

Appendix E

Interview Guidelines - Acceptable and Unacceptable Questions

Interviewing and evaluating applicants fairly is one of the most important and critical stages of the recruitment process. All search committee members should know what information may legitimately be sought during the interview. Some lines of inquiry may themselves be viewed as discriminatory; others have the potential to elicit information that is improper to use in making a decision. Examples of these areas of concern follow this introduction.

It is critical to conduct lawful employment interviews that meet Equal Employment Opportunity Commission (EEOC) standards. The guiding principle behind any question to an applicant is, can the employer demonstrate a job-related necessity for asking the question? It is the **intent** behind the question that is important, as well as **how** the information is used that the EEOC would examine to determine if any discrimination has occurred.

Because your actions can expose you and the University to legal liability during the interview process, it is crucial to understand the types of questions that can and cannot legitimately be asked. The litmus test for an employer is to ask this question: *What do I really need to know about this applicant to decide whether s/he is qualified to perform this job?*

In asking applicant questions, the interviewer should ask himself/herself if this information is really needed in order to judge the applicant's qualifications, level of skills and overall competence for the job in question. It is unacceptable to ask questions about a qualification or criteria that will not affect the way a job is performed.

Race and Ethnicity

Applicants should not be asked questions regarding their race or ethnic background during the interview. There are no job-related considerations that would justify asking an applicant a question based on race.

Gender

Generally, there are no appropriate questions based on the applicant's gender during the interview process. The only exception is gender is a Bona fide Occupational qualification (BFOQ) when the position justifies hiring a candidate of a specific gender. For example; hiring a female attendant for a women's dressing room in a department store.

Moreover, the federal prohibition against sex discrimination would be violated if an employer were to treat men and women differently based on their marital status or existence of dependents. Specifically:

- (a) Women are no longer protected under state wage/hour laws re: number of hours worked, lifting restrictions, etc.
- (b) It is unlawful to deny a female applicant employment because she is pregnant, or planning to have a child at some future date.
- (c) Questions on marital status, number of children, child care arrangements, etc. are not appropriate.
- (d) Questions as to availability to work should be job-related: What hours can you work? What shift(s) can you work? Can you work on weekends and/or holidays?

Age

The Age Discrimination Act of 1967 bars discrimination against persons age 40 or over. Any

recruiting effort that is age-biased such as "recent graduate", or any question during the interview process that deters employment because of age is unlawful. Questions that would reveal age, such as year of graduation, should be avoided unless there is a need to construct a chronology of work or educational experience.

Citizenship / National Origin

Applicants are protected from discrimination based on their national origin. Questions related to an applicants' national origin, such as their birthplace, ancestry, or origin of name, should be avoided. Thus, you may not ask an applicant where he/she was born, or where his/her parents were born.

Prior to making an offer, the only discussion about citizenship status that may lawfully occur is whether the applicant is currently eligible to work in the United States. If such a question is asked of one applicant, it should be asked of all. Following the offer stage, the successful applicant will be required to produce documentation of eligibility in order to complete the I-9 form requirements.

Arrest or conviction Records

Questions relating to an applicant's arrest record are improper, while questions of an applicant's conviction record may be asked, if job related. If such an inquiry is deemed warranted because of a particular position, all applicants should be treated equally, and it is advisable to conduct a formal records check per University policy. The Equal Employment Opportunity Commission and many states prohibit use of arrest records for employment decisions because they are inherently biased against applicants in protected classes. Also, questions about a candidate's conviction records if included in the selection process must be asked of all applicants in a consistent manner. Asking or obtaining criminal records in an inconsistent manner, based on race, color, religion, national origin or sex of the applicant is unlawful under Title VII.

Financial Status

An interviewer should not ask if an applicant owns or rents a home or car, or if wages have been previously garnished, unless financial considerations for the job in question exist. Any employer who relies on consumer credit reports in its employment process must comply with the Fair Credit Reporting Act of 1970 and the Consumer Credit Reporting Reform Act of 1996.

Disability

The Americans with Disabilities Act (ADA) prohibits employment discrimination against qualified individuals with disabilities, as well as persons who have a record of disability or are perceived as disabled. The protection extends to all aspects of the hiring process and all other employment related activities.

You may not ask whether or not the applicant has a particular disability. You may only ask whether or not the applicant can perform the duties of the job in question with or without a reasonable accommodation. . If such a question is asked of one applicant, it should be asked of all.

