



Hiring and Interviewing Basics

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According to the Department of Labor's recently released statistics from June 2009, the number of job openings in the United States remains at a low of 2.6 million, having fallen off by 45% since June of 2007. As a result of the decrease in job openings, staffing agencies and businesses across the country are receiving hundreds of applications for single job postings. These numbers are double or triple the number of applications that would have been received for similar postings in years past. This disparity between the number of available jobs and the number of available candidates creates a pool of exceptionally qualified candidates, much to the benefit of employers.

For those employers lucky enough to be in a position to hire new talent from this pool of highly qualified candidates, screening, interviewing and selecting the best and brightest candidates is a challenge that should be assigned to the best and most qualified employees in your organization. An individual who is properly trained to understand the hiring process and to know what inquiries to avoid in the interview process is best qualified to screen, interview and select employees.

Moreover, employers who currently are not hiring can take advantage of the lull in hiring by taking time to review employee selection and hiring practices to ensure they are in the best possible position when it is time to expand the workforce.

In either case, recruitment and application tools should be reviewed for legal compliance and to make sure they are up to date and accurate. Doing so now will put your company in the best position to hire employees now or to react quickly and appropriately when you do move into hiring mode. Prior to engaging in the hiring process, those responsible for interviewing and hiring should develop and

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understand the qualifications and criteria for available positions. They also should be familiar with the company's policies and practices so that they can accurately explain them and answer any questions applicants may ask.

To be effective in the employee selection and hiring process, the interviewer should be trained to focus on the qualifications, educational requirements, experience needs, physical demands/abilities and licenses required by the position and to avoid areas of inquiry that are prohibited by the Equal Employment Opportunity Commission (EEOC) and the Ohio Civil Rights Commission (OCRC). Of course, there are certain subjects which interviewers must be careful to avoid during a job interview. Of these subjects, the easiest to identify and avoid are those that are almost always (with few very narrow exceptions) and impermissible: (1) race/color; (2) religion; and (3) marital status, children, pregnancy or childcare. Because there are generally no questions into these areas that are permitted by law, interviewers easily should be able to steer clear of questions that violate the law by avoiding these subjects altogether.

Other subjects are more tricky, because certain inquiries can be made without running afoul of the law, while other inquiries into the same subject would be unlawful. Therefore, training the individuals responsible for your employee selection and hiring process to ask the right questions – and avoid the illegal ones – is critical. The following guidelines may be useful:

1. **Name:** Any inquiries into titles that indicate race, color, religion, sex, national origin or marital status are prohibited by law. Therefore, an interviewer may not ask a candidate about a maiden name or whether the candidate would prefer to be referred to as Miss, Mrs. or Ms. It is, however, lawful to ask a candidate whether he or she has ever worked or studied under a different name.
2. **Address:** Inquiries into foreign addresses that indicate national origin are prohibited by law. Instead, ask the candidate questions about the place and length of residence at current or former addresses.
3. **Age:** Potential employers are prohibited from making any inquiry other than that necessary to establish the applicant meets a minimum legal requirement for age. Indeed, requiring a birth certificate before hiring is unlawful. Therefore, interviewers must steer clear of asking how old a candidate is, or what year the candidate graduated from high school.
4. **Birthplace/National Origin:** An interviewer must not make any inquiries into the place of birth of the applicant or the spouse, parents or grandparents of the applicant. However, if speaking a foreign language is a requirement of the available position, an interviewer may lawfully ask questions to ascertain foreign language proficiency.
5. **Sex/Gender:** The only time it is permissible to ask questions related to gender is when gender is necessarily related to performance of the job (i.e. models for gender specific clothing). Interviewers must avoid questions about gender and also must avoid asking questions of one gender to the exclusion of the other. For example, interviewers should not ask “what will your children do while you are work” of only women.
6. **Citizenship:** The law prohibits inquiries into whether applicant, spouse or parents of applicant are native born or naturalized. Requiring proof of citizenship before hiring also is prohibited. Interviewers should be trained to ask only whether the applicant is legally authorized to work in the United States. Or, if the job requires the ability to speak or write in English, this narrow inquiry can be made.
7. **Protected Activity:** While it is permissible to ask an applicant why he or she left his or her last job, interviewers should be trained to avoid unlawful inquiries into whether an applicant has filed a lawsuit or charge against a prior employer.
8. **Arrests/Convictions:** The EEOC and OCRC generally only permit inquiries into convictions of specific crimes which are related to the qualifications for the job. Interviewers should be trained to avoid asking any questions which would reveal arrests without convictions.

9. **Physical Condition:** Employers are prohibited from asking an applicant whether he or she will need medical insurance, and also must steer clear of asking questions about physical characteristics such as height, weight, hair, skin or eye color of the applicant. However, inquiries about an applicant's physical condition or abilities, when related to the job in question, can be made. For example, if the job requires repeated lifting of 25-pound boxes, an applicant may be asked about his or her ability to perform this task.

10. **Work Schedule:** Interviewers will get your company into legal hot water by asking questions about an applicant's willingness to work on a particular religious holidays. Instead, interviewers should focus their inquiries about an individual's work schedule, on whether the individual is willing to work a required schedule or anticipated overtime.

11. **Transportation:** No inquiries should be made into an applicant's specific transportation arrangements, such as whether the applicant owns a car. However, job-related questions about the applicant's ability to travel may be asked. Interviewers also may ask whether transportation is available so the applicant can work the required schedule.

12. **Disability/Handicap:** Any inquires into current or past medical problems, prescriptions, past worker's compensation claims or treatment for drug/alcohol abuse are prohibited and must be avoided. Interviewers should ask applicants only whether they can meet the attendance requirements of the job and whether they can perform the essential functions of the job in question with or without accommodation.

13. **Relocation:** Interviewers must tread lightly on the subject of relocation. While it is lawful to ask an applicant whether he or she is willing to relocate, if it is required for the job, inquiries into a spouse's attitude towards relocation would be unlawful.

Interviewers also must be careful to avoid making promises to applicants during the interview process. Finally, all individuals involved in the employee selection and hiring process should be trained that they must identify observable, measurable, definable differences between candidates for a particular position and document these differences. If an applicant is not offered a position and files a charge of discrimination, contemporaneous documentation which thoroughly explains the reasons for the decision will be the best evidence for the EEOC or the OCRC to rely upon to dismiss the charge.



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