

# **Appendix A**

## **Guide to Legally Permissible Interview Questions (alphabetical by topic)**

The following guide should be reviewed by all search committee members before interviewing candidates or references. Some topics may be inapplicable to a faculty search.

### **ADDRESS**

#### *Permissible*

- Applicant's address and length of residence in this city/state

#### *Impermissible*

- Questions regarding foreign addresses which would intentionally or unintentionally reveal national origin
- Whether applicant owns or rents home or lives in an apartment
- Names and relationships of persons with whom applicant resides

### **AGE / DATE OF BIRTH**

The Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age against individuals who are at least 40 years of age.

#### *Permissible*

- Questions as to whether applicant meets minimum/maximum age requirements, if applicable

#### *Impermissible*

- "How old are you?"
- Birth date, or request for birth certificate
- Dates of graduation
- "How would you feel about working for someone younger than you?"

### **ARRESTS**

Any consideration of arrest records is generally impermissible, as arrests are of little or no legal significance, and historically minorities have experienced proportionately higher arrest rates.

#### *Impermissible (unless permitted by state law)*

- Any question pertaining to arrest record



## **CITIZENSHIP / NATIONAL ORIGIN**

The EEOC has adopted Guidelines on Discrimination Because of National Origin that contain the following statement: “Because discrimination on the basis of citizenship has the effect of discriminating on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship; except pursuant to national security requirements by a federal statute or executive order.” Employers are, on the other hand, authorized to ask about employment eligibility.

### *Permissible*

- “Are you legally authorized to work in the U.S.?”
- “Will you now or in the future require sponsorship for an employment visa status for this position?”
- Statement that, if hired, applicant must furnish proof of citizenship or appropriate visa
- Assessment of all candidates regarding ability to communicate sufficient for job
- Proficiency in languages other than English, if job-related

### *Impermissible*

- National origin of other members of applicant’s family
- Questions regarding place of birth, “where originally from,” native language, etc.
- Require proof of citizenship prior to employment

## **CONVICTIONS (other than for traffic violations)**

In general, conviction of a crime cannot be an automatic bar to employment. Use of conviction records may discriminate against certain minority groups. On the other hand, employers for some positions involving high risk to the public may be required by state laws to inquire into applicants’ criminal histories; for other positions, use of conviction information is permitted to the extent it directly relates to the applicant’s fitness for the job. Consult with HR/EEO or legal counsel for guidance on whether to request criminal history information.

*Permissible* (Ask only if it is required or permitted because it directly relates to applicant’s fitness to perform a particular job.)

- “Have you ever been convicted of a (specific type) crime?”

## **CREDIT RECORD**

Probably impermissible unless required by considerations of business necessity, (e.g., hiring for a position having significant fiscal management duties) due to potential disparate impact on minority groups. Must consult with HR/EEO before beginning such a background search. Obtain written permission.



## **DISABILITY (For more detail, see attached *Interviewing Guidelines Under ADA*)**

Section 504 of the Rehabilitation Act of 1973 and The Americans with Disabilities Act (“ADA”) prohibit

discrimination in employment on the basis of handicap or disability except that such a person must be “qualified”- *i.e.*, with or without reasonable accommodation can perform the essential functions of the job in question. The employer need not hire any individual who, after reasonable accommodation, is not able to perform the essential functions of a job effectively and safely.

The ADA further prohibits covered employers from discriminating against *qualified disabled* individuals in any aspect of employment, including hiring, promotion, dismissal, compensation, training, or any other term, condition, or privilege of employment. The term “disabled” means substantially limited in performing one or more major life activities; being regarded as disabled; or having a history of a disability.

Specific prohibitions include limiting, segregating, or classifying job applicants or employees in ways that adversely affect the opportunities or status of such individuals because of a disability; using standards or criteria that have the effect of discriminating against the disabled; denying job benefits or opportunities to someone because of association or relationship with a disabled individual; not making reasonable accommodations; using employment tests or selection criteria that screen out the disabled and are not job-related; and failing to use tests that accurately measure job abilities rather than the impairment of a disabled individual.

### *Permissible*

- You may ask applicants if they will need reasonable accommodation in the *hiring* process (Ask *all* applicants.)
- If an applicant has an obvious disability, you may ask the applicant to explain how he or she would perform the tasks with or without reasonable accommodation.
- May ask about ability to perform job-related functions including attendance requirements, so long as not designed to seek information about a disability
- *Post-offer* physicals may be appropriate in some cases. Consult HR/EEO before proceeding.

### *Impermissible*

- “Do you have any disability or medical condition that would preclude you from qualifying for this position?”
- “Are you now or have you received treatment for a physical or mental condition that will require on-going time off for treatment?”

## **EDUCATION**

### *Permissible*

- Schools attended



- Degrees acquired
- Transcripts, if required of all applicants for similar work

#### *Impermissible*

- Questions regarding national, racial, or religious affiliation of schools attended (or dates of attendance or graduation)

### **FRIENDS OR RELATIVES**

This question may reflect preference for friends or relatives of present employees, and such a preference may be unlawful if it has a disproportionate effect on minority groups.

#### *Permissible*

- Names and addresses of persons willing to provide personal or professional references for applicant
- Explain conflict of interest rules and ask if these affect applicant.

#### *Impermissible*

- Names and addresses of applicant's relatives
- Questions about any relative of applicant that would be unlawful if asked of the applicant

### **MARITAL STATUS**

In general, irrelevant and impermissible.

