

I SEE THAT YOU'VE
COME PREPARED!



JOB INTERVIEWS & DISCRIMINATORY BEHAVIORS

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GOALS

1. Differentiate between “soft skills” and “hard skills.”
2. State the difference between fallacious and legitimate interviews.
3. State the purpose of the U.S. Employment Equal Opportunity Commission (EEOC).
4. Reiterate at least four of the listed EEOC Discriminatory Laws.
5. Know what to say or do regarding discriminatory questions asked during an employment interview.
6. Incorporate appropriate non-discriminatory behaviors as a Human Resource (HR) Manager.

KEY WORDS FOR APPLICATION

1. Soft Skills
2. Hard Skills
3. Fallacious Interview
4. Legitimate Interview
5. Equal Employment Opportunity Commission (EEOC)
6. Discriminatory Laws (11 in number)
7. Equal Pay Act
8. Civil Rights Act (1964 & 1994)
9. Age Discrimination in Employment Act
10. Genetic Information Non-Discrimination Act
11. Americans with Disabilities Act
12. National Origin Discrimination
13. Lesbian, Gay, Bisexual, Transgender (LGBT) Discrimination
14. Montana Discriminatory Laws
15. Human Resource Department (HRD) Discriminatory Practices

The following process is intended to give potential employees and employers an opportunity for acceptable theory and process of interviewing and discriminatory behaviors. If you are a potential employee, the following information is intended to provide a knowledge and awareness of interviewing behaviors and discriminatory laws. If you are an employer, the following information is intended to provide important information regarding policies and discriminatory laws. Being mutually aware of the process will better prepare a potential employee and employer for the complexity of the process.

POTENTIAL EMPLOYEE INTERVIEW

As a potential employee, be prepared by bringing to the interview a copy of the completed application, your letter of interest, resume, and written references, if possible. These documents should contain only information that is not discriminatory in nature—e.g. leave (among other identified discriminators) your age and race off the documents. Also, be sure that the interviewers have received their copy in advance of your application, letter of interest, and resume *before* you enter the job interview.

Come intellectually prepared with information about the facility/organization, its philosophy, objectives, goals, and anything you can find on the internet about the facility/organization. Think about your personal philosophy and how it supports (or does not support) the facility/organization's philosophy. Also, know how you are willing to help move the facility/organization toward their stated mission and goals. Be prepared to offer this information to the interviewing committee/person. Know the laws related to job discrimination and be willing to identify them if confronted with discriminatory questions.

Dress conservatively. This means to dress simply, modestly, and be clean. Modest makeup for a female is a must! Males should consider if the job warrants being clean-shaven. Preferably, represent yourself in the manner YOU feel you want to be represented.

Understand that employers are concerned about your "soft skills" as well as "hard skills." The term "soft skills" is related to your work ethics, ability to be courteous, success as a team member, self-discipline, self-confidence and control, ability to conform to prevailing norms, and language proficiency. The "hard skills" have to do with your intellectual understanding and ability to do the required work. It is important to display your "soft skills" while assuring the reviewing committee that you can do the expected "hard skills."

You might be placed in a legitimate or fallacious interview. The hiring process for the employer is to be the SAME, legally, no matter whether a person is seriously considered for the job (legitimate interview) or a decision has already been covertly determined by the interviewing committee/person (fallacious interview). Fallacious interviews are common and often an attempt to meet nondiscriminatory laws. Many accrediting processes require the interviewing of a certain number of potential employees, as well as other criteria that help to reduce the appearance of discrimination and biases.

As a potential employee being interviewed, enter the situation of being interviewed with the full understanding that the facility/organization has a legal requirement to conduct job nondiscriminatory interviews. There are federal laws prohibiting job discrimination; however, discrimination is alive and well with 20,857 complaints filed with the U.S. Equal Employment Opportunity Commission (EEOC) in 2016, alone. The anti-discriminatory laws refer to the right of people to be treated equally.

DISCRIMINATORY LAWS

There are eleven (11) different types of discrimination. These are: age, disability, equal pay/compensation, genetic information, national origin, pregnancy, race/color, religion, retaliation, sex, and harassment.

Fifty years after the legislation protection for older workers, bias is on the rise in job recruiting. There are questions and “required documents/documentation” by job interviewers that can help reveal the age of the applicant—asking about age, viewing a driver’s license, asking about high school graduation date, etc. Even though some applications inform you that you do not need to answer their discriminatory questions, the statement is often added that they greatly encourage the answering of these questions. These questions are often/can be an effort to covertly intimidate to acquire discriminatory answers or an intentional plan to discriminate. Don’t be afraid to mention that you realize the question is considered legally discriminatory—then, answer only if you choose to answer! Know that there are many possible questions that might test your knowledge as a potential employee about discriminatory laws. When you hear a discriminatory question, always comment about your awareness of the possible attempt to discriminate. Just the fact that the interviewing committee/person is aware of your discriminatory astuteness is a significant indication of your intelligence!

