

SCREENING AND HIRING GUIDE LINE

This guideline is a resource for individuals serving on church, school, and other boards of Seventh-day Adventists organizations who are involved in interviewing and selecting candidates for positions authorized by the Conference. These screening and hiring guidelines are intended to educate participants on their legal responsibilities as representatives of the Conference, to ensure that participants meet their legal, ethical, moral, and spiritual responsibilities, and to promote accountability, trust, and equal employment opportunities in the Church workplace.

- The Conference is an equal opportunity employer.

Equal Employment Opportunities

- The Conference has the right, under federal law, to restrict employment to Seventh-day Adventists.
- The Conference is subject to other federal and state laws that prohibit discrimination in recruiting, selection, and hiring based on race, color, sex, age, ethnicity, or disability.
- As a volunteer serving on a committee or Board for a church or school and participating in screening and selection of Conference employees, you are also subject to these non-discrimination laws.
- Your failure to screen and recommend applicants in compliance with legal requirements and the Conference's equal employment opportunity policy can result in significant liability and expense.

Employment Application

- An application form provided by the Conference should be completed for all positions.
- Ensure that the applicant answers all questions on the employment application and does not omit any information requested on the form.
- Review the application to determine if the applicant's responses provide sufficient information on his/her background and qualifications.
- Review the applicant's work history to determine the existence of, and be prepared to request an explanation for, any gaps in employment.

Verification of Information Provided by the Applicant

- Confirm, if applicable, an applicant's current certification.
- Inquire regarding any complaints filed with the state agency or former employers against the applicant.
- Check references, especially those employers who employed the applicant in the same position which he is presently seeking.
- If the applicant is seeking a position of trust (e.g., with children or other vulnerable individuals or money), it should be made clear to the reference provider that the applicant is being considered for a position of trust.
- Review the results of the Conference's criminal background check, and check the applicant's driving record if the applicant is seeking employment in a position that involves driving responsibilities.
- Document in writing all information obtained regarding the applicant (especially verbal references) and include with the application.

Interview

- The focus of the interview should be the requirements of the position. The interviewer must understand the job, what it entails, its responsibilities and the essential requirements for the job.
- If there are any gaps in employment history or inconsistencies on the application, question the applicant to confirm the validity of the information.
- Take notes of all job-related information elicited during the interview (but not on the application form or resume).
- Limit your questions to those that are both relevant and legally permissible. Avoid asking questions about the applicant's national origin, sex, pregnancy status or future family plans, or age.
- Confirmation and consideration of an applicant's sex is only permissible where this characteristic is directly job-related. (i.e., bona fide occupational qualification for residence hall staff).
- Examples of prohibited and permitted interview questions are attached for your review.

Uniform Hiring Criteria

- Use uniform and consistent selection criteria on which to base a hiring recommendation.

Recordkeeping and Confidentiality

- The information gathered for the purposes of screening a candidate should be discussed only with the candidate and those directly involved in the screening and hiring process.
- Information on candidates should not be discussed or shared with persons outside of the selection committee or Board, including spouses.
- Notes taken during interviews should be provided to the Board chair and retained for all candidates for at least one (1) year.

Reasonable Accommodation Obligations

- The Conference is subject to the prohibitions against disability discrimination under federal and state laws.
- The Conference also has a legal duty under the Americans with Disabilities Act and similar state laws to "reasonably accommodate" persons with disabilities in the application and selection process, as well as for employment opportunities unless doing so would create any "undue hardship."

Limitations on Soliciting Information from Applicants

Anti-discrimination Statutes

Federal Laws: Title VII of the Civil Rights Act of 1964 prohibits discrimination in any aspect of employment on the basis of an individual's race, color, religion, sex, or national origin, and is applicable to all employers engaged in an industry affecting commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

Under Title VII, it is an unlawful employment practice for an employer to fail or refuse to hire or otherwise discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment because of a person's race, color, religion, sex, or national origin.

Other federal laws provide specific protections based on age (the Age Discrimination in Employment Act) and disability (the Americans with Disabilities Act).

