

IV. Legal Considerations

In addition to the EEOC guidelines, many state and federal laws and regulations govern employment practices and affect the hiring process. The major federal laws that apply to most employers include:

1. Title VII of the Civil Rights Act of 1964
2. Equal Pay Act
3. Age Discrimination in Employment Act
4. Vocational Rehabilitation Act
5. Pregnancy Discrimination Act
6. Civil Rights Act of 1991
7. Immigration Reform and Control Act
8. Americans with Disabilities Act

If necessary, schedule training with HR to review the process and legal considerations with the search committee/interview team.

Best Practices:

1. Ensure that all candidates feel they have been treated fairly.
2. Establish adequate records in the event the hiring decision must be justified at some future date.
3. Ask only for information that will be used as the basis for the hiring decision. Inquiries not related to the job must be avoided. The questions should be based on the tasks and responsibilities of the position and the knowledge, skills and abilities required to perform the work.
4. Obtain the same kind of information from every candidate for the same job.
5. Remember that under the Americans with Disabilities Act (ADA) it is illegal to refuse to hire a qualified individual on the basis of a disability if, with or without reasonable accommodations, the person can perform the essential functions of the job. If the candidate is a person with a disability who requests a reasonable accommodation, please contact HR to discuss the provision of the accommodation.

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6. Exercise caution in describing the prospective job. Do not, for example, assure the applicant that if hired, he or she can count on a long career, that there are no layoffs, that discharges always require "just cause," or other similar comments. Discussion of salary, promotional opportunities, and tenure or other job security must be carefully worded. Otherwise, the person hired for the job might interpret this information as an implied employment contract. Any promises made during the interview might subject the employer to lawsuits by discharged employees for breach of implied contract.
7. Avoid "negligent hiring" which is a failure by a prospective employer to check references adequately or to gather relevant information. Employers can be held liable for not thoroughly checking reference information. It is important to obtain adequate information to ensure that the new employee does not repeat a negative past behavior pattern and create problems on the job.

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Pre-Employment Questions Guide
This chart distinguishes legal from illegal inquiries.

Subject	Do Not Ask	You May Ask
Sex/Sexual Orientation	Are you male/female? What are the names and relationships of persons living with you? Are you homosexual?	None.
Residence	Do you own your own home or do you rent? Give me the names and relationships of persons you reside with.	What is your present address?
Race/Color	What is your race? What color is your hair, eyes, or skin?	None.
Age	What is your date of birth? How old are you? What year did you graduate from high school?	If hired, can you provide proof that you are at least 18 years of age?
National Origin	Where are you from? What is your ancestry, parentage, or nationality? What is your native language? What is the nationality of your parents or spouse?	What languages do you speak or write fluently? (Ask only if strictly job related.)
Religion	What is your religious affiliation or denomination? What church do you belong to? What is the name of your pastor or rabbi? What religious holidays do you observe?	None. If you need to know if an applicant is available to work Saturday or Sunday shifts, you may consistently ask all applicants: Are you available to work on Saturdays or Sundays if needed?

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Marital or Family Status	What is your marital status? What is your spouse's name? What was your maiden name? How many children do you have? Are you pregnant? Do you plan to have kids? What day care arrangements have you made for your children?	None. (You may consistently ask of all applicants: Do you have any commitments or responsibilities preventing you from meeting attendance requirements? Do you anticipate any lengthy absences from work?)
Arrests & Convictions	Have you ever been arrested? Have you ever been charged with any crime? Have you ever served time?	Have you been convicted of any crime?
Disabilities	Are you disabled? Do you have any handicaps?	Are you capable of performing the essential functions of this job with or without reasonable accommodation?
Citizenship	Of what country are you a citizen? Are you or other members of your family naturalized citizens? If so, when did you or they become a U.S. citizen? Attach a copy of your naturalization papers to your job application?	If hired, can you prove your eligibility to work in the United States?

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Affirmative Action

Wittenberg University, as a church-related school in partnership with its supporting synods of the Evangelical Lutheran Church in America, respects and defends the Church's position that discrimination in any form is destructive of God's gift of personhood. Consequently, in accordance with the university's Christian heritage and with the law, Wittenberg insists that equal opportunity be provided to all persons in all university operations. Wittenberg strives to develop a diverse community and to maintain an environment that promotes tolerance and understanding.

Because Wittenberg is committed to dealing fairly with all faculty, students and staff, it does not discriminate on the basis of race, religion, gender, color, national or ethnic origin, age or disability in the administration of its employment policies, educational policies, admission policies, scholarship and loan programs, or athletic and other college-administered programs.

The university expects its entire community to take positive steps to recruit, train and promote qualified individuals from diverse ethnic groups. Although Wittenberg does not employ quotas, the contribution a candidate might make toward achieving the goal of increasing diversity in the Wittenberg community will be an important consideration in hiring.

As specified in appropriate university personnel manuals, qualifications and performance are the university's criteria for compensation, advancement and retention. No employee of Wittenberg University will be granted fewer benefits or lower compensation nor be passed over for promotion or denied academic tenure because of race, color, religion, gender, national origin, age, disability, sexual orientation or any other legally protected status. The university strives to build a highly qualified and diverse faculty and staff.

Consensual Relations

In the interest of maintaining high standards of professional conduct, and of avoiding behavior that could interfere or could easily be construed to interfere with the discharge of an employee's professional responsibilities, Wittenberg University does not condone intimate sexual relationships between a university employee and a student or between a supervisor and a subordinate. This policy applies even when the parties have consented at the outset to enter into the relationship. This policy applies to an employee

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and a student even when no apparent professional relationship exists at the time because of the potential always exists for the involved employee to be placed unexpectedly in to a position of responsibility concerning the student (e.g. instruction, evaluation, counseling, advising).

The university employee found to be involved with the student or the supervisor found to be involved with the subordinate, in violation of this policy, will be held accountable and may be subject to discipline, up to and including dismissal, in a manner consistent with other university policies. Because by law faculty members are employees of Wittenberg University, they are included in all portions of this policy. They remain subject to the obligations of their adopted Statement of Professional Ethics.

Exclusions and Clarifications:

1. Relationships between individuals married to each other (or equivalent domestic partnerships) are exempt from this policy.
2. Part-time student employees of Wittenberg are not considered "employees" as described above.
3. This policy does not apply to a supervisor and an employee who is not a subordinate.
4. A Wittenberg student who within one year after graduation becomes employed by the university and is dating a Wittenberg student at the time of employment is not expected to end that relationship unless the job responsibilities include supervision, instruction, counseling, or advising. This includes any position where the employee has authority over the student in the decision of any matter that may directly affect the academic status, evaluation, employment, or promotion of a student.

When such a pre-existing relationship exists, the new employee must notify his or her immediate supervisor and the Director of Human Resources at the time of his or her employment. If the pre-existing relationship ends, the employee is subject to this policy and is prohibited from entering other romantic relationships with students.

Note: The Professional Code of Conduct for staff in Student Development prohibits its members from dating students in any circumstances.