

Legal Issues and the Search Process

- Be knowledgeable about affirmative action requirements associated with underrepresented groups, women, veterans, and persons with disabilities. Understand how the Americans with Disabilities Act (ADA) affects the search and selection process.
- Ensure that all portions of the application and interview process are accessible to persons with disabilities, and that the committee is prepared to address the issue of accommodations should that be necessary.
- Job-related criteria for the advertised position should be developed at the outset of the search and approved by the appropriate administrator.
- Committees should use forms to record job-related reasons to advance candidates through the search process and to provide rationale in the event of a charge of discrimination. Comments on forms should directly address the candidate being evaluated and not compare strengths and weaknesses relative to other candidates (unless the candidate is a veteran; in this case the reporting requirements are different). Inappropriate or judgmental comments about a candidate's appearance, personality etc. should not be included.
- All persons on the search committee should actively participate in the screening process to avoid having any one person eliminate a candidate.
- Only candidates meeting minimum advertised qualifications should be invited for campus interviews.
- Interview questions designed to provide fair and objective evaluation of each candidate should be developed in advance of committee interviews with candidates. A set of identical questions should be asked of all candidates.
- Contacts with candidates or any other individuals concerning any aspect of the search should be made by the appropriate administrative official or search committee designee.
- Telephone contacts with candidates should be limited to standard questions agreed upon in advance. Notes of responses should be made for subsequent committee use.
- Relative weights of criteria should be developed and assigned prior to the review of any application. Fluctuation in the application of weighted criteria may lead to allegations of manipulation and may indeed indicate manipulation to select a particular candidate.

- Avoid gratuitous comments made to the candidates that might indicate bias or be viewed as a discriminatory statement (such as, "we're looking for young blood").
- Only job-related reasons can be used to advance candidates. Objective criteria are less susceptible to legal challenge; however, the higher the level of position, the more acceptable the use of subjective criteria becomes. The subjective criteria still must be related to the position in question (e.g., leadership ability for a dean's position).
- As a public institution, documents generated by the search committee are considered public records subject to disclosure. Likewise, if a discrimination action is filed, investigating agencies will have access to search committee records.

These are guidelines only and are not meant to constitute legal advice, which can only be rendered when related to specific factual situations.

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