State Laws: States generally provide protections similar to those under Title VII for applicants and employees based on race, color, religion, sex, disability, or national origin. However, some state anti-discrimination laws are more expansive and may prohibit discrimination based on other categories, such as marital status, sexual orientation, and gender identity.

Local Ordinances: Cities or counties, by ordinance, may also prohibit an employer from discriminating against applicants or employees based on membership in a protected category.

To avoid inadvertent violations of these laws and ordinances, participants in the hiring process should understand and comply with any additional protected factors during the recruiting, screening, interviewing, and selection process.

Bona Fide Occupational Qualifications

Asking questions on application forms or in telephonic/personal interviews about the applicant's race, color, and disability should always be avoided. Inquiries into an applicant's national origin, sex, religion, or age should also be avoided unless these characteristics are directly job related. Under Title VII, there is an exception to the prohibition against discrimination based on sex, religion, or national origin. The exception is called a "bona fide occupational qualification," ("BFOQ") and applies where, "in some extremely rare circumstances, a person's sex, religion, or national origin may be reasonably necessary to carrying out a particular job function in the normal operation of an employer's business or enterprise." Race cannot ever be considered a BFOQ.

Permitted and Prohibited Applicant/Candidate Inquiries

A. Name

The Conference is entitled to obtain the applicant's or candidate's name. However, even with respect to this basic information, care should be taken:

1. The Conference may ask:
 - Have you ever used another name? If yes, what is it?
 - Is there any additional information relative to a change of name or use of another name, necessary for us to check your work and education record? If yes, please explain.
2. The Conference should not ask:
 - Questions regarding any title which would indicate a protected class.
 - Question regarding maiden name.

B. Race/Color

1. Questions concerning an individual's race or color are presumptively prohibited because they generally have no legitimate purpose in the hiring process.
2. An employer is entitled to collect statistical information regarding applicants and its work force to comply with federal regulations which require the reporting of such information (such as the EEO-1 report). However, such information cannot be considered as part of the applicant's qualifications and must be maintained separate from the application. The information should not be requested by managers in the pre-hire process.

C. Age

Questions concerning an individual's age are presumptively prohibited because they generally have no legitimate purpose in the hiring process. There is no reason to ask such questions and therefore they should not be included in telephonic or personal interviews.

1. The Conference may:
 - Ask, “Are you at least _____ years of age?” (If you are applying for a job with a minimum age requirement you may be required to submit proof of age.)
 - Make a statement that a photograph may be required *after* the applicant is hired.

2. The Conference should not:
 - Ask questions concerning age, generally. Federal law prohibits discrimination against individuals age 40 and above.
 - Ask question as to birth date.
 - Ask questions regarding dates of attendance and/or completion of a particular school.
 - Ask any other question which might indicate that the applicant is at least 40 years of age.
 - Request submission of a photograph before hire.

D. Own Home/Rent/Board or Other Questions Concerning Financial Status

These are generally prohibited inquiries. Inquiries into an applicant's financial status, such as bankruptcy, car ownership, rental or ownership of a house, length of residence at that address, or past garnishment of wages, if utilized to make employment decisions, may violate federal law.

1. The Conference may ask:
 - Question regarding place of residence and previous residences.

2. The Conference may not ask:
 - Questions regarding whether applicant owns or rents home.
 - Questions regarding length of residence at current or previous addresses.
 - Questions concerning applicant's bankruptcy or garnishment.

E. Height/Weight

The EEOC and many courts have ruled that minimum height and weight requirements are illegal if they screen out a disproportionate number of minority group individuals (e.g., Hispanic surnamed or Asian-Americans) or women, and the Conference cannot show that height/weight standards are essential to the safe performance of the job in question.

F. Marital Status/Number of Children/Number of Dependents/Family

Questions about marital status, pregnancy, future child-bearing plans, and number and ages of children may be used to discriminate against women and may violate Title VII or state laws if used to deny or limit employment opportunities for female applicants. If such information is needed for tax, insurance or social security purposes, it should be obtained by the Conference after commencement of employment.

I. The Conference may make:

Statement regarding any nepotism policy concerning work assignment of employees who are related by blood or marriage.

