you planning to have children soon?/Do you plan to have children?/Do you plan on having more children?/Do you plan to have a family? When?
- How many kids do you have? How old are your children?
- What is your marital status?/Are you married, divorced, separated, engaged, widowed, etc.?/What is your maiden name?/Is this your maiden or married name?
- What is the name of your relative/spouse/children?
- Questions concerning the candidate's spouse, or the spouse's employment, salary, or dependents are also improper.
- How will your spouse feel about the amount of time you will be traveling if you get this job?

### **REHABILITATION ACT – Section 503**

Prohibits employment discrimination against individuals with disabilities by federal contractors and subcontractors with contracts of more than \$10,000.

### **GENETIC INFORMATION NONDISCRIMINATION ACT – Title II (GINA)**

Prohibits employment discrimination based on genetic information about an applicant, employee, or former employee.

### **FEDERAL EXECUTIVE ORDER #11246**

Prohibits federal contractors and federally–assisted construction contractors and subcontractors from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires Government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.

### **EQUAL PAY ACT (EPA)**

Prohibits discrimination based on sex in the payment of wages or benefits when men and women perform work requiring similar skills, effort, and responsibility for the same employer under similar working conditions.

### **ILLINOIS HUMAN RIGHTS ACT**

Provides for freedom from discrimination because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, military status, or unfavorable military discharge, in connection with employment.

### **VIETNAM ERA VETERAN'S READJUSTMENT ASSISTANCE ACT (VEVRAA)**

Prohibits federal contractors and subcontractors from discriminating in employment against protected veterans, and requires these employers to take affirmative action to recruit, hire, promote, and retain these veterans.

## Other Do's and Don'ts

Category	May Ask (Do)	Discriminatory (Don't)
Military	<ul style="list-style-type: none"> <li>Describe the relevant work experience that you acquired from U.S. armed forces as it relates to this position.</li> <li>Training received in the US military</li> </ul>	<ul style="list-style-type: none"> <li>Do you plan to take leave to serve in the military?</li> <li>Veteran status, discharge status, branch of service</li> </ul>
Labor Organization	<ul style="list-style-type: none"> <li>Do not ask questions about labor union associations or relationships with unions.</li> </ul>	<ul style="list-style-type: none"> <li>Are you a union member?</li> <li>What do you think of unions?</li> </ul>
Sexual Orientation	<ul style="list-style-type: none"> <li>No questions are appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Are you straight or gay?</li> </ul>
Other	<ul style="list-style-type: none"> <li>Academic, vocational or professional schooling</li> <li>Membership in trade or professional association related to the position</li> <li>Job references</li> </ul>	<ul style="list-style-type: none"> <li>Height or weight except if a bona fide occupational qualification</li> </ul>
Arrest Record	<ul style="list-style-type: none"> <li>Have you ever been convicted of a crime? If so, when, where, and what was the disposition of the case? (The information secured on an individual's conviction record should only be used in employment decisions if the conviction is substantially work-related.)</li> <li>Convictions - disclosure of a criminal record</li> </ul>	<ul style="list-style-type: none"> <li>Have you ever been arrested?</li> <li>Have you ever spent a night in jail?</li> <li>Number and kinds of arrests</li> </ul>

## Biases

Category	Red Flag	Example
Inconsistency in questioning	Asking different questions of candidates of the same position	Asking women if they have had gaps in employment
First-impression	Making snap judgments, good or bad of first impressions	Impressed with individuals "charisma"

Negative emphasis	Rejecting candidate based on small amount of negative information	Candidate didn't have polished shoes
Halo Effect	Interviewer lets one strong point overshadow all other information	Candidate went to the same alma mater as interviewer
Horn Effect	Interviewer lets one negative point overshadow all other information	
Nonverbal bias	Undue emphasis placed on nonverbal behavior not related to job performance	Person constantly flings hair to the side
Contrast Effect	Candidate is compared to the last one interviewed	Second person may appear more qualified than they are or than the job would require when compared to a weaker candidate
Similar-to-me	Selecting candidates that have the same personal characteristics	Candidate is from the same home town and high school
Cultural noise	Candidate provides socially acceptable rather than factual response	Why did you leave your last employer? I am looking for more challenging opportunities.
Implicit Bias	Attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner	Pervasive and do not necessarily align with our declared beliefs.