

# **QUICK TIPS**

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## **Conducting Interviews Legally**

Do you know what interview questions you can legally ask a job candidate? What if the individual is pregnant, has a disability, or cannot work on specific days because of religious beliefs? This issue of *UE QUICK TIPS* provides a concise overview of federal laws on interviewing with particular focus on those with greatest complexity. It also discusses special concerns in the recruiting and hiring of faculty. A handy chart at the end summarizes the guide and covers some additional areas. Remember that this newsletter focuses only on federal laws. Be sure to check with an employment lawyer about state and local laws that may apply in your area.

Do not approach the hiring process with preconceptions about the personal characteristics of the ideal candidate. It is generally unlawful to consider only women, minorities, or native speakers of a language for positions. In well-intentioned but overzealous attempts to diversify, some institutions have committed reverse discrimination by excluding whole classes of people from consideration. Use the interview process to explore the talents that diverse individuals have to offer.

### **Disabilities**

As a general rule, employers may not ask questions during job interviews that are likely to elicit information about a disability. It is best to begin with a job description that includes the essential functions of the position. Interview questions should focus on how a candidate would perform the job rather than whether the person has a disability. After an employer makes a job offer, it can ask more specific questions about a disability. However, the scope of questioning during the interview process is strictly limited, as these examples illustrate.

#### ***Don't Ask***

- What is the nature of your disability and what limitations does it place on you? (if the disability is obvious)
- Do you have a disability? (if no disability is obvious)
- Do you need a reasonable accommodation to perform this job?

- Have you ever been injured on the job?
- Have you ever filed a workers' compensation claim?
- What medications are you currently taking?
- Have you ever been addicted to drugs or treated for drug addiction?

### ***Okay to Ask***

- How would you go about performing this job?
- Will you be able to perform all of the job assignments for this position in a safe manner?
- Can you meet the attendance requirements of this job?
- Do you have all of the licenses and certifications required for this job?
- Have you ever used illegal drugs?

### **Sex and Family Matters**

Because of a long history of discrimination against women in the workplace, Congress passed numerous laws that prohibit questions about sex, family status, or pregnancy during the interviewing process. Interviewers should not limit specific questions to male or female candidates only. For example, it is permissible to ask candidates if they are willing to travel for work, but it is illegal to put that question to female applicants only.

### ***Don't Ask***

- Are you married?
- How many children do you have?
- What is your child-care arrangement?
- Are you planning to start a family in the near future?
- Do you have a spouse who would need relocation assistance if you are offered this job?

### ***Okay to Ask***

- Do you anticipate any absences from work on a regular basis?
- Have you ever used a different last name?
- Do you have any responsibilities or commitments that will prevent you from meeting specified work schedules?

### **Age**

While it is legitimate for an employer to consider job candidates' experience, the employer may not consider age unless there is a legal minimum, such as a position serving alcohol. Legal maximum ages, such as the one for commercial airline pilots, are very rare and seldom apply to educational institutions. In addition, be careful not to make stray comments in an interview such as "we are looking for new blood," which may suggest age bias.

### ***Don't Ask***

- What is your date of birth?
- What year did you graduate from high school or college?
- At what age do you plan to retire?

### ***Okay to Ask***

- If you were offered this position, could you establish that you meet the legal age minimum?
- How long do you intend to stay in the position you are seeking?

### **National Origin and Citizenship**

An institution may not discriminate in hiring on the basis of national origin. However, it may ask whether a candidate is legally eligible to work in the United States. If English is not an applicant's first language, the institution may consider whether the individual speaks, understands, and reads English well enough to perform the position's essential functions.

### ***Don't Ask***

- Where were you born?
- What is the origin of your last name?
- What is your native language?
- Are you a U.S. citizen?

### ***Okay to Ask***

- If offered this position, could you provide verification of your right to work in the United States?
- Do you speak languages other than English that might be helpful in performing this job?

### **Tips for Interviewing Faculty and Coaches**

- Many faculty and coaches are hired on fixed-term contracts renewable at the end of the academic year. Be careful not to make representations that a candidate could reasonably construe either as a promise that the contract will automatically be renewed or that the term of employment will be different from what is stated in the written contract.
- Avoid stereotypes about what kind of candidate is needed to fill a coaching or faculty position. For example, it is illegal to assume that a man could not coach a female athletic team or that a Spanish teacher needs to be of Spanish or Latino descent. Stick to questions based on the individual's ability to perform the job.
- In filling regular faculty positions, do not dismiss the qualifications of your own adjuncts and visiting faculty. Declining to give serious consideration to their candidacies can lead to problems. They may argue that the individual ultimately selected had less teaching experience or weaker qualifications. If differences such as gender, race, age, or disability exist, the unsuccessful adjunct or visitor may claim discrimination.