Marital and Family Status

Questions that could elicit personal information about applicants' marital status or childcare arrangements should be avoided. Employers can ask if applicants are able to work the hours required by the job, or undertake job-related travel, as well as about the duration of any anticipated absences. All applicants should be treated equally. Applicants themselves may ask about the University's leave policies, such as Family Leave, Paternity Leave, Adoption/Foster

Care Leave, and Temporary Disability Leave. If such questions arise, refer the applicants to the Benefits section of the UML HR website at www.uml.edu/hr.

Military Record

You may not ask what type of discharge the applicant received from military service. Applicants can be asked questions about their military experience, qualifications, or training if they relate to the actual requirements of the position and if asked, should be asked of all applicants.

Religion

Applicants are protected from discrimination based on religious denomination, beliefs, customs, or religious holidays observed. Questions that could elicit religious information should be avoided unless they have a clear correlation to need, such as working on Saturdays or Sundays, or peak periods. If asked, the question should be limited to stating the requirements of the position, and should be asked of all applicants.

Sick Leave / Medical conditions

Questions that elicit information about how many days an applicant was sick or other questions pertaining to sick leave or medical conditions should be avoided.

Workers' Compensation

Questions that elicit information about an applicant's workers' compensation history should be avoided.

Acceptable and Unacceptable Questions

Following is a representative list of unacceptable and acceptable questions. It is NOT all-inclusive but is meant as a guide to assist you in the interview process. If an inquiry could be discriminatory, it is best to avoid it.

Subject	Acceptable	Unacceptable
Name	Current legal name	Maiden Name
	-Have you ever worked under a different name?	Questions about national origin, ancestry, or prior marital status.
	-Is any additional information, relative to a change of name necessary to enable a check of your educational or work records?	
Age	-Are you over the age of eighteen?	Age. Birth Date.
		Questions that might identify the applicant's age, especially, over age 40
National Origin/Citizenship	"All offers of employment are contingent upon verification of identity and work authorization in the United States" "Are you legally authorized to work in the United States?"	Questions as to nationality lineage, ancestry, national origin, descent, parentage of applicant or applicant's spouse. "What is your mother tongue?" or language commonly used by applicant. How applicant acquired ability to read, write, or speak a foreign language.
		"Are you a US citizen?."
Race, Color	None	Questions that indicate applicant's race or color, complexion or color or skin, eyes or hair. Direct or indirect reference to race, color, or racial groups.
Residence	Place of Residence	"Do you own or rent your home?"
Marital Status, Family	Whether applicant can meet work schedule or job requirements. Should be asked of both sexes.	Any inquiry about marital status, children, dependents, pregnancy, or childcare arrangements. Name or address of relative, spouse or children of adult applicant. "With whom do you reside?", or "Do you live alone?", or similar questions.
Religion	Describe the work schedule and ask whether applicant can work that schedule.	Questions about applicant's religion, religious days and hours to be worked. days observed, or "Does your religion prevent you from working weekends or holidays?".
Military Service	Questions about knowledge, skills and abilities, acquired during applicant's military service, relevant to the position applied for.	Specific questions about military service, such as dates, type of discharge, or service in a foreign military services. -What type of discharge did you receive?

References	"By who were you referred for this position?" Names of persons willing to provide professional references for applicant.	Questions of applicant's former employers or acquaintances that elicit information specifying applicant's color, race, religious creed, national origin, ancestry, any physical or mental disability, medical condition, marital status, age or sex
Disability/ Medical Conditions	May ask applicant's ability to perform job-related functions and with or without reasonable accommodation, only if the question is asked of all applicants. <i>(The interviewer must have already thoroughly described the job.)</i>	-Whether applicant is handicapped or has a disability. - Have you ever been hospitalized? If so, for what condition. - How many days were you absent from work because of illness last year?
Arrest and Conviction Records	-Have you ever been convicted of a crime? If so, when, where and what was the disposition of the case? The answer if yes, will not be used to discriminate against any applicant. (May ask about record of convictions if all applicants are asked.)	-Have you ever been arrested?

References/ Acknowledgements:

- EEOC website (www.eeoc.gov)
- SHRM White papers- Basic Interviewing; Guidelines on Interview and Employment Application Questions