2. The Conference should not ask:

- Questions which concern marital status.
- Questions concerning number and age of children or dependents.
- Questions regarding pregnancy, childbearing or birth control.
- Questions regarding arrangements for child care.
- Questions regarding names and addresses of spouse or children of adult applicant.
- Questions regarding with whom applicant lives.
- Questions directed to one sex, but not the other.

G. Citizenship/National Origin

It can be illegal under federal law to refuse to hire an applicant because he or she is not a citizen of the United States. However, under the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1101, et seq. ("IRCA"), it is illegal to knowingly hire (i) aliens who do not have any authorization to work in the United States, or (ii) any individual without complying with specific verification procedures.

Under IRCA, an Immigration and Naturalization Service 1-9 form must be completed by both the employee and the employer within 72 hours after hire. Employers must also examine documentation for all individuals, whether the individual is a United States citizen or an alien, to verify that the individual is authorized to work in the United States. In addition, both the applicant and the employer must attest under penalty of perjury that the required documents were examined. The 1-9 form must be maintained by the employer for a minimum of three years after the hire date or one year after termination, whichever is later.

Title VII prohibits discrimination on the basis of national origin. Any questions regarding the applicant's national or ethnic origin would be presumptively prohibited.

1. The Conference may:

- State, “You will be required to submit proof of identity and work authorization upon hiring in compliance with the Immigration Reform and Control Act.”
- Ask questions regarding languages the applicant reads, speaks, or writes.

2. The Conference should not ask:

- Questions regarding whether the applicant, applicant's parents, or spouse are native born or naturalized citizens.
- Questions regarding birthplace of the applicant, applicant's spouse or parents.
- Questions regarding nationality of the applicant, applicant's spouse or parents.
- Declaration that proof of citizenship or authorized alien status is required before selection for employment.
- Questions regarding the submission of a photograph before hire.

H. Contact with Current Employer/Reference Checks

So long as the Conference treats all applicants consistently, it can check references or talk to previous employers and base a decision, in part, on the information received so long as it is job related and not tainted by discrimination.

However, it should be recognized that it is unlikely an applicant will receive a bad reference from previous employers. Many employers refuse to talk about prior employees because of fear of being sued for defamation and limit information to confirming employment, the job position and

the dates of employment. The question, "Is the employee eligible for rehire?" will sometimes be answered, but many employers will not even respond to that question.

I. Education

There is no prohibition against asking an applicant information about his/her educational background. However, asking the applicant to provide the dates of attendance or completion of high school is an indirect but impermissible inquiry into the applicant's age.

1. The Conference may ask:
 - Questions regarding nature and scope of academic, professional and vocational training.
2. The Conference should not ask:
 - Questions that would indicate nationality or religious affiliation of a school.
 - Questions that would reveal an applicant's age.

J. Driver's License

A driver's license is certainly a necessary requirement for any position that involves the operation of a motor vehicle, or where the position requires the employee to be "on call" with independent means of transportation. Thus, such a question would be legitimate for this purpose. However, a requirement that an employee possess a valid driver's license would be difficult to sustain with respect to positions where a driver's license is not necessary for job performance and the applicant has other reliable means of transportation.

K. Arrest and/or Conviction of a Crime

1. Arrests
 - Federal regulations and most courts state that because members of some minority groups are arrested statistically more often than whites in proportion to their numbers in the population, making hiring decisions on the basis of arrest records may have a disproportionate effect on these groups. State laws may also limit inquiries regarding an applicant's criminal history.

2. Convictions

- EEOC regulations and guidance to employers provide that a conviction for a felony or a misdemeanor may not by itself lawfully constitute an absolute bar to employment. However, an employer may give fair consideration to the relationship between a conviction and the applicant's fitness for a particular job.
- A conviction record should result in rejection if the number, nature and recentness of the convictions cause the applicant to be unsuitable for that position. Factors such as (i) the age of the offense, (ii) seriousness of the crime, (iii) nature of the violation, and (iv) rehabilitation should be taken into account.