It is important that you, as a potential employee, know (at least) the following laws that help protect from discrimination. The (EEOC) enforces these laws. It, also, provides oversight and coordination of all federal equal employment opportunity regulations, practices, and policies.

Equal Pay Act of 1963 is intended to protect against sex-wage discrimination. This means equal pay for equal work as it relates to job content. It is illegal to discriminate based on sex regarding fair and equal pay and benefits in any aspect of employment. This includes overtime pay, bonuses, vacation pay, retirement benefits, and fringe benefits. Exceptions to this law are bona fide seniority, quality or quantity of production, experience, education, and training. Signed into law by John F. Kenney as part of the New Frontier Program. (www.wisegeek.com)

Civil Rights Act of 1964 was a landmark civil rights and U.S. labor law in the U.S. that out-laws discrimination based on race, color, sex, or religion. It included the banning of discrimination in public places. It requires that job requirements be uniformly and consistently applied to persons of all races, color, religion, sex, national origin. Signed into law by Lyndon B. Johnson. (Civil Rights Act of 1964)

Race/Color Discrimination of 1964 (Title VII) involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Race/color discrimination also can involve treating someone unfavorably because the person is married to (or associated with) a person of a certain race or color. Discrimination can, also, occur when the victim and the person who inflicted the discrimination are the same race or color. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training fringe benefits, and any other term or condition of employment. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision such as being fired or demoted. (U.S. Equal Employment Opportunity Commission)

Age Discrimination in Employment Act (ADEA) of 1967 and the Older Worker’s Benefit Protection Act protect individuals of companies of 20 or more employees who are 40 years of age or older. Age discrimination means treating an applicant or employee less favorable because of his/her age. It prohibits discrimination in any aspect of employment—hiring, firing, pay, job assignments, promotions, layoff,

training, benefits, job assignment, training, or any other condition of employment. It is not illegal to favor an older worker over a younger worker, even if both workers are 40 years or older. It is generally unlawful to include age preferences, limitations, or age specifications in job notices or advertisements unless shown to be a bona fide and reasonable occupation qualification. (U.S. Equal Employment Opportunity Commission)

The Civil Rights Act of 1991 was a more comprehensive civil rights law than the 1964 Civil Rights Act. It attempted to strengthen the earlier law, especially in the realm of employer liability and burden of proof. It added new ways to sue employers. It prohibits all discrimination in employment based on race, gender, color, religious, or ethnic considerations. There is a provision for monetary damages to employees in cases of intentional employment discrimination. (Civil Rights Act of 1991)

Genetic Information Nondiscrimination Act (Title II) of 2008 prohibits employment discrimination based on genetic information about an applicant, employee, or former employee. It bars employers from using an individual's genetic information when making hiring, firing, job placement or promotion decisions. (U.S. Equal Employment Opportunity Commission)

Americans with Disabilities Act (ADA) (Title I) of 2009 prohibits employment discrimination against qualified individuals with physical disabilities that limit one or more major life activities, who has a history or record of an impairment, or is perceived by others to have such an impairment. The ADA does not state all the impairments that are covered. The requirement is for employers or religious entities with 15 or more employees. It provides qualified individuals with disabilities an equal opportunity to benefit from a full range of employment-related opportunities available to others. It restricts questioning about an applicant's disability before a job offer is made and requires an employer to make reasonable accommodations regarding mental or physical limitations, unless it results in undue hardship. (A Guide to Disability Rights Laws)

National Origin Discrimination of 2017 is an employment policy or practice applying to everyone regardless of race or color. It involves treating people (applicants and employees) unfavorably because they **appear** to be of an ethnic background, ethnicity, or accent, or because they appear to be a certain ethnic background (even if they are not). National origin discrimination also can involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision such as being fired or demoted. (U.S. Equal Employment Opportunity Commission)

Lesbian, Gay, Bisexual, and Transgender (LGBT) Discrimination of 2010 included gender identity among all classes protected against discrimination under the authority of the EEOC.

In 2012, the EEOC ruled that Title VII of the Civil Rights Act of 1964 does not allow gender identity-based (i.e. how one thinks of him/herself as a male or female) employment discrimination because it is a form of sex discrimination.

