

Non-Discrimination in the Hiring Process

Under Federal and state law it is unlawful to discriminate in hiring on several “protected statuses”. This means that if you have two applicants who are equally qualified you cannot use one of these as a reason to choose one candidate over the other. Generally you may not discriminate against an applicant because they are married to, or associated with, a person having a protected status. Persons who are not members of a protected status group but are perceived to be members are also covered under these laws.

You should avoid asking questions on protected statuses in the interview process because asking questions of this type might be regarded as intent to discriminate and could give unsuccessful candidates grounds for legal action. That’s why every question should relate to this central theme: *“How are you qualified to perform the job you are applying for?”*

If you perform background checks you should also be cautious in checking candidates’ social media pages such as Facebook and Twitter because of the probability of finding out information related to these protected statuses. This could give unsuccessful candidates grounds for legal action.

Protected statuses under Federal law include:

- Race and Color: Applicants who are of a certain race or have personal characteristics associated with race (such as hair texture, skin color, or certain facial features).
- Religion
- Sex
- Age: Applicants aged 40 or older.
- Disability: Under the Americans with Disabilities Act (ADA) employers may inquire only about an applicant's ability to perform specific job duties and cannot request an employee's medical records. As long as the employee can do the job, with or without reasonable accommodations, an employer may not make a job decision (on hiring or promotion, for example) based on an employee's disability.
- Genetic Information: Applicants who a genetic test determines may be susceptible to physical or mental illness or impairment.
- National origin: Applicants who are from a particular country or part of the world, have a particular ethnicity or accent, or who appear to be of a certain ethnic background.
- Citizenship status: Applicants who are legal resident but are not U.S. Citizens.
- Pregnancy: Pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.
- Bankruptcy: The Federal Bankruptcy Act prohibits employers from discriminating against applicants because they have filed for bankruptcy.
- Military Status: Federal law prohibits discrimination based on military status with respect to “the terms, conditions, or privileges of employment.”

In addition, Wisconsin law includes these protected statuses:

- Arrest and Conviction Record: You may ask whether an applicant has any pending charges or convictions, as long as you make it clear that these will be given consideration only if the

offenses are substantially related to the particular job. You may only refuse to hire a qualified applicant because of a conviction record for an offense that is substantially related to the circumstances of a particular job.

- Honesty Testing: Requiring or requesting that an applicant take an honesty test (lie detector) is unlawful or heavily regulated. Further, you may not discriminate against a person who refuses to take a test or objects to its use.
- Marital Status
- Military Service, including the National Guard or U.S. Armed Forces Reserve.
- Sexual Orientation
- Use or nonuse of lawful products off the employer's premises during nonworking hours

Major Federal Laws

Note that the thresholds for these laws is for the whole municipality—the city or village—and not the library alone.

- Americans with Disabilities Act (ADA): The ADA prohibits employers with 15 or more workers from discriminating against employees or applicants because of disability or perceived disability. In addition, facilities that are open to the public must be accessible, regardless of the number of employees.
- Fair Labor Standards Act (FLSA): this law governs child labor and minimum labor requirements.
- Family and Medical Leave Act (FMLA): The FMLA grants up to 12 weeks of job-protected, unpaid leave to certain workers in companies with 50 or more employees who work within a 75-mile radius of the work site. Note that you're not covered until 50 workers are employed "for each working day during 20 or more calendar workweeks in the current or preceding calendar year."
Workers must be on your payroll for at least 12 months and put in at least 1,250 hours before becoming eligible for FMLA leave. Paid time off, including vacation and sick leave, doesn't count. The FMLA is an area where states have been active recently. Numerous states have enacted leave laws applying to employers with fewer than 50 employees.
- Title VII: Title VII of the Civil Rights Act prohibits employers from discriminating against employees based on race, color, religion, sex and national origin. Many states have statutes reducing the employer-size threshold and expanding the classes of protection.
- Age Discrimination in Employment Act (ADEA): The Age Discrimination in Employment Act prohibits companies with 20 or more workers from discriminating against people age 40 or older in hiring, firing, wages and benefits.
- Consolidated Omnibus Budget Reconciliation Act (COBRA): The Consolidated Omnibus Budget Reconciliation Act mandates continuing coverage when an employer with 20 or more workers offers health coverage.
- Pregnancy Discrimination Act (PDA): The Pregnancy Discrimination Act prohibits discrimination on the basis of pregnancy, childbirth and other related medical issues.
- Worker Adjustment and Retraining Notification Act (WARN): The Worker Adjustment and Retraining Notification Act requires companies to give at least 60 days' notice of closings and mass layoffs. It applies to employers with 100 or more workers. That does not count

employees who have worked less than six of the past 12 months or who work an average of less than 20 hours a week.

- National Labor Relations Act (NLRB): This law governs organizing activity for almost all employers and unions.
- Occupational Safety and Health Act (OSHA): requires all employers, regardless of size, to provide a safe workplace. The law includes additional mandates for certain industries. But if you have 10 or fewer employees, you're exempt from programmed inspections. The Occupational Safety and Health Administration's new ergonomic rules apply regardless of the number of employees, but they do exclude the construction, maritime, railroad and agriculture industries. Also, some record-keeping provisions apply only to businesses with at least 11 employees.
- Equal Pay Act: This law requires employers to pay men and women at the same rate.
- Immigration Reform and Control Act: Employers are required to ensure that employees are in this country legally and are eligible to work in this country.

Resources

- Wisconsin Department of Workforce Development, Equal Rights Division <http://dwd.wisconsin.gov/er/>
- U. S. Equal Opportunity Employment Commission <http://www.eeoc.gov/laws/>

revised 1/23/13