L. Discharge from Military Service

The Conference should not, as a matter of policy, reject applicants with less than honorable discharges from military service. Minority service members have a higher proportion of general and undesirable discharges than non-minority members of similar aptitude and education. A requirement that to be eligible for employment, ex-members of the armed services must have been honorably discharged may have a disproportionate effect on minorities and may be a violation of Title VII.

1. The Conference may ask:

- Information about military service.
- Questions concerning training or relevant skills acquired in military service.
- Questions regarding military service duties/responsibilities.

2. The Conference should not ask:

- Questions regarding type of discharge.
- Questions concerning service in the military of a foreign country.

M. Availability to Work on Weekends or Holidays

The Conference has an obligation to reasonably accommodate the exercise of employees' religious beliefs unless to do so would cause undue hardship. The religious exemption does not excuse the Conference from its obligation to reasonably accommodate the exercise of an employee's religious beliefs and religious practices.

1. The Conference may:
 - State regular workdays, hours, or shifts.
 - State that shift, rotation, and weekend work may be required.
 - Ask questions concerning the applicant's availability to work required days, hours or shifts.
2. The Conference should not:
 - Refuse to consider an applicant who requests accommodation of religious practices or beliefs.

**Retention Requirements for Interview Notes
And Hiring Documents
EEOC Regulations on Hiring Documentation**

- a. The organization is required by EEOC regulations to retain "documents and materials reviewed, prepared, or considered in the hiring process" (as well as documents generated during employment).
- b. Documents relating to the hiring process include applications, resumes, interview notes, questionnaires, tests, requests for accommodation during the application process, and any other documents that the organization makes or generates during the hiring process.
- c. Such documents must be retained by the organization for a period of one (1) year from the date of the making of the record or the personnel action involved, whichever occurs later.
- d. Where a charge of discrimination is filed or a lawsuit brought against the organization, it is required to preserve all personnel records relevant to the charge or action until final disposition of the charge or the action.
 - (1) The term "personnel records relevant to the charge" includes personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.
 - (2) The date of final disposition of the charge or the action means the date of expiration of the statutory period within which the aggrieved person may bring an action in a U.S. District Court or, where an action is brought against an organization either by the aggrieved person or the Commission, the date on which such litigation is terminated. 29 C.F.R. § 1602.14.

Americans with Disabilities Act Considerations in the Hiring Process

1. Accessibility

Employers, including church organizations, are required to provide necessary reasonable accommodations to enable an applicant to have equal opportunity in the interview process. The EEOC provides the following as examples of accommodations during interviews:

- a. An accessible location for people with mobility impairments.
- b. A sign interpreter for a deaf person.
- c. A reader for a blind person.

2. Worker's Compensation Claims History

It is the EEOC's position that:

- a. The ADA prohibits employers from inquiring into an applicant's workers' compensation history before making a conditional offer of employment.
- b. After making a conditional job offer, an employer may ask about a person's workers' compensation history in a medical inquiry or examination that is required of all applicants in the same job category.
- c. An employer may not base an employment decision on the speculation that an applicant may cause increased workers' compensation costs in the future.
- d. However, an employer may refuse to hire, or may discharge an individual who is not currently able to perform a job without posing a significant risk of substantial harm to the health or safety of the individual or others, if the risk cannot be eliminated or reduced by reasonable accommodation. Ch. IX, Americans with Disabilities Act of 1990, EEOC Technical Assistance Manual, § 9.1.
- e. In the pre-employment phase of the hiring process, the Conference should not ask:
 - (1) Have you ever been injured on the job?
 - (2) Have you ever filed a claim for workers' compensation?

- (3) Have you ever received workers' compensation or disability benefits?
- (4) Identify the dates, the circumstances surrounding such injury, and the nature of any workers' compensation claim you have filed.