In 2014, there was a ruling that an employee could bring a claim under Title VII's ban on sex discrimination because an employer views an employee's sexual orientation as "not consistent with acceptable gender roles." Both categories of "sexual orientation" (i.e. The inclination of an individual with respect to heterosexual, homosexual, and bisexual behavior—An enduring pattern of romantic or sexual attraction) and "gender identity" (i.e. how one thinks of him/herself as a male or female) are protected against discrimination in hiring and employment on the part of federal government contractors and subcontractors. Signed into law by Pres. Barack Obama.

In 2015, the EEOC concluded that Title VII of the Civil Rights Act of 1964 does not allow sexual orientation discrimination in employment because it is a form of sex discrimination. In 2017, the Department of Justice reversed the Obama-era policy which used Title VII to protect transgender employees from discrimination. Reversal was signed into law by Pres. Donald Trump.

Montana LGBT Discrimination Laws since 1997, state that same-sex sexual activity is legal. However, same-sex couples and families headed by same-sex couples are not eligible for all the protections available to opposite-sex married couples. Altering sex on a birth certificate requires sex reassignment surgery.

In 1991, there was an anti-sodomy statute with a failure to repeal the state's sodomy law. In 1997, the state law stated same-gender sexual contact between consenting adults was constitutional. In 2013, legislation decriminalized sodomy. Signed into law by Gov. Steve Bullock.

As of 2014, the federal court ruled same-sex marriage was constitutional. (Historically in 2004, Montana voters defined marriage as the union between a man and a woman).

Montana permits adoption by individuals. Stepparent adoption is legal with no restrictions.

Montana (by executive order) prohibits discrimination on the basis of sexual orientation and gender identity in state employment. (Wikipedia)

(ALL OTHER STATES REPRESENTED ON WIKIPEDIA)

If there is a test to be considered for employment, the test must be about the *specifics of the job*.

If the interviewing committee/person makes it known that your job qualifications do not meet job expectations, ask why!? After all---the application and resume provided the information prior to the interview. Have the reviewing committee members tell you the qualities they expect in a potential employee. That way, it provides an opportunity to explain personal qualities that were, possibly, overlooked by the interviewing committee.

Some interviewing committee members/individuals will ask questions that are discriminatory, but are covert, subtle, or even concealed in the type of questions they ask. For example: Instead of asking directly about where a potential employee was born, the question might be about where did you grow

up? Another common question to determine age is, “When did you graduate from high school?” These are often disguised in very friendly language and demeanor. The astute potential employee should recognize any diversion that is intended to prompt the disclosure of discriminatory information. No response is required. Merely, use the technique of redirection of the conversation to talk about something else.

The interviewing process is an educational process to see and more fully understand a facility/organization’s employment process. Considering the ability and desire to work with any individual can be one of the most important decisions for job success. Discriminatory concerns about an interviewing behavior (or no interviewing opportunity) should encourage acquiring of their name and their supervisor's name in an unobtrusive manner. Discriminatory interviews are reportable, but should be done initially at the lowest level—that is, bringing it to the attention of the person who attempts to discriminate and, thereafter, to their supervisor if you deem necessary. *Most of the time, interviewers do not intend to ask questions that discriminate or behave in a discriminatory manner!*

Know your ability offered to the facility/organization. Have pride on being self-aware and having a healthy ego. Say what is correct, not necessarily what you think the interviewing committee/person wants to hear.

If hired, wonderful! If not, an interview can be a valuable learning experience. Know the worth of your personal respect, dignity, and being empowered to determine personal employment choices—not always depending on others for approval.

Be gentle with yourself and know the intended objectivity of an interview—and the probable *subjective* outcome by the interviewing committee. Be understanding of the interviewing committee member(s) or a person who will try to perform an *objective* interview. Objectivity (or at least an attempt) is required. The process is time consuming and requires concentration. Because of the human component, *subjectivity* will always be integrated as a part of an objective interview attempt.

HUMAN RESOURCE DEPARTMENT (HRD) & NON-DISCRIMINATION

The intended role of the HRD is to maximize strategic use of human resources and maintain policy and regulatory compliance within the organization/facility. Entropy naturally causes a random movement away (deterioration) of all law(s) of nature or behavior—therefore, there is an absolute necessity to have policies to guide administrative behaviors. Also, because of the extreme increase in susceptibility and discriminatory litigation, it requires every organization/facility to perform diligence in their discriminatory knowledge, establishment of written organization/facility policy, and recorded compliance to nondiscriminatory behaviors. This, also, includes:

1. Informing others regarding accurate knowledge, acceptance, and intended compliance to discriminatory laws as stated in established policy---(Suggestion: Place information in full view of both employees and potential employees.)
2. Documenting carefully the reasons for hiring of relatives, friends who feel/act like relatives, or in-house employees without out-of-house employee consideration as established by policy---(Suggestion: Consider the possibility of Nepotism accusations.)
3. Interviewing job applicants in like-manner and in keeping with policy---(Suggestion: Determine in writing *preliminary* criteria stating a required method of advertising and a minimum number of in-

house and out-of-house qualified applicants to be interviewed. If applicant applications are less than policy requirements, state recognition of policy noncompliance and advertising efforts.)