In conclusion, numerous laws regulate the interview process, but a little bit of guidance can go a long way. Remember that this guide covers only federal laws on interviewing, so be sure to check with an employment lawyer in your area about additional laws that may apply. For example, discrimination based on sexual orientation is not illegal under federal law but is prohibited by many states and localities. Overall, we hope these *Quick Tips* will help you avoid legal pitfalls and find the best candidates to fill positions at your institution.

## Basic Interview Guidelines Under Federal Law

ITEM	AVOID	PERMISSIBLE
AGE	Age, birth certificate, date of high school or college graduation.	Whether candidate meets minimum or maximum age requirement that is a bona fide occupational qualification.
ALCOHOL OR DRUG USE	Whether candidate is an alcoholic or has been addicted to drugs in the past.	Whether candidate currently uses illegal drugs or has used illegal drugs in the past.
ARREST RECORD	Inquiries about arrests.	None (may have a disparate impact on certain minority groups).
CITIZENSHIP	Whether candidate is a U.S. citizen.	Whether candidate is legally eligible to work in the U.S.
CONVICTION RECORD	Inquiries relating to convictions that are not relevant to the job being applied for.	Convictions that reasonably relate to performing the job in question. Consider the nature and number of convictions, facts surrounding each offense, and length of time since the last conviction.
DISABILITIES	Questions designed to elicit information about a disability.	How candidate would perform the job and whether the candidate could perform the job with or without accommodation.
HEIGHT OR WEIGHT REQUIREMENTS	Height or weight requirements not related to job.	Height or weight requirements necessary for the job.
MARITAL AND FAMILY STATUS	Questions about marital status, childcare, number of children, or pregnancy.	Questions about whether candidate can meet work schedule. Ask all questions to candidates of both sexes.
NAME	Inquiries about national origin, ancestry, or prior marital status.	Whether candidate has ever worked under a different name.
NATIONAL ORIGIN	Lineage, ancestry, descent, native language, birthplace, and national origin of spouse or parents.	Whether candidate is legally eligible to work in the U.S. and can communicate well enough to perform the job's essential functions.
RACE OR COLOR	Complexion or color of skin.	None.
RELIGION	Religious preference or affiliation, except at religiously affiliated institutions when hiring faculty or ministerial positions that further the institution's religious mission.	Whether candidate can meet the work schedule with reasonable accommodation, if necessary.
SEX	Candidate's sex, where sex is not a bona fide occupational qualification.	Candidate's sex, where it is a bona fide occupational qualification, such as actor, actress, or locker room attendant.

## **Additional Resources**

*Interview Guide for Supervisors*, 5<sup>th</sup> Edition, edited by Mary Ann Wersch

This detailed guide is the most popular publication sold by the College and University Professional Association for Human Resources (CUPA-HR). It costs \$9 for members and \$16 for non-members. For more information, go to [www.cupahr.org/HRpubs/details/intervw.htm](http://www.cupahr.org/HRpubs/details/intervw.htm).

*“Legal Guidelines for Interviewing”*

Boston College has provided a thorough eight-page chart for employees on what they may or may not ask during job interviews. For a copy of the chart, go to [www.bc.edu/bc\\_org/hvp/e/job\\_fair/legal\\_guidelines\\_chart.html](http://www.bc.edu/bc_org/hvp/e/job_fair/legal_guidelines_chart.html).

*“Employees with Disabilities: A Plain English Guide to Rights and Responsibilities in the Education Workplace”* by D. Frank Vinik

This guide includes an overview of the hiring process for individuals with disabilities including interviews, applicant testing, post-offer questions, and medical exams. United Educators members may download a free copy from the Members Only Library of the UE website at [www.ue.org/membersonly/GetDocument.asp?id=384](http://www.ue.org/membersonly/GetDocument.asp?id=384). The website gives instructions on how to register for the Members Only section.

*“Update on Legal and Illegal Interview Questions,”* by Art Bell

A well written-article with lots of practical advice by a faculty member at the University of San Francisco. To obtain a copy, go to [www.usfca.edu/fac-staff/bell/article18.html](http://www.usfca.edu/fac-staff/bell/article18.html).

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