#### *Permissible (Ask of all candidates.)*

- Whether applicant can meet specified work schedules
- Whether applicant has any commitments that would interfere with proper attendance, or job-related travel
- If applicant volunteers that spouse is also seeking employment, you may discuss how institution may assist.

#### *Impermissible*

- Whether applicant is married, single, divorced, separated, engaged, etc.
- Number and ages of dependent children
- All questions related to pregnancy or plans for marriage or family
- Questions regarding child care arrangements
- Questions regarding name or employment of spouse (unless relevant to dual hire)

## **MILITARY HISTORY**

### *Permissible*

- Experience/education in military services that would relate to the job applicant is seeking.

### *Impermissible*

- Type of discharge.
- Military disciplinary record.
- Inquiries about potential leaves of absence.

## **NAME**

### *Permissible* (Ask of all candidates.)

- Whether applicant has worked or studied under another name or nickname - needed to check work or educational record.

### *Impermissible*

- Requirements of prefix Mr., Ms., Miss, or Mrs.
- Questions about name seeking information about ancestry or name changes due to marital status, court order, etc.

## **NATIONAL ORIGIN (See Citizenship)**

### *Permissible*

- Names of professional organizations to which applicant belongs
- Offices held in professional organizations

### *Impermissible*

- “List of all clubs or organizations to which you belong.”

## **PHOTOGRAPH**

### *Permissible*

- May be required *after hiring* if necessary for business purposes.

### *Impermissible*

- Requirement that applicant attach photo to application. (State that attaching photo is optional.)



## **RACE**

### *Permissible*

- None - except voluntary self-identification for EEO reporting requirements, if any

### *Impermissible*

- Inquiry into color of eyes, hair
- Questions regarding race or about background or national origin that would reveal race

## **RELIGION / AVAILABLE FOR SATURDAY AND SUNDAY WORK**

### *Permissible*

- Questions regarding religious denomination or beliefs *only* if based on Bona Fide Occupational Qualification (BFOQ) as may be the case for employees of religious organizations
- Questions regarding availability for work during specific time periods (Reasonable accommodations must be made for employees whose religious practices interfere with work schedules.) (Ask of all candidates)

### *Impermissible*

- Questions regarding religious denomination or beliefs if not based on BFOQ
- Questions such as “Can you work Saturdays and/or Sundays?” or “What religious holidays do you observe?” if asked prior to employment

## **SEX**

Title VII prohibits discrimination in employment on the basis of sex except in the few instances in which sex may be a BFOQ that is reasonably necessary to the normal operation of the employer’s business. *E.g.*, men’s locker room attendant, etc.

### *Impermissible*

- All questions regarding sex of the applicant unless based on BFOQ

## **UNION AFFILIATION**

### *Impermissible*

- “Have you now or ever been a member of a union?”

## **WORKER’S COMPENSATION**

Generally impermissible

*Impermissible*

- “Have you ever been injured on the job, or filed for or received workers’ compensation?”

***Adapted from U.S. Equal Employment Opportunity Commission Guidelines for Title VII of the Civil Rights Act of 1964.***



## **INTERVIEWING GUIDELINES UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)**

The following are general guidelines to assist search committees in interviewing candidates with disabilities.

When contacting the candidates to arrange the interview, ask ALL candidates whether they will need any accommodations during the interviewing process. If accommodations are requested, contact the EEO Office for assistance, if needed.

During the interview, describe the essential job duties and conditions (orally or in writing) to EACH candidate and ask if he/she can perform duties with or without accommodations. Focus on job-specific tasks, not particular methods. Don't ask if candidate has a disability or some medical condition that would interfere with ability to work.

If a candidate voluntarily indicates that she or he has a disability and may require a reasonable accommodation to perform job tasks:

- Thank the person for providing the information and assure the candidate of the institution's commitment to provide reasonable accommodations for its employees.
- Don't ask, "What happened to you?" or for information relating to the type of physical or mental condition, diagnosis or prognosis.
- Follow up by asking about the types of accommodations the candidate believes may be necessary. You may also ask what equipment the candidate has used in the past to assist him/her in performing other jobs. You should not, however, discuss whether you feel these are reasonable or unreasonable accommodations.
- Don't ask how candidate proposes to get to work.

You MAY inquire whether a candidate will be able to meet the established attendance, hours, and leave policies. You MUST NOT ask whether the candidate has an illness or condition that requires regular medical treatment or might affect attendance.

You MAY ask about each candidate's attendance at prior jobs. Do not ask specifically about days missed due to illness.

You MAY NOT inquire about the candidate's prior on-the-job injuries, or workers' compensation claims. HOWEVER, for jobs where safety issues are significant, you MAY ask about the candidate's safety records and whether she or he has ever been involved in an accident on-the-job that resulted in property damage or injury to co-workers or students. You must indicate that you do not want details on whether and to what extent the candidate himself/herself might have been injured.



If the candidate has an obvious disability, such as vision impairment or a mobility impairment, that you feel may affect performance on certain job tasks, you may ask the candidate to explain how he or she would perform those job tasks with or without reasonable accommodation. You may not, however, ask about the nature and extent of the disability itself (*i.e.*, the diagnosis, how the individual became disabled, current or past medical treatment, prognosis, problems the individual has because of the disability, etc.)

***When conducting reference checks, the interview question guidelines provided above also apply to any questions you might ask of current or past employers or references.***