4. Stating on the application form that “answers to potential discriminatory questions will not be used to determine employment” --- (Suggestion: Add to **each** discriminatory question on the application a check-box that can be checked by the job applicant indicating a potential employee’s personal choice **not** to provide the associated discriminatory information.)
5. Providing privacy for every person that wishes to converse about any business or employment opportunity--- (Suggestion: Invite visitors or potential employees to sit down in an office with one or more HR employees, closing the door (if needed), listening to any concerns or questions presented, and conducting communication that is verbally and non-verbally supportive. No lunchroom or foyer conversations are acceptable for business or employment concerns.)
6. Informing advertising agencies/career centers/job opportunity centers, etc. immediately of the closing of job opportunities or the filling of an advertised position--- (Suggestion: Courtesy shown by a hiring organization/facility toward a potential employee who is pursuing a work opportunity speaks for the nondiscriminatory effort, philosophy, and overall caring behaviors of the organization/facility. Accurate advertising and updating of employment information is important, as it takes time and effort for the potential employee to seek out employment opportunities.)
7. Terminating employees (when necessary) according to existing nondiscriminatory policies and job descriptions --- (Suggestion: Have a policy that requires a HRD employee and an administrator present in the room. That is, always two people should be present representing the organization/facility. Know the facts and examples of employee non-compliance. Be honest, kind, and have a quiet demeanor. Provide support along with constructive criticism. Use legal counsel, as needed. Follow existing policies carefully and document outcomes thoroughly.)
8. Mentoring new employees--- To hire new employees without concern for the ongoing information and support to successfully accomplish their expected job description is discriminatory. After all, other existing employees know how to do their job or they would not continue to be employed. Ignorance regarding the needs of new employees shows insensitivity and a lack of understanding of the need by all new employees to be successful. Discrimination as to the access and understanding of behavior(s) producing employment success is not acceptable. Active mentoring during a reasonable time post-employment is non-discriminatory behavior. (Suggestion: Have a policy that requires at least one identified mentor that is performing similar tasks and responsibilities to meet with the new employee at least weekly for the purpose of determining job requirement progress, answering job questions, and making suggestions on how to continue successfully in his/her job assignments.) Perhaps a report to the HRD by the mentor for a stated length of time would help the HRD support successful job outcomes for the new employee.

It is important to recognize the HRD as the first encounter for potential employees and the probable end-point for employment resolutions, concerns, and conflict resolutions. Therefore, it is important that the laws and relevant non-discrimination behaviors be known by all who have contact with the HRD department.

Montana Discriminatory Laws (Title 49-- Human Rights Act--Montana Governmental Code of Fair Practices) is the beginning point for any effective HRD in Montana. The Montana Human Rights Bureau provides services, investigates, and attempts conciliation of discriminatory complaints. Complaints must be filed within 300 days of alleged discrimination to the Human Rights Bureau.

Critical Thinking Questions: (Use as individual assignments, classroom discussion, or personal introspective critical thinking exercises.)

1. Relate a person of color's concern(s) regarding race/color when applying for a job. Defend your concerns as they relate to the possibility of discrimination.
2. State the contents of appropriate questions asked at an interview. Contrast these appropriate questions with inappropriate questions.
3. Plan a reasonable and appropriate clothing wardrobe for an interview. Determine how an inappropriate wardrobe influences the chance of possible employment.
4. Make it known that you are a member of the LBGT community. Describe the possible feelings and concerns (if any) of an employer. Justify how you should be treated as a potential employee.
5. State the difference between "soft skills" and "hard skills." Judge the importance of each as it relates to different job opportunities.
6. Define a Legitimate Interview and a Fallacious Interview. Discuss the reasons for these two interviews and your response to each interview.
7. Give an example(s) of a possible discriminatory practice in employment. Predict the potential employee's feelings and behaviors regarding such discriminatory practice.
8. Understand the expected role of the Human Resource Department of the company/organization/facility for hiring of potential employees. Visualize the interviewing process and explain how a potential employee should be treated, verbally and nonverbally.
9. State the eleven (11) discriminatory categories. Compare the categories as to potential for abuse according to the variables of job type and responsibility, geographical location, high and low paying jobs, and individuals who have different amounts of education.
10. Review the history and progression of nondiscriminatory laws. Justify which law/act has had the most significant impact on the eradication (hopefully) of employment discrimination.

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