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 they 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 they have a disability, an employer may ask two follow-up questions: Whether they need 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?
- The nature of severity of disability / How does your condition affect your abilities?
- Recent or past surgeries and dates
- Past medical problems
- 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 illegal aliens.
- 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:

- 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 if it is job related.
- Other languages spoken if it is job related.
• 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?
• 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?
• 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 childcare 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

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<tr>
<th>Subject</th>
<th>Inappropriate</th>
<th>Appropriate</th>
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<tbody>
<tr>
<td>Criminal Record</td>
<td>Questions about being arrested, spending a night in jail or the number and kinds of arrests.</td>
<td>None</td>
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<tr>
<td>Salary</td>
<td>It’s illegal to screen applicants based on salary history or ask/require an applicant for salary and benefits history before interviewing, considering, or hiring them.</td>
<td>Information about wages, benefits, or compensation can be provided to applicants. A discussion with an applicant about the applicant’s expectations with respect to wage or salary, benefits, and/or other compensation is acceptable.</td>
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<tr>
<td>Military</td>
<td>Any questions regarding leave to serve in the military or veteran status, discharge status or branch of service.</td>
<td>Can ask the candidate to describe their relevant work experience that they acquired from U.S. armed forces as it relates to the position and training received in the U.S. military.</td>
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<td>Miscellaneous</td>
<td>Any inquiry that is not job-related or necessary for determining a candidate’s eligibility for employment.</td>
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<td>Organizations</td>
<td>Questions regarding a list of clubs, organizations, societies, and lodges which the candidate belongs to.</td>
<td>Can ask the candidate if they are a member of any organization that the candidate believes is relevant to their ability to perform the job.</td>
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<tr>
<td>Sexual Orientation</td>
<td>Questions regarding sexual orientation.</td>
<td>None</td>
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