

Leadership Toolkit

LEGAL GUIDELINES FOR INTERVIEWING



The purpose of this tool is to instruct you on the type of questions that can and cannot be legally asked while interviewing candidates for faculty, staff, or student employment opportunities. Understanding the difference between lawful and unlawful interview questions will help ensure a fair and unbiased experience for candidates and the University.

Our Commitment

Franklin Pierce University is an Equal Opportunity Employer committed to fostering an environment of respect, diversity, inclusion and high performance. We need to ensure that our hiring and selection practices align with these values and are in full compliance with all non-discrimination regulations.

Objective of Interviewing

Interviewing is an important part of the recruitment and selection process. The interview provides you with an opportunity to obtain in-depth information about a job applicant's skills, experiences, competencies and behavioral characteristics. You will then use this information to determine whether an applicant is suitable for an available position.

The law presumes that all questions asked during an interview will be used to make the hiring decision. Therefore, it is important to limit interview topics only to those that are needed to evaluate an applicant's qualifications for the particular position. There may be additional information you would like to know about the candidate, but you must refrain from asking questions that could potentially violate an individual's civil rights and/or privacy and could be interpreted as discriminatory. Questions not necessary to evaluate a candidate's ability to perform the job should always be avoided.

Consistency in Interviewing

Consistency in our interview practices is also critical in order to maintain thorough, fair and non-discriminatory selection processes. Otherwise, you could risk forming unintentional biases or not hiring the most qualified candidate. Your interview questions should ensure that similar information is gathered from each candidate for the same job. You do this by asking the same questions to each candidate. This makes it possible to compare qualifications and avoid fairness concerns.

Before conducting any interviews, you'll want to make sure the hiring team or search committee agrees on the key responsibilities and competencies of the role. These will be the basis of how you select the candidate and ultimately measure his/her performance.

Legal and Illegal Questions

The next page outlines legal guidelines you follow for interviewing candidates¹. You will see a trend in what is legal and what is illegal -- essentially, you cannot ask questions that will reveal information that can lead to bias in hiring, but you can ask questions that relate to job performance.

¹ Adopted from <https://www.nh.gov/hrc/laws.html> regulations

Category of Questions	What You May Ask in an Interview	What You Can't Ask/Discriminatory or Potentially Discriminatory
Gender and Family Issues	<ul style="list-style-type: none"> Whether the candidate has relatives already employed by the organization 	<ul style="list-style-type: none"> Are you pregnant? Number of children or child care arrangements Marital Status, Spouse's/partner's occupation or name Healthcare coverage through spouse/partner Maiden name
Race	<ul style="list-style-type: none"> No questions can be asked 	<ul style="list-style-type: none"> Candidate's race or color of skin Photos affixed to any application/resume forms
National Origin or Ancestry	<ul style="list-style-type: none"> Whether applicant is authorized to be employed in the US Ability to speak/write English fluently, if job-related Other languages spoken, if job-related 	<ul style="list-style-type: none"> Ethnic association of surname Birthplace of the candidate or his/her parents Nationality, lineage, national origin or the candidate's native language Whether the candidate is a citizen of another country
Religion	<ul style="list-style-type: none"> Whether the candidate is able to work on the shifts/times required by the job 	<ul style="list-style-type: none"> Religious affiliation Religious holidays observed
Age	<ul style="list-style-type: none"> If an applicant is over 18 or over 21 and only if it's job related (<i>useful if hiring students and if they work with specific equipment</i>) 	<ul style="list-style-type: none"> Date of birth or age Date of high-school graduation
Disability	<ul style="list-style-type: none"> Whether the applicant can perform the essential job-related functions, with or without accommodations (<i>essential functions are the fundamental, critical job duties</i>) 	<ul style="list-style-type: none"> If the candidate has a disability or the nature or severity of the disability Whether the candidate has ever filed a worker's compensation claim Past medical problems; recent or past surgeries and their dates
Other	<ul style="list-style-type: none"> Convictions (<i>The issue is highly complicated and has employment implications by State. Contact HR or Legal for advice.</i>) Professional, academic/ vocational schooling Training received in the US military Membership in job-related professional associations Job references Candidate's salary expectations 	<ul style="list-style-type: none"> Number and kinds of arrests Height and weight, except if it's a bona fide essential condition of the job Veteran status, discharge status or branch of service Contact in case of emergency (<i>can only ask post hire</i>) Minimum salary the applicant will accept

Information Candidate's Volunteer

Despite your careful preparation and question selection, some candidates may volunteer information related to one of the topics outlined above. The best way to handle this situation is not to pursue it or to make note of it. You can't erase the information from your memory, but you can eliminate it as a discussion point and selection factor. You can simply say, you'd like to return to the conversation about the candidate's experience and the job responsibilities.