

DO'S AND DON'TS FOR YOUR SCHOOL WHEN CONDUCTING JOB INTERVIEWS

Insights

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The job interview is a crucial factor in maintaining a school's community, identity, and safety. But it isn't just a chance to vet applicants for compatibility with school culture and mission – it's also when your school can sell the opportunity and learn more about the candidate as a person. The applicant should leave the interview feeling that your school is a great organization to work for. We've developed a list of strategies and questions that allow schools to present their best selves while positively engaging with their job applicants and complying with state and federal law.

Before We Begin: Consistency is Key

Above all, schools should have a consistent interview process to evaluate candidates fairly while avoiding legal exposure for disparate impact and disparate treatment under various state and federal laws. A rejected candidate claiming failure to hire or disparate impact doesn't even need to show that your school acted intentionally in discriminating against them, but having an established consistent process that you have developed ahead of time and applied to all candidates can help you avoid liability.

Pre-Interview Steps: What Your School Should Do Before Conducting Interviews

There are a few steps you should take before even launching into interviews to ensure you are on the right path.

Create and follow a hiring policy statement

A formal hiring policy helps your school explain how it deals with specific issues when they arise and shows that your

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school operates in a fair and consistent manner toward all employees.

Avoid bias in job descriptions

Before a candidate even reaches the interview stage, your school should ensure all job descriptions contain language that is clear, concise, and does not inadvertently exclude qualified candidates based on a protected characteristic. Your school should also evaluate job requirements to ensure they are necessary for successful job performance while not being overly restrictive.

Require employment applications before scheduling the interview

Your school's employment application should contain important details and representations from the candidate that all information is truthful and accurate. Your school should have a candidate's employment application on file before allowing them to enter school property for the interview.

Monitor referrals and hiring data

Additionally, your school must ensure that it does not take into account any protected characteristics, such as a candidate's race, national origin, or disability when considering referrals. Lastly, you should monitor hiring data to ensure that you are keeping track of selection rates across groups of candidates identified by protected category.

Questions to Ask

An interview panel of several school administrators and colleagues should be involved in the discussion with the job applicant as well as the final decision-making process. Having several faces in the room allows for a more comprehensive evaluation of the job applicant's qualifications compared to the school's needs. Once your school has selected finalists for interviews, consider asking each candidate the following questions:

Can you tell me how to pronounce your name?

This question shows that your school cares about each job applicant as an individual, and that the school is not presuming anything about the applicant's identity.



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Additionally, asking this question shows that your school respects applicants of all backgrounds equally.

Do you need anything from us to make this a positive interview experience?

This question shows that your school not only takes each applicant's needs into account, but also could help identify accommodations that could be necessary for the interview process — without disclosing an applicant's disability.

Are there any people from our school you'd like to talk to before you make a decision?

This question gives applicants an opportunity to gather information from multiple sources – not just the interview panel – and lets them know that your school is transparent.

What more do you need to hear from us to make your decision?

This question shows your school recognizes that applicants have choices but has a genuine interest in them choosing you.

Questions to Avoid – And Alternatives to Consider

Community and mission are critical components of the interview process for many schools. However, your school should exercise caution in how candidates are assessed for community fit, as these topics could lead questions addressing protected characteristics under federal and state laws. We've watered down what is – and isn't – permissible to discuss during your school's interviews.

Immigration Status

Avoid asking whether a candidate is native-born or naturalized, or where the candidate's parents came from. Interview questions relating to a candidate's national origin may violate the Immigration and Nationality Act and Title VII. While your school may be concerned with the Trump administration's directives permitting immigration enforcement activity in "sensitive" locations, including schools, an inquiry into a candidate's national origin may expose your school to litigation from candidates whose applications were denied.

Instead, consider asking, “Are you authorized to work in the United States?” While asking whether a candidate is a United States citizen prior to making an offer of employment is generally prohibited, your school would not be penalized for asking whether a candidate is authorized to work in the United States.

Native Language

Avoid asking about a candidate’s native language – as it could be construed as asking for their national origin and thus could violate Title VII.

Instead, consider asking, “What languages do you speak and write fluently?” Foreign language proficiency is often a key requirement of some positions — particularly for foreign language instructors. For immersion schools, foreign language proficiency is a basic requirement. For other schools, maintaining a breadth of languages spoken by faculty enhances the school’s commitment to educating the next generation of global leaders. But never premise a question about spoken language to identify a candidate’s national origin or other protected characteristic.

Religion and the Ministerial Exception for Religious Schools

In most circumstances, avoid asking whether a candidate is willing to work on a particular religious holiday, or whether the candidate observes any religious holidays. Interview questions relating to a candidate’s religion may violate Title VII. Asking a candidate for details about religious holidays they observe could be construed as asking the candidate about their religious affiliation.

Instead, consider asking, “Are you aware that our school follows a certain calendar and/or schedule?” Merely advising a candidate of your school’s calendar or schedule, even if it is a religious calendar or schedule, is permissible – but schools that are not affiliated with a religious institution should exercise caution to not inquire further into the candidate’s religious background.

However, if your school is affiliated with a religious organization you may be able to make certain hiring decisions based on religion. The Supreme Court has held that the First Amendment’s Religion Clauses provide a ministerial exception to laws that govern the relationship

between your religious school and “key employees”— those entrusted “with the responsibility of educating and forming students in the faith” of that religion. Put simply, your religious school may consider religion when hiring chaplains, pastors, priests, rabbis, or teachers who perform important religious functions. But your religious school should tread carefully in evaluating religion as a hiring criterion for other positions. Reach out to your attorney if you are unsure if the exception applies.

Disability Status and Genetic Traits

Avoid asking whether a candidate has a disability, or how severe a candidate’s visible disability is. Interview questions directly relating to a candidate’s disability may violate the ADA. Further, inquiring into a candidate’s own or family genetic traits – such as family history of carpal tunnel syndrome – may expose your school to litigation under the Genetic Information Non-Discrimination Act (GINA) or other state laws.

Instead, consider asking, “Are you able to perform the duties of this position?” Refer to the written job description you provided the candidate. Merely asking whether a candidate can perform essential job functions is always permissible. Your school likely has varying levels of physical activity requirements, ranging from physical education instructors to chemistry teachers, so inquiring into a candidate’s ability to perform essential job functions is highly important.

Parental Status

Avoid asking whether a candidate has children or plans to have children. Interview questions directly relating to a candidate’s parental status may violate Title VII and the Pregnancy Discrimination Act.

Instead, consider asking, “Do you have any commitments or responsibilities that would interfere with your ability to perform any job functions?” Again, refer to the written job description. While your school cannot ask candidates about their parental status, the available position may require extensive after-hours commitments, such as advising a student organization, coaching a sports team, or traveling to activities. But never premise a question inquiring into a candidate’s availability on the assumption that the candidate will be busy caring for their children.

Age

Avoid asking for a candidate's age, date of birth, or birth certificate before making a hiring decision, or any other question that could easily identify a candidate's age. An example of a question identifying a candidate's age could be, "Do you remember being at work before e-mail was introduced?" Age is a protected class under the Age Discrimination in Employment Act (ADEA).

Instead, your school may ask questions seeking proof of age for candidates who are minors, or ask whether a candidate could provide proof of age if they are ultimately hired – but never ask for proof of age during the interview process.

Salary History

Avoid asking candidates for their salary at their current or former positions. Many states have enacted laws prohibiting employers from asking about salary history, including California, New York, Illinois, and Washington. When in doubt, your school should avoid asking candidates about their salary history to comply with state law.

Instead, consider asking, "What is your salary expectation for this position?" This question shows that your school takes the candidate's experience and needs seriously.

Military Status

Avoid asking whether a candidate was discharged from the military or the type of discharge the candidate received. If the candidate would need to be absent for deployment, do not inquire further into those details. Military status is protected under the Uniformed Services Employment and Reemployment Rights Act.

Instead, consider asking whether the candidate can meet the essential job functions. Again, refer to the written job description you provided to the candidate. Your school could also ask about the type of training the candidate received in the military.

Questions to Always Avoid

Sexual Orientation

Interview questions directly relating to a candidate's sexual orientation may violate Title VII or state law. However,

schools with a religious affiliation may be able to consider a candidate's sexual orientation under the ministerial exception based on their religious tenets.

History of Workers' Compensation Claims

The ADA, as well as some state laws, prohibit employers from using past workers' compensation claims as a factor in hiring decisions. To avoid liability for discrimination claims, your school should avoid asking candidates if they have ever filed for workers' compensation.

Financial Information

While federal law does not prevent your school from asking about a candidate's financial information, federal EEO laws do prohibit your school from illegally discriminating when using a candidate's financial information to make a decision. Financial information protected from discrimination in hiring practices includes credit history and whether a candidate is a homeowner. To avoid risk of discrimination claims – as well as to maintain a positive interview environment – your school should avoid asking the above questions.

Memberships in Organizations

While asking a candidate about membership in a club or society might seem harmless, this may force the candidate to divulge information related to a protected characteristic such as race or religion. Schools without a religious affiliation should avoid asking candidates about their membership status in any organization that has any relation to a protected characteristic, including churches or synagogues or political groups.

However, schools with a religious affiliation may be able to require membership at a particular religious institution.

Avoid Making False Promises of Job Security

A successful candidate who is later terminated could sue your school under a breach of contract theory if an interviewer made false promises of job security during the hiring process. Here are some common pitfalls for your school to avoid:

- Saying that a candidate "can look forward to a long career" at your school.

- Saying that after a “probationary period” the candidate will become a permanent employee.
- Telling a candidate that they just need to do a good job to not worry about job security.
- Saying that no one is fired at your school unless there is a good reason.

Conclusion

We will continue to provide updates to assist your school in workplace compliance. Be sure to subscribe to [Fisher Phillips’ Insight System](#) to keep up with the most up-to-date information. Please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Education Practice Group](#) if you have any questions.