

## **NDUS Legal News: Recruitment and Hiring**

Anyone involved in hiring decisions, including search committee members, department heads or administrators must be aware of restrictions on information that may be solicited from job applicants. There are numerous federal and state laws granting protection against discrimination on the basis of race, sex, age, religion, disability or marital status to job applicants. To minimize exposure to discrimination claims by unsuccessful job applicants, every institution should adopt guidelines that instruct persons involved in hiring decisions concerning permissible and impermissible areas of inquiry during pre-employment screening. Furthermore, persons making hiring decisions must be familiar with veteran preference laws.

It is generally understood that employment application forms may not request information concerning applicants' race, sex, age, religion, disability status or marital status. These restrictions also apply to oral interviews and other pre-employment screening. To avoid inadvertent mistakes when asking questions, and to document strict compliance with guidelines, a prepared list of questions, approved by the institution's legal counsel or personnel officer, should be used whenever applicants are interviewed or questioned. All applicants who are interviewed or questioned should be asked the same questions.

Applicants may not be asked their age or birth date, except that you may ascertain whether the applicant is 18 years of age or older. Do not ask about race, color, national origin or native language. Never ask applicants about their religious beliefs or practices or whether those beliefs prevent them from working certain days or hours. However, you may state the regular working days and hours and ask if the applicant is able to work that schedule. Do not inquire about disabilities or health. You may, however, ask whether the applicant can perform the essential job functions with or without a reasonable accommodation. Do not inquire about marital status or children (although the employer's nepotism policy may be stated on the application form). Do not ask for a maiden name (but you may ask whether the applicant has ever used any other name). You may inquire about criminal convictions, but you may not ask about arrests. When inquiring about an applicant's education, do not ask for high school graduation date or dates of attendance at elementary or high school. Do not inquire about political affiliations or union membership.

State law provides that veterans are entitled to preference in hiring for most government positions. The preference does not apply to faculty positions and certain administrative positions. To invoke the preference, the veteran must be a North Dakota resident, must not have been dishonorably discharged, and must submit documentation of active duty service for at least twenty-four months (or completion of the active duty term of services). If the agency does not have an established personnel system, a veteran who meets minimum job qualifications is entitled to absolute preference over all applicants who are not veterans. If the employer has an established personnel system (the NDUS and its institutions have one), a veteran is entitled to a five-point bonus and a disabled veteran is entitled to a ten-point bonus. Under an established personnel system by which applicants are ranked according to exam scores, interviews, and other factors, the person with the highest score is generally entitled to the position, absent "a justifiable cause" for not appointing that person. An exception is that a qualified disabled veteran is entitled to the position, regardless of ranking, absent justifiable cause for not appointing the disabled veteran.

It is very important for everyone involved in soliciting information from job applicants to understand these guidelines. The best method of avoiding mistakes is to distribute guidelines, with a list of permissible questions to be asked of all applicants, to all search committee members and others involved in the hiring decisions.

**Reviewed: Fall, 2008**

**Sponsors: President and Human Resources Administrator**