3. Prohibited Pre-Employment Medical Inquiries and Examinations

1. The Conference cannot conduct medical examinations or ask medical questions prior to making a conditional offer of employment. 42 U.S.C. § 12112(c)(2)(A).
2. The Conference cannot ask a former employer or a reference about the applicant's disability or the nature or severity of the disability in any background or reference check. Ch. V, Manual, § 5.5(a), p. V-5.
3. The Conference cannot single out a disabled employee to request that he or she demonstrate his ability to perform a job-related task where the disability will not prevent the employee from performing these job-related tasks (e.g., an interview may not single out a disabled applicant with one leg to demonstrate his ability to assemble small parts with his hands while seated at a table). 29 C.F.R. § 1630, Appendix, § 1630.14(a).
4. Conference interviewers cannot ask a job applicant, in writing or verbally, any of the following questions:
 - 1) Do you have a disability?
 - 2) If so, explain the nature or severity of your disability.
 - 3) Have you filed any claims for workers' compensation?
 - 4) If so, identify the dates and nature of any workers' compensation claims you have filed.
 - 5) How did you become disabled?
 - 6) How did you lose your _____?
 - 7) Was the loss of your _____ caused by an impairment?
 - 8) What is your prognosis?
 - 9) How often will you require leave for treatment of your disability?
 - 10) Have you ever had or been treated for any of the following conditions or diseases? (Followed by a checklist of various conditions and diseases).
 - 11) Have any of your family members ever had or been treated for any of the conditions listed above?

- 12) Please list any conditions or diseases for which you have been treated in the past three years.
- 13) Have you ever been hospitalized? If so, for what condition?
- 14) Have you ever been treated by a psychiatrist or a psychologist? If so, for what condition?
- 15) Have you ever been treated for any mental condition?
- 16) Is there any health-related reason you may not be able to perform the job for which you are applying?
- 17) Have you had a major illness in the last five years?
- 18) How many days were you absent from work because of illness last year?
- 19) Do you have any physical or mental defects, which preclude you from performing specific kinds of work? If yes, describe such defects and specific work limitations.
- 20) Do you have any disabilities or impairments, which may affect your performance in the position for which you are applying? If so, identify any accommodations that would enable you to perform the job.
- 21) Are you taking any prescribed drugs?
- 22) Have you ever been treated for drug addiction or alcoholism?
- 23) Are you involved or have you been involved with an individual who has been/diagnosed with the HIV virus?

4. Permitted Pre-Employment Medical Inquiries and Examinations

- a. A Conference interviewer may ask an applicant whose known disability may interfere with or prevent the performance of a job-related function to demonstrate his or her ability to perform the function whether or not the Conference routinely makes this request of all applicants.
- b. A Conference interviewer may ask a disabled applicant with a known disability which will not interfere with the performance of a job-related function to demonstrate his or her abilities only if an employer routinely asks all applicants to demonstrate their abilities.

- c. If an applicant with a known disability has indicated that he could perform a job with reasonable accommodation, a previous employer may be asked about the accommodations made by that employer (but not about the particular disability).
- d. The Conference may require an applicant to submit to a drug test. A drug test is not considered a medical exam. 42 U.S.C. § 12114(d)(1). (The statute and regulations do not address testing for alcohol and, therefore, the Conference should not test for alcohol prior to a conditional offer of employment.)
- e. A Conference interviewer may ask an applicant, in writing or verbally, any of the following questions:
 - (1) Are you able to perform the job functions (identified in a job description or described verbally)?
 - (2) Can you perform these job functions (identified in a job description or described verbally) with or without reasonable assistance or accommodation.
 - (3) If you are able to perform the job functions with an accommodation, how would you perform the task and with what accommodation(s)?
 - (4) Demonstrate or explain how, with or without reasonable accommodation, you (a teller person with one arm) would be able to transport yourself and your tools up or down stairs.
 - (5) The attendance requirements of the job are _____. Can you meet these requirements?
 - (6) Can you perform both the essential (specify) and marginal (specify) job functions.¹
 - (7) The regular work hours of the job are _____. Can you meet this requirement?
 - (8) The special attendance needs of the job are _____. Can you comply with this requirement?

¹ Although this inquiry is specifically suggested by the EEOC, the EEOC reminds employers that any employment decision may not be based upon the applicant's inability to perform non-essential functions. For this reason, despite the position of the EEOC, managers should be cautious in concentrating on an applicant's ability to perform admittedly non-essential functions of the position.

(9) The travel requirements of the job are _____. Can you comply with this requirement?

(10) Do you engage in the current illegal use of drugs?

