

## 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?”*

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

#### 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/>