



Selection & Recruitment: Ask the Right Questions

Presented by the Office of Fair Practices

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Discrimination Laws

- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act (ADEA)
- Americans With Disabilities Act (ADA)
- Maryland Law

Protected Classes

- **Title VII of the Civil Rights Act** – no discrimination because of an employee's:
 - Race
 - Color
 - National Origin
 - Religion
 - Gender (women and men)
 - Pregnancy
 - Genetic Information

Protected Classes

- **Maryland law** protects an employee's:
 - Sexual Orientation
 - Gender Identity/Expression
 - Family or Marital Status
 - Age (any age!)
 - Religious and Political Affiliation

The “Prima Facie” Case of Employment Discrimination

- Member of a protected class
- Objectively qualified for the position (or performing satisfactorily)
- Suffered an adverse employment decision (i.e., not hired for the position)
- Others not in the protected class of equal or lesser qualifications were treated more favorably (i.e., hired for the job)

The “Legitimate Reason”

- Employer must “articulate a legitimate non-discriminatory reason” for its decision
- Make sure it’s the real reason
- Make sure you can prove it
- Don’t change your reasons

Pretext

- Employee must prove that the employer's stated reasons are untrue
- A jury can find evidence of discrimination based on the prima facie case and the disbelief of the employer's stated reason

OFP Review

- Interview questions and documented responses
- Interview log
- Interview panel
- Questions about selection go through HR recruiter
- 48 hour turnaround

Interview Questions to Avoid

Unlawful or Unwise Considerations

- Age
- Race, gender, national origin, religion
- Physical characteristics
- Marital Status
- This is a “man’s” or “woman’s” job
- Physical and health conditions
- Place of worship, if any

Interview Questions to Avoid

Unlawful or Unwise Considerations

- Financial Status
- Arrests
- Family Status
- Union affiliation
- Affiliation with non-job-related clubs

The ADA and Applicants

Follow the EEOC's Guidance

- Job descriptions and applications should be current and accurate
- Don't ask the wrong questions in the interview
- Direction from the EEOC's Guidance
 - Tell applicants the job requirements, don't ask about accommodation
 - Interview an applicant even if you don't think she could do the job if hired
 - Make the process accessible

Questions for Applicants

- No physical or mental questions
- Can ask about performing job
 - Cannot ask why
- Can ask about attendance
 - Cannot ask why



EEOC Questions

- How many days did you take leave last year?
 - Permitted
- How many days were you sick last year?
 - Prohibited
- How well can you handle stress?
 - Permitted
- Have you ever been treated for a stress related illness?
 - Prohibited

Miscellaneous Reminders

- Diversity training
- ADA reasonable accommodation
- New religious accommodation policy